General Insurance Code of Practice
Independent Review 2012–2013
Final Report
May 2013

Ian Enright
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Glossary

Definitions in the 2013 Code are also used in this Report. See Appendix F.

**ACCC** — Australian Competition and Consumer Commission

**ADA** — Age Discrimination Act 2004 (Cth)

**AFSL** — Australian financial services licence

**AFSL holder** — holder of Australian financial services licence

**AGD** — Attorney-General’s Department

**AHRC** — Australian Human Rights Commission (AHRC)

**ALRC** — Australian Law Reform Commission

**APRA** — Australian Prudential Regulation Authority

**ASIC** — Australian Securities and Investments Commission

**ASIC Act** — Australian Securities and Investments Commission Act 2001 (Cth)

**ASIC RG 139** — ASIC Regulatory Guide 139: Approval and oversight of external dispute resolution schemes

**ASIC RG 183** — ASIC Regulatory Guide 183: Approval of financial services sector codes of conduct

**ASIC RG 165** — ASIC Regulatory Guide 165: Licensing: Internal and external dispute resolution

**Cameron/Milne report** — report by Alan Cameron and Nancy Milne in September 2003 on a general review of the IC Act

**CAP** — Code Advisory Panel for the Review

**CCC** — Code Compliance Committee

**CCC submission** — submission by the Code Compliance Committee

**CGB** — Code Governance Body

**Code** — General Insurance Code of Practice

**Code Content Principles** — the Code Content Principles are set out in paragraph 7.68 of this Report

**Code Framework Principles** — the Code Framework Principles are set out in paragraph 7.67 of this Report

**Code Participant** — a general insurance industry participant that is a signatory to the General Insurance Code of Practice
Code Principles — principles for the Code self-regulation framework and principles for the Code content

Corporations Act — Corporations Act 2001 (Cth)

CRS — Consumer Referral Service

EDR — External dispute resolution

FOS — Financial Ombudsman Service

FOS Code — means the Financial Ombudsman Service in its capacity as the supplier of services in relation to Code administration


FSA — Financial Services Authority

HOR Report — The Parliament of the Commonwealth of Australia, In the Wake of Disasters, Volume One: The operation of the insurance industry during disaster events, House of Representatives Standing Committee on Social Policy and Legal Affairs, February 2012

IAG submission — submission by the Insurance Australia Group

ICA — Insurance Council of Australia

ICA submission — submission by the Insurance Council of Australia

IC Act — Insurance Contracts Act 1984 (Cth)

IDR — Internal dispute resolution

IEC — Insurance Enquiries and Complaints Scheme

ILS submission — Joint customer advocate submission to this Review authored by the Insurance Law Service

IRAG — Insurance Reform Advisory Group

KFS — Key facts sheet

Major Reports — Five recent reports on disaster events: NDIR Report, HOR Report, QFCI Report, Treasury Paper, FOS QF Survey

NCRG — National Consumer Reference Group

NDIR — National Disaster Insurance Review

NDIS — the National Disability Insurance Scheme

NESB — Non-English Speaking Background

New Code — set out in Appendix F

NIBA — National Insurance Brokers Association

NIBA Code — National Insurance Brokers Association Code of Practice

NIBA submission — submission by the National Insurance Brokers Association

NIIS — National Injury Insurance Scheme


PDS — Product Disclosure Statement

QFCI — Queensland Floods Commission of Inquiry


RACQ Insurance submission — submission by RACQ Insurance Limited


SIB — Securities and Investments Board

SROs — self-regulatory organisations

Suncorp submission — submission by Suncorp Group Limited

Treasury Paper — Commonwealth Treasury, Reforming flood insurance — Clearing the waters, Consultation paper, April 2011

WRLC submission — submission by Western Region Legal Centres Victoria
1 Introduction

1.1 This document sets out the General Insurance Code of Practice 2012–2013 Independent Review Final Report. Its purpose is to report to the Board of the ICA matters on which I make recommendations about the terms of the Code and related industry practices. It has been prepared on the basis of the Terms of Reference for the Independent Review. The core of the Review has been a consideration of the Major Government Reports and the relevant issues from those reports were set out in the Issues Paper. The submissions, consultations and forums all sent a strong signal of commitment by all submitting entities to the virtues of the Code and a strong insistence that it must work well and better for the benefit of all.

1.2 The ICA appointed me as the Independent Reviewer of the General Insurance Code of Practice, under the Code and the Terms of Reference, on 3 May 2012.

1.3 The Code provides that:

1.14 An independent party will be appointed by the Insurance Council of Australia to review this Code every three years.

1.15 The review will consider whether this Code operates in accordance with its objectives. It will be conducted in consultation with FOS, the Insurance Council of Australia, insurers, consumer and business representatives, and ASIC.

1.4 The Terms of Reference for this Review are set out in Appendix A to this Report. The Terms of Reference are broad and I have interpreted and applied them accordingly. The Terms of Reference included a review of the ICA Disaster Declaration Guidelines. My report and recommendations on that issue are under Issue 15: Natural Disasters.

1.5 I appointed a Code Advisory Panel (‘CAP’) consisting of Julie Maron, with David Leermakers as the alternate, as the customer representative and Annabelle Butler as the insurer representative. The CAP Terms of Reference are set out in Appendix A.

1.6 The ICA provided me with a Secretariat consisting of Vicki Mullen and Amber Fitzpatrick.

1.7 The Review is taking place at an important time from three perspectives. Firstly, the natural disasters in 2010–2013 caused exceptional and distressing loss in our communities, and a number of inquiries into those natural disasters highlighted the role of insurance in paying claims and helping our communities to recover. There have been some criticisms of insurers in that context and some recommendations about changes to insurers’ practices, and to the Code. Secondly, insurers continue to operate in a competitive market and are experiencing volatility in their underwriting results, and uncertain returns on their investment portfolios. Thirdly, the speed and scale of legal and regulatory changes affecting the industry are greater than they have ever been. These three factors make this an important Review. The Insurance Council of Australia (ICA) brought the triennial Review forward by 12 months to enable the Review to focus on these issues.

1.8 There have been five Major Reports on the insurance industry since April 2011 (Major Reports). They were introduced in the Issues Paper, and their findings form an important part of this Report. The Issues Paper examined the issues against the recommendations by the Major Reports. Their recommendations are tabulated in relation to the issues in this Report. Appendix F tracks my findings and recommendations against the recommendations by the Major Reports.

1.9 The ICA has indicated a wish for the Review to take into account the ICA’s intention to submit a revised Code to ASIC for approval in accordance with the Corporations Act 2001 (Cth) (Corporations Act), section 1101A1 and ASIC Regulatory Guide 183: Approval of financial services sector codes of conduct (ASIC RG 183). I have therefore had regard to the processes and criteria for that approval in the course of this Review. I have also discussed this
aspect of the Review with ASIC and outlined my approach to ASIC. ASIC has indicated that it accepts my approach as appropriate in the context of ASIC RG 183. I consider that the process of my Independent Review and the content of the recommended 2013 Code meet the ASIC RG 183 criteria.

1.10 I published the Issues Paper in October 2012.

1.11 The Review’s activities — consultations, forums and meetings — are set out in the Stakeholder Consultation Diary. There were also issue specific forums on: financial hardship, governance, IDR and claims. The public consultations sessions for Melbourne, Ipswich, Perth, Sydney, and Wagga Wagga, were advertised publicly and the Review and the CAP worked to ensure that the sessions were made available to local politicians, representatives and members of the community.

1.12 I have considered material available to me up to 31 March 2013.

1.13 The submissions to the Review are listed in Appendix C. There are a number of confidential submissions which are not listed there. I consider that the FOS QF Survey and the CCC submissions are critically important to this Review because of their credentials, FOS’ data quality and their position in the Code governance framework. I have taken account of them accordingly.

1.14 The recommendations in this Report mean that transitional measures, to the extent that my Report is adopted, will need careful consideration but their detail is beyond the scope of my Report.

1.15 It is open to the ICA to accept or reject any part of my Independent Review, Report or recommendations.

1.16 I want to thank the many people who contributed so much to the work of the Review: all those who attended the Review consultations and forums and all those who made submissions. I thank Rob Whelan, the ICA CEO and the ICA staff for giving the Review all the support I asked for without infringing on the independence of the Review. I should make special mention of Julie Maron and Annabelle Butler on the CAP and Amber Fitzpatrick and Vicki Mullen on the Review Secretariat. The commitment and care for the issues and the people, our community and our insurance industry, shown by everyone involved in the Review, demonstrate the virtues in our community and industry and the promise of our future.
2 Executive summary

2.1 This Review of the Code is an important one in the development of the Australian insurance industry. The context of the state of the industry, the recent natural disasters and the regulatory matrix in which the industry and its stakeholders work shape the issues here. The history of the Code from the first Code in 1994 illuminates some important issues. The Code has standards about fairness and there is proposed legislation on the utmost good faith duty and on unfair contract terms. The relationship among the three different types of fairness duty in the Code and the IC Act is critical for the development of the industry and the Code.

2.2 It is important to emphasise that the Code is self-regulation. It is not legislation nor is it merely market practice. The place of self-regulation is both blurred and fragile in the matrix of legal and government agency regulation which dominates the framework for the regulation of the general insurance industry. This Independent Review offers an important opportunity to consider the Code as a piece of self-regulation, within the matrix of regulation of the general insurance industry. The Review aims to place the Code in a stable position in that framework by testing the Code against self-regulation principles for the general insurance industry. It is time, in my view, for self-regulation to reclaim its place for general insurance in Australia.

2.3 Code governance emerged as the single most important overarching issue for my Review. It is essential for the Code to be set in a governance framework in which the governance body is independent, expert, informed and resourced. The framework must be visible and accountable. I have dealt with Code governance as the first issue because of its importance and because so many other issues and the approach in my Report and my recommendations are based on my recommended approach to Code governance. The issues and my recommendations on those issues are set out in Section 8.

2.4 I have considered developments in the industry, changes in law and regulation and the events of this last summer; the issues and recommendations in this Report are developed in that context. The three most pressing issues were, in my view, financial illiteracy, financial hardship and education and training. The breadth and depth of financial illiteracy in our community is one of our greatest challenges. It is a core challenge for the insurance industry. Recent research supports both the concern and the importance of progress to a solution. Findings in recent reports that the insurance product disclosure regime has significant shortcomings are credible and persuasive. It is an inadequate solution to a problem of an inability or unwillingness to read, to rely on a different type and presentation of disclosure — while that might improve the position, by definition, it cannot solve the problem. I have recommended that the Code standards should reflect a fuller commitment to financial literacy. The Code Governance Body should be tasked with involving and guiding Code stakeholders in such programs.

2.5 The issue of financial hardship was the subject of a number of consultations and forums — one was devoted exclusively to the issue. A working group took the development of the issue from those forums and worked with me and advised me on a draft Financial Hardship Guideline which forms a part of the New Code in Appendix F. I am delighted to report that the Guideline reflects a broad stakeholder consensus on the issue.

2.6 There was a strong and deep consensus from my consultations, forums and the submissions that, even with the considerable work to date and continuing, the ICA, Code Participants and the Code Governance Body must redouble their resources and efforts in training and education. The terms of the Code are a clanging symbol only, if the performance of Code Participants, employees, agents and Service Suppliers who work with customers and the community do not understand and implement the spirit and the standards in the Code. There are sufficient instances of matters which involve a breach of the law, policy or the IC Act as well as the Code, to cause concern. The education and training that is currently being carried
out is clearly not adequate for its purpose. I recommend an enhancement in the quality and quantity of education and training, including on financial hardship and assistance for those who are traumatized by natural disaster. The Code Governance Body should also be tasked with involving and guiding Code stakeholders in such programs.

2.7 I recommend a refurbished New Code. One that has principles, standards, guidelines and service levels. One that is in plain English. The body of the New Code, as I envisage it, is set out in Appendix F, with a commentary to enable comparison with the current Code in Section 10. The guidelines and service levels focus on specific areas: financial hardship, IDR, claims, natural disasters and Code monitoring and enforcement. They are designed to give all stakeholders more consistency and quality of experience with general insurance.

2.8 There are important challenges of access and diversity for our community and the general insurance industry which are regrettably beyond the scope of recommendation in my Independent Review. It is, however, essential to give them context in this Review: Section 11.

2.9 There are also important challenges for our community and the general insurance industry which lie ahead of us. They are, on any measure, gravely more significant than the issues covered in my Code Review. These challenges are set out in Sections 5 and 12 but I outline them briefly here. The first challenge is how to develop a built environment that reduces hazard exposures in the community, leading to a reduction in claims value and volume.

2.10 The second challenge arises from changes in disability and accident compensation schemes. The National Disability Insurance Scheme (NDIS), and the associated National Injury Insurance Scheme (NIIS) are major developments in the support for Australians with a serious disability.

2.11 The third challenge is access to insurance and its affordability. This issue has never been more problematic nor its solution more vital in the context of significant community risk but significant underinsurance. There is a related and growing demand for simple products. With greater public and political attention being given to equity issues and the larger numbers of people who are seniors or disabled, concern is growing about access to general insurance for all members of Australian society.

2.12 Fourthly, the general insurance industry has been through more than two decades of constant regulatory change in prudential and consumer protection or market conduct regulation. The number of reforms attempted simultaneously over a long time has stretched the resources of all stakeholders. It is time, in my view, for a reassessment of the business of regulation.

2.13 I mention these challenges here for another purpose as well. I offer the proposals in my Report as measures to improve the performance of the general insurance industry and the community’s trust and confidence in it. I consider that they strike a fair balance among the interests involved and that they will lead to cost effective outcomes. I also offer the proposals in my Report to position the general insurance industry to enable it to meet these grave challenges which lie ahead of us and which are urgent and compelling for us all. I recommend my proposals in this context, above all.
3 Recommendations

3.1 I set out a table of the recommendations in this Report.

Table 1: Recommendations

The Recommendations use the definitions in the New Code in Appendix F.

<table>
<thead>
<tr>
<th>Number</th>
<th>Recommendation</th>
<th>Reference</th>
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<tbody>
<tr>
<td>1</td>
<td>The CCC should become the Code Governance Body (CGB).</td>
<td>Section 8</td>
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<tr>
<td>2</td>
<td>The CGB should be established and maintained consistently with the Code Principles.</td>
<td>Section 8</td>
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<td>3</td>
<td>The CGB should be reconstituted as follows:</td>
<td>Section 8</td>
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<tr>
<td></td>
<td>• CGB: three independent members and one insurance industry and one customer advocate or representative;</td>
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<td></td>
<td>• CGB Sanctions Committee: three independent members only;</td>
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<td></td>
<td>• CGB Promotion, Education and Training Committee: CGB plus representatives from industry and customers and the ICA, FOS Code, ASIC and Treasury;</td>
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<tr>
<td></td>
<td>• CGB Policy Committee: the CGB plus representatives from industry and customers and the ICA, FOS Code, ASIC and Treasury.</td>
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<tr>
<td>4</td>
<td>CGB should source the resources and services it needs for its work under its charter from FOS Code.</td>
<td>Section 8</td>
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<tr>
<td>5</td>
<td>The CGB constitution or charter should be amended to provide that the CGB should:</td>
<td>Section 8</td>
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<tr>
<td></td>
<td>• Work with the ICA and Code Participants to promote the Code and on industry education and training;</td>
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<td></td>
<td>• Receive industry and Code data flowing from FOS Code, FOS EDR, ICA and other bodies. CGB and ASIC should share relevant information. CGB should refer Code serious and systemic issues to ASIC;</td>
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<tr>
<td></td>
<td>• Direct FOS Code’s administration service, receiving data and reports from FOS Code and monitoring FOS Code’s performance;</td>
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<td></td>
<td>• Deal with industry conduct and Code breach allegations;</td>
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<td></td>
<td>• Consult with ASIC and Treasury on general insurance policy issues;</td>
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<td></td>
<td>• Liaise with, and make recommendations to ASIC, on Corporations Law, IC Act and Code matters for general insurance.</td>
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<td>6</td>
<td>The CGB should decide what reports it commissions or publishes in relation to the matters under its jurisdiction.</td>
<td>Section 8</td>
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<tr>
<td>7</td>
<td>The CGB should be a co-ordinating body as the host and focus of insurance policy forums involving all stakeholders for planned and measured proposals for industry continuous improvement.</td>
<td>Section 8</td>
</tr>
<tr>
<td>8</td>
<td>The Code should refer to the CGB constitution or charter and the CGB’s outsource contract with FOS Code.</td>
<td>Section 8</td>
</tr>
</tbody>
</table>
Section 9: Issues

9. The Code should contain a standard which requires the ICA as well as each Code Participant to promote the Code.

Issue 1

10. The CGB should lead and co-ordinate the promotion of the Code.

Issue 1

11. A Code Promotion, Education and Training Committee should be established to support the CGB’s work in leading and co-ordinating the promotion of the Code.

Issue 1

12. The Code should:
   - consist of ethical principles, principles, objectives, rules or standards and guidelines;
   - be clearly and simply structured and set out; and
   - be in plain English.

Issue 2

13. The Code should be substantially in the terms set out in Appendix F.

Issue 2

14. The ICA, ASIC and the CGB should work even more closely together to bring all general insurers and insurance operations carrying on insurance business in Australia into the Code as Code Participants. The CGB should be given powers to effect this purpose.

Issue 3

15. The Code should apply to cover all Service Suppliers and relevant agents, including distributors.

Issue 3

16. The Code should apply to all Third Party Beneficiaries, as defined in the Insurance Contracts Act 1984.

Issue 3

17. The Code principles and objectives should apply to all Code Insurances, including Wholesale Code Insurances. The education and training standards should apply to all Code Insurances, including Wholesale Code Insurances. The other sections, standards, guidelines and service levels should apply to Code Retail Insurances only. The distinction between Retail Code Insurances and Wholesale Code Insurances should follow the Corporations Law definitions.

Issue 3

18. There should be no change to the insurance contracts excepted from the Code.

Issue 3

19. A Code Participant should be free and encouraged to consider which standards and guidelines might apply with adaptation to its own Wholesale Code Insurances.

Issue 3

20. The Code should not provide for monetary penalties or fines as Sanctions for a Code breach.

Issue 4


Issue 4

22. The Code standards on education and training should be enhanced. The recommended Code standards are in Appendix F. The standards should include education and training on financial hardship and on dealing with personal stress in natural disasters.

Issue 4

23. The Code standards should include a commitment to improving the financial literacy of insurance customers.

Issue 5

24. A Code Promotion, Education and Training committee should be established to support the CGB’s work in leading and co-ordinating education and training under the Code.

Issue 5

25. The Code standards should include a commitment to improving the financial literacy of insurance customers.

Issue 6

26. The Code should not contain standards on policy terms and coverage.

Issue 7

27. The Code should include a standard for an insurer to notify a Customer before and after cancelling an instalment insurance contract.

Issue 8

28. The Code standards should include claims service levels substantially...

Issue 9
<table>
<thead>
<tr>
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<th>Statement</th>
<th>Issue</th>
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<tbody>
<tr>
<td>29</td>
<td>The Claims Service Levels should be a term of each Retail Code Insurance. An insurer may offer better but not worse terms.</td>
<td>9</td>
</tr>
<tr>
<td>30</td>
<td>An insurer should be entitled to the defences set out in the Claims Service Levels.</td>
<td>9</td>
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<tr>
<td>31</td>
<td>The ‘right to claim’ standard should be enhanced in the Claims Service Levels.</td>
<td>9</td>
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<tr>
<td>32</td>
<td>It should not be a Code standard that the claimant must be notified about IDR and EDR on claim lodgement.</td>
<td>9</td>
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<td>33</td>
<td>The terms of the Claims Service Levels in the Code should be enhanced to allow the Customer and the Code Participant the ability to agree to alternative timelines and for an agreement on alternative timelines to be binding.</td>
<td>9</td>
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<tr>
<td>34</td>
<td>The Claims Service Levels should acknowledge that a Service Supplier’s timeliness might be beyond the best endeavours of the Code Participant to control.</td>
<td>9</td>
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<tr>
<td>35</td>
<td>The Code standards should not have a time limit on finalising a claim after it is accepted.</td>
<td>9</td>
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<tr>
<td>36</td>
<td>The Code Participant should, from the time the claim is lodged until the Customer has given the Code Participant all it needs from the Customer to assess the claim, act in accordance with the Code Service Principles.</td>
<td>9</td>
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<tr>
<td>37</td>
<td>The Code standards should not prescribe a Code Participant’s methods for recording claims calls nor its record keeping measures.</td>
<td>9</td>
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<tr>
<td>38</td>
<td>The Code standards should not require the Code Participant to notify the Customer about IDR and EDR if the claim has not been determined after two months.</td>
<td>9</td>
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<tr>
<td>39</td>
<td>A Code Participant should have a service level agreement with each Service Supplier, reflecting the Claims Service Levels that are binding on a Code Participant.</td>
<td>9</td>
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<tr>
<td>40</td>
<td>The Code Claims Service levels should include standards about a Code Participant giving reasons and supplying documents on denying a claim.</td>
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<tr>
<td>41</td>
<td>The Code standards should not include guidelines on the application of the legal professional privilege as an exception to the standard for supplying documents to the Customer about the reasons for a claim denial.</td>
<td>9</td>
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<tr>
<td>42</td>
<td>The Code should not include a standard that a claim not determined within four months should automatically become an IDR matter.</td>
<td>9</td>
</tr>
<tr>
<td>43</td>
<td>The Code should not include a standard for the standardisation of Code Participants’ processes and documents for natural disaster claims assessment unless such a standard is in the Natural Disaster Customer Response Guideline — see Recommendation 60.</td>
<td>9</td>
</tr>
<tr>
<td>44</td>
<td>The period for reopening a natural disaster claim should be seven months not six months. The time should not run from the finalisation of the claim but should run from the date of the deed of release.</td>
<td>9</td>
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<tr>
<td>45</td>
<td>The Code should include an Internal Complaints Process Guideline substantially in the terms set out in Appendix F.</td>
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<tr>
<td>46</td>
<td>The Internal Complaints Process Guideline should refer to a complaint but not to a dispute.</td>
<td>10</td>
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<tr>
<td>47</td>
<td>The Code should not include a time limit within which a complaint should be made.</td>
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<tr>
<td>48</td>
<td>The Internal Complaints Process Guideline should include a standard that at the end of the first tier review process, the Code Participant</td>
<td>10</td>
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must notify the Customer about the Code Participant’s internal complaints resolution processes and about the Customer’s rights.

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<tr>
<td>49</td>
<td>The ten-day period defining a declined claim in ASIC RG 165 should be amended consistently with the equivalent standard in the Code.</td>
</tr>
<tr>
<td>50</td>
<td>The CGB should decide on and implement good reporting channels and information on internal complaints resolution and processes.</td>
</tr>
<tr>
<td>51</td>
<td>The CGB, FOS Code and FOS EDR should enhance their efforts and work closely together to ensure that the processes and communications in relation to internal complaints resolution and processes and EDR be more consistent.</td>
</tr>
<tr>
<td>52</td>
<td>A Code Participant under investigation for a Code breach or non-compliance should not be named publicly. A Code Participant under investigation for, or allegation of, a Code breach or non-compliance must be identified to the CGB Sanctions Committee on its request.</td>
</tr>
<tr>
<td>53</td>
<td>The CGB Sanctions Committee should have power to make decisions about the reporting of its activities and matters before it, consistent with the other recommendations.</td>
</tr>
<tr>
<td>54</td>
<td>The terms of the Code, section 7 on processes, procedures and reporting for Code monitoring and enforcement should be removed from the body of the Code and placed in a Code Monitoring and Enforcement Guideline to be developed.</td>
</tr>
<tr>
<td>55</td>
<td>The CGB Sanctions Committee should have a discretion to name publicly a Code Participant in the context of a Corrective Action, if the Code Participant has committed a significant, serious or systemic breach of, or in relation to, the Code.</td>
</tr>
<tr>
<td>56</td>
<td>The Code sanctions for a Code Participant, subject to Recommendation 55, should not be changed.</td>
</tr>
<tr>
<td>57</td>
<td>The Code standards should include a Financial Hardship Guideline substantially in the terms set out in Appendix F.</td>
</tr>
<tr>
<td>58</td>
<td>The Code standards on education and training should include education and training on financial hardship.</td>
</tr>
<tr>
<td>59</td>
<td>The Natural Disaster Declaration Guideline should be adopted and incorporated as one of the Code Guidelines — see Appendix F. There should be no substantive change to the terms of the Natural Disaster Declaration Guideline.</td>
</tr>
<tr>
<td>60</td>
<td>The Code standards should include a Natural Disaster Customer Response Guideline to be developed.</td>
</tr>
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</table>
NEW CODE

1 PRINCIPLES AND OBJECTIVES

1.1 We acknowledge that our Customers and our relationships with them are the foundations of our businesses.

1.2 Our Customers acknowledge that we must prosper for the benefit of our owners and stakeholders. A Code Participant that is a general insurer is also subject to prudential regulation.

1.3 Our relationship with our Customers includes the insurance contract and the law and regulation that is relevant to the insurance contract. Our conduct in relation to our Customers is based on the utmost good faith. We commit to conducting ourselves with due regard to our Customer’s interests.

1.4 The objectives of this Code are to:

(a) ensure our community and our customers are well informed about this Code, insurance, insurance products and about our businesses;

(b) ensure general insurance industry continuous improvement through education and training;

(c) ensure that our customers’ experience in buying insurance and in having claims assessed meets their reasonable expectations including in natural disasters;

(d) provide fair and effective mechanisms for the resolution of complaints and disputes between Code Participants and Customers;

(e) commit Code Participants and their Service Suppliers to high standards of customer service; and

(f) enhance community and Customer trust and confidence in the general insurance industry and the esteem of each person involved.

1.5 We commit that our conduct in all phases of our relationship with our Customers and the community will be honest, fair, reasonable, professional, transparent, prompt and efficient. We commit to high standards of service in our conduct under the Code.

1.6 We care for our Customers in hard times, or those who suffer hardship, with compassion.

1.7 There is a dictionary at the end of the Code. A word or phrase that is in italics is defined in the Dictionary. A word or phrase that is used only in a Standard or Guideline is defined in that Standard or Guideline only.

2 APPLICATION

2.1 The Code applies to a Code Participant and to Code Insurances.

2.2 The ICA commits to working with the CGB, ASIC and stakeholders to encourage all general insurers and general insurance operations, which carry on business in Australia, to adopt the Code.

2.3 The Code applies to a Code Participant in relation to the conduct of a Service Supplier.
2.4 The Code applies to Code Insurances. It applies differently to Retail Code Insurances compared with Wholesale Code Insurances.

The following sections apply to Retail Code Insurances only. They do not apply to Wholesale Code Insurances:

(a) financial hardship — section 5
(b) service suppliers and employees — section 6
(c) natural disasters — section 7
(d) buying insurance — section 8
(e) claims — section 9
(f) complaints and disputes — section 10
(g) monitoring, enforcement and sanctions — section 11

2.5 The other sections apply to all Code Insurances.

2.6 The Code is approved by ASIC under the Corporations Act 2001. The Code is consistent with ASIC Law.

3 PROMOTING THE CODE AND THE INDUSTRY — ASSISTING CUSTOMERS

3.1 We commit to working with the ICA and the CGB to promote and champion this Code.

3.2 We commit to including information about the Code on our websites, in our relevant communications with you and in our relevant product information and documents.

3.3 We commit to working with the ICA and the CGB to give you information and services to assist you to choose insurance products.

3.4 We commit to working with the ICA and the CGB to initiate and support programs to promote insurance, financial literacy and the insurance industry to our communities.

4 EDUCATION AND TRAINING

4.1 We commit to working with the ICA and the CGB to promote and champion the education and training of our employees and Service Suppliers.

4.2 We commit to:

(a) giving the right and good education and training to our employees for their work and their services for you;

(b) ensuring our Service Suppliers have the right and good education and training for their work and their services for you;

(c) giving or ensuring education and training to correct any shortcomings in our employees and Service Suppliers’ work or services; and

(d) keeping education and training records for a minimum of five years and making them available to the CGB on request.

5 FINANCIAL HARDSHIP

5.1 We acknowledge that our communities and some of our Customers experience financial hardship.
5.2 We commit that we will treat each Customer who experiences financial hardship in accordance with the Code Service Principles.

5.3 We commit that we will conduct ourselves in dealing with your financial hardship in accordance with the Financial Hardship Guideline. The Financial Hardship Guideline applies to Retail Code Insurances only.

5.4 A Code Participant is bound by the Code in relation to the services and conduct of a Service Supplier to a Code Participant in relation to any matter under the Financial Hardship Guideline.

6 SERVICE SUPPLIERS AND EMPLOYEES

6.1 This standard applies to buying insurance and claims for Retail Code Insurances.

6.2 We commit that our employees and Service Suppliers, except for Special Services, will treat each Customer in relation to a matter under this Code in accordance with the Code Service Principles.

6.3 We commit to appointing only Service Suppliers who are qualified by education, training and experience for a service in relation to a matter under this Code. Our contracts with our Service Suppliers must reflect the Code Service Principles and the Code standards relevant to the services by the Service Supplier. A Service Supplier must obtain our approval before subcontracting their services.

6.4 Our Service Suppliers, except for Special Services, must inform you about the identity of the Code Participant for whom they act and about the work they do or the service they supply. We commit to monitoring and measuring the performance of the functions and services by our employees and Service Suppliers.

6.5 Our Service Suppliers must notify us about any complaint by you about a matter under this Code when acting on our behalf. Our Internal Complaints Process applies to a complaint about a Service Supplier under this Code.

7 NATURAL DISASTERS

7.1 We acknowledge and understand that Natural Disasters cause not only great personal, financial and property loss but also acute levels of distress and concern in our communities. We commit that our response to Natural Disasters will recognise our role in helping to compensate our Customers for these losses as well as the importance of alleviating the distress and concern.

7.2 We commit to responding to Natural Disasters in accordance with the Code Service Principles.

7.3 We and our Service Suppliers, commit that we will conduct ourselves in dealing with you in a Natural Disaster in accordance with the Natural Disaster Customer Response Guideline. The Natural Disaster Customer Response Guideline applies to Retail Code Insurances only.

7.4 We commit to cooperating and working with the ICA and the CGB on industry coordination and communications under the ICA’s Natural Disaster coordination arrangements.

8 BUYING INSURANCE

8.1 The sales process for buying a Retail Code Insurance is regulated by law including the Corporations Act. We commit to ensuring that our Service Suppliers’ and our conduct
towards you when buying a Retail Code Insurance is according to the law as a minimum standard.

8.2 We commit that we, and our Service Suppliers, will treat each Customer who is buying Retail Code Insurance in accordance with the Code Service Principles.

8.3 We commit to ensuring that our sales material, our discussions and written communications with you are in plain language.

8.4 We will ask for and rely on only relevant and material information and documents to assess your application for Retail Code Insurance. We will give you a fair opportunity to correct any mistakes we see in your application for a Retail Code Insurance.

8.5 We will give you, on request, our reasons in accordance with the Code Service Principles if we decline your application for a Retail Code Insurance. We commit to supplying you with the information and documents we relied on for our decision if you request and if the information and documents are Disclosable Material.

8.6 We commit, in relation to the cancellation of an instalment Retail Code Insurance:
(a) to giving one notice of the intention to cancel the instalment Retail Code Insurance to the Customer 28 days before cancellation and to giving another notice of the intention to cancel the instalment Retail Code Insurance to the Customer 14 days before cancellation;
(b) to notifying the Customer of the cancellation within 14 days after the effective date of the cancellation.

8.7 You may be entitled to cancel your Retail Code Insurance and obtain a refund. We will inform you about your rights to cancellation and a refund.

8.8 We commit to ensuring that all our communications with you are conducted according to the law as a minimum standard and the Code Service Principles.

9 CLAIMS

9.1 We sell a core promise to pay valid claims. We expect our Customers to make claims.

9.2 We expect that our Customers’ claims will be made promptly, truthfully, accurately and without exaggeration.

9.3 We, and our Service Suppliers, commit that we will treat each Customer and claim assessment under a Retail Code Insurance in accordance with the Code Service Principles.

9.4 We must adopt the Claims Service Levels for our Retail Code Insurances as a minimum standard for our claims assessment and services.

9.5 We will consider adopting terms from the Claims Service Levels for our Wholesale Code Insurances as a minimum standard for our claims assessment and services.

10 COMPLAINTS AND DISPUTES

Internal Complaints Process

10.1 We acknowledge that you may want to make a complaint to us about your experience with us in relation to a Retail Code Insurance.

10.2 We commit that we will treat each Customer who makes a complaint in accordance with the Code Service Principles.
10.3 We commit that we will conduct ourselves in dealing with a Customer complaint in accordance with the Internal Complaint Process Guideline. The Internal Complaint Process Guideline applies to Retail Code Insurances only.

10.4 A Code Participant is bound by the Code in relation to the services and conduct of a Service Supplier to a Code Participant in relation to any matter under the Internal Complaint Process Guideline.

EDR Process

10.5 If you are not satisfied with the resolution of your complaint after our Internal Complaint Process, we commit to informing you about our EDR processes and your rights to EDR.

10.6 We subscribe to the independent external dispute resolution scheme administered by FOS EDR.

10.7 FOS EDR is available to Customers who fall within the FOS Terms of Reference.

10.8 External dispute resolution determinations made by FOS are binding upon us in accordance with the FOS Terms of Reference.

10.9 Where FOS Terms of Reference do not extend to you or your dispute, we commit to advising you to seek independent legal advice or giving you information about any other external dispute resolution options that may be available to you.

11 MONITORING, ENFORCEMENT AND SANCTIONS

11.1 The CGB monitors and enforces Code Participant compliance with the Code.

11.2 A Code Participant breaches the Code if its Service Supplier, except for Special Services, breaches the Code when supplying services for the Code Participant.

11.3 A Code Participant must report a breach of the Code to the CGB.

11.4 The CGB has power to make enquiries about a Code Participant’s compliance with the Code. FOS Code and FOS EDR also report possible Code breaches to the CGB. Any serious or systemic issue is reported to ASIC.

11.5 You are entitled to complain to the CGB that a Code Participant has breached the Code. If the CGB finds that a Code Participant has breached the Code, the CGB has power to require Corrective Action by the Code Participant. If the Code Participant does not comply with the Corrective Action, the CGB has power to impose a Code Sanction. A Corrective Action and a Sanction are binding on a Code Participant.

11.6 The CGB and FOS Code must comply with the Code Monitoring and Enforcement Guideline which is binding on them and each Code Participant under the contract by which a Code Participant adopts the Code.

12 CODE GOVERNANCE

12.1 The CGB is the governing body for this Code. It is independent. Its address is [ ].

12.2 The CGB’s constitution, functions and powers are set out in the CGB Charter [refer to website for charter].

12.3 The CGB has a contract with FOS Code under which FOS Code supplies services to the CGB [refer to website for contract].

12.4 The CGB should commission an independent review of this Code at least every five years.
13 GUIDELINES AND SERVICE LEVELS

13.1 The following Guidelines and Service Levels are a part of this Code:
(a) Financial Hardship Guideline
(b) Claims Service Levels
(c) Internal Complaint Process Guideline
(d) Natural Disaster Declaration Guideline
(e) Natural Disaster Customer Response Guideline [to be developed]
(f) Code Monitoring and Enforcement Guideline [to be developed]

13.2 The CGB should review these Guidelines and Services Levels periodically and at least annually.

13.3 A Guideline or Service Level may be varied, superseded or rescinded by the CGB, with a transition period and for application to Retail Code Insurances entered into or renewed after the end of the transitional period.
4 The Review and ASIC RG183 approval

Background

4.1 The ICA has indicated a wish for the Review to take into account the ICA’s intention to submit a revised Code to ASIC for approval in accordance with section 1101A of the Corporations Act 2001 (Cth) (Corporations Act) and ASIC Regulatory Guide 183: Approval of financial services sector codes of conduct (ASIC RG 183). I have therefore had regard to the processes and criteria for that approval in the course of this Review. I have also discussed this aspect of the Review with ASIC and outlined my approach to ASIC. ASIC has indicated that it accepts this approach as appropriate in the context of ASIC RG 183.

4.2 ASIC has power under the Corporations Act to approve a code. ASIC Regulatory Guide 183 is a guideline for the process and its minimum content. However, ASIC approval has no statutory or regulatory effect beyond the ASIC Act. ASIC approval of a Code seems to have two effects, namely, it will be a signal to consumers that it is a code they can have confidence in. An approved code would also respond to identified and emerging consumer issues and would deliver substantial benefits to consumers and heighten the possibility of misrepresentations about the nature of the code and any approval. The legal effect of a code in itself is a complex question.

4.3 ASIC’s code approval power is limited to entities that are regulated by ASIC. Relevantly for the Code, these entities include Australian financial services licence (AFSL) holders. However, ASIC is prepared to consider the approval of a code that covers bodies which it does not regulate. This raises the question about general insurers who are not AFSL holders for any reason including because they are wholesale only or carrying on business offshore. ASIC encourages codes to extend beyond retail clients where appropriate.

ASIC RG 183 process

4.4 ASIC RG 183 prescribes the code development process for a code to be approved under it. The general principle is that: “The code must be developed and reviewed in a transparent manner which involves consulting with relevant stakeholders including consumer representatives.”

4.5 The more particular criteria are set out below in the first and second columns with my comment in the third column. On this basis, I submit that the Code review process meets the process criteria in ASIC RG 183.

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1 See also sections 761E and 761G, 1017G, 912A and 916B.
2 Section 1101A, ASIC RG 183.
3 ASIC RG para 183.6.
4 ASIC RG paras 183.107, 108.
5 Report, Section 9, Issues 4 and 9.
6 Corporations Act, section 1101A; ASIC RG 183.10.
7 Corporations Act, section 1101A; ASIC RG 183.10.
8 ASIC RG 183, para 183.20; compare para 183.42.
9 ASIC RG 183, paras 183.18, 183.56–61.
10 The criteria are in ASIC RG 183.13(b); ASIC RG 183.22(b); 183.44(a); ASIC RG 183.50–RG 183.55; the criteria for the application are in ASIC RG 183.61, 92, 93.
11 ASIC RG 183.13(b).
**Table 2: ASIC RG 183**

<table>
<thead>
<tr>
<th>Criterion</th>
<th>Comment</th>
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<tbody>
<tr>
<td><strong>RG 183.51</strong>&lt;br&gt;(a) Identifying at the outset all relevant stakeholders, including affected consumers, relevant community and consumer groups, industry participants and their peak bodies, and relevant regulators and government departments;</td>
<td>I consider that the work of the Review set out in the Issues Paper and this Report including the consultations, forums, submissions, set out in the Diary and the list of submissions meet this criterion.</td>
</tr>
<tr>
<td><strong>(b)</strong> Effectively consulting with all stakeholders to identify the issues and debate appropriate responses. For example, this may include obtaining information about consumer complaints from a variety of sources including internal and external dispute resolution complaints data;</td>
<td>I consider that the work of the Review set out in the Issues Paper and this Report including the consultations, forums, submissions, set out in the Diary and the list of submissions meet this criterion.</td>
</tr>
<tr>
<td><strong>(c)</strong> Adopting transparent procedures such as issuing a discussion paper, recommendations and/or draft code for public consultation purposes. In most cases, it will be necessary to appoint an independent party to conduct public consultations and/or to make public recommendations about the code;</td>
<td>I consider that the work of the Review set out in the Issues Paper and this Report including the consultations, forums, submissions, set out in the Diary and the list of submissions meet this criterion. As the Code Independent Reviewer, I conducted the consultations and I make recommendations.</td>
</tr>
<tr>
<td><strong>(d)</strong> Having early and appropriate involvement of ASIC and other relevant regulators in the development and consultative process;</td>
<td>ASIC and FOS Code have been closely involved. APRA was invited but declined to be involved. I consider that the work of the Review set out in the Issues Paper and this Report including the consultations, forums, submissions, set out in the Diary and the list of submissions meet this criterion.</td>
</tr>
<tr>
<td><strong>(e)</strong> Assessing whether a code actually provides the best option to address the identified problems; and</td>
<td>The Code works in a matrix of regulation. I consider that within this matrix it is the best option to address the identified problems. I consider that the work of the Review set out in the Issues Paper and this Report including the consultations, forums, submissions, set out in the Diary and the list of submissions meet this criterion.</td>
</tr>
<tr>
<td><strong>(f)</strong> Resolving what is in (and out) of the code without bias towards any group of stakeholders.</td>
<td>I have not acted with any bias. The resolution of the Code content is in my Report and recommendations. I have recommended a substantially amended Code and it is set out in this Report. I consider that the work of the Review set...</td>
</tr>
<tr>
<td>Criterion</td>
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<td>out in the Issues Paper and this Report including the consultations, forums, submissions, set out in the Diary and the list of submissions meet this criterion.</td>
</tr>
<tr>
<td><strong>RG 183.52</strong></td>
<td>This last objective can be demonstrated by processes that give due consideration to different stakeholder views. It may be necessary, for example, to conduct stakeholder roundtables to find mutually acceptable solutions as to how the Code might respond to identified consumer and industry issues.</td>
</tr>
</tbody>
</table>
ASIC RG 183 content

4.6 ASIC RG 183 prescribes minimum content for a code to be approved under it.\textsuperscript{12} I set out the ASIC Code Approval Checklist from RG 183 below. I deal with that minimum content throughout this Report.

Table 3: Code approval checklist

<table>
<thead>
<tr>
<th>Approval criteria</th>
<th>Reference</th>
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</thead>
<tbody>
<tr>
<td>Freestanding and written in plain language</td>
<td>RG 183.99 &amp; RG 183.56</td>
</tr>
<tr>
<td>Comprehensive body of rules (not single issue)</td>
<td>RG 183.13 &amp; RG 183.23</td>
</tr>
<tr>
<td>Enforceable against subscribers</td>
<td>RG 183.13–RG 183.15</td>
</tr>
<tr>
<td>Meets the statutory criteria</td>
<td>RG 183.26–RG 183.35</td>
</tr>
<tr>
<td>Consultative process for code development</td>
<td>RG 183.50–RG 183.55</td>
</tr>
<tr>
<td>Effective and independent code administration</td>
<td>RG 183.73–RG 183.75</td>
</tr>
<tr>
<td>Compliance is monitored and enforced</td>
<td>RG 183.76–RG 183.78</td>
</tr>
<tr>
<td>Appropriate remedies and sanctions</td>
<td>RG 183.67–RG 183.72</td>
</tr>
<tr>
<td>Code content addresses stakeholder issues</td>
<td>RG 183.56–RG 183.61</td>
</tr>
<tr>
<td>Code is adequately promoted</td>
<td>RG 183.75–RG 183.77</td>
</tr>
<tr>
<td>Mandatory three year review of code</td>
<td>RG 183.79–RG 183.81</td>
</tr>
</tbody>
</table>

4.7 I consider that the Code that I recommend in this Report meets the ASIC RG 183 criteria.

4.8 If the ICA Board resolves to submit the Code for ASIC RG 183 approval, a formal application is required which must address the relevant content criteria. On that basis, it is not necessary or desirable for my Report to address this issue further.

\textsuperscript{12} The threshold criteria are in ASIC RG 183.26–RG 183.35 and the balance are throughout the RG.
5 The Review in context — general insurance and natural disasters

General insurance industry

5.1 I have sourced, collated and considered Selected Statistics for the general insurance industry for the period 2009–2012 — Appendix D. The Selected Statistics indicate (with some rounding) an increase of:

1. policies of 815,138 or 2.2% over the period;
2. gross written premium of $5.633bn or 17.7% over the period;
3. total investment income of $1.088bn or 25% over the period;
4. assets of $22.976bn or 24% over the period; and
5. gross claim payments of $6.363bn or 28% over the period.

5.2 The Selected Statistics might also indicate the following:

1. in 2011, the number of claims decreased absolutely and the decrease was greater when compared with the increase in policies (and premium) from 2011;
2. the combined expense ratio in 2011 and 2012 reached challenging levels; and
3. the majority of insurance is personal, on any measure, at about 86%.

5.3 The HOR Report said: “The industry is characterised by high revenue volatility and high levels of competition.”\(^\text{13}\)

5.4 I comment further on the Selected Statistics in relation to some of the issues in Section 9.

Natural disasters

5.5 I have sourced, collated and considered Selected Statistics for the natural disasters over the last two summers, in the Table below, and I have compared them with the Selected Statistics for the period 2009–2012 in Appendix D.

5.6 The graph on the next page illustrates natural disasters and associated claims information over the past two years.\(^\text{14}\)

\(^\text{13}\) HOR Report, para 2.3.

\(^\text{14}\) Claims statistics are sourced from the ICA and are current as at 30 April 2013.
Note: Blue bars indicate the length of each disaster event.

Red bars indicate a period of ten days after the event, at the end of which about 47% of insurance claims were assessed.

Grey bars indicate a four month period, at the end of which 89% of insurance claims were assessed.\textsuperscript{15}

\textsuperscript{15} QFCl Report paras 12.2.4 and 12.5.1.
5.7 In a seven week period from 21 December 2010 to 7 February 2011, there were five natural disasters occurring almost concurrently, involving insured losses of $4.36bn and 190,391 claims, across three different States, with three in Queensland. In a 15 week period from 22 November 2011 to 6 March 2012, there were four natural disasters occurring almost concurrently, across four different States, with two in Victoria, involving insured losses of nearly $1bn and 127,727 claims.

5.8 The period for each natural disaster, including the following claims assessment period meant that for 2010–2011, there was a period of five months, and for 2011–2012 a period of eight months, in which five and four major natural disasters were affecting the community at the same time. Against an industry average, for the statistics period, of about 315,000 claims each month, 190,391 claims arose from the 2010–2011 natural disasters and 127,727 claims arose from the 2011–2012 natural disasters. Against an industry average, for the statistics period, of about $2.2bn in gross claims payments each month, about $4.36bn of claims were paid on the 2010–2011 natural disasters and nearly $1bn of claims were paid on the 2011–2012 natural disasters.

5.9 Total claims increased from 2009 to 2010 because of the extreme weather events but the percentage declined decreased, but the percentage of disputes increased. The NDIR table on disputes lodged with FOS supports the NDIR views that the number of lodgements per 1000 claims indicates that:

1. there is a clear difference between the frequency of disputes in floods (8.5 and 14.8 for the Queensland and Victorian floods) with much lower frequencies for the storms; and

2. the difference is largely explained by the absence of flood coverage in many policies.

5.10 Since the outset of this Review the community has again endured a summer of multiple natural disasters. In a four week period from 4 January to 30 January 2013, there were four natural disasters occurring almost concurrently involving insured losses of nearly $1bn and 91,480 claims across three States. These included the Tasmanian bushfires, and the Queensland and northern New South Wales inundation and flooding in January 2013.

5.11 The graph below illustrates the natural disasters of 2013 and expected claims information based on patterns observed over the past two years.\textsuperscript{16}

\textsuperscript{16} Claims statistics are sourced from the ICA and are current as at 30 April 2013.
Challenges facing the general insurance industry

Resilience

5.12 A primary challenge of the industry is how to influence the adoption (by governments) of built environment policies that reduce hazard exposures in the community, leading to a reduction in claims value and volume. Insured losses to extreme weather events are growing, not as the result of an increase in frequency and intensity of weather events, but rather as a result of building more expensive assets, in a more brittle ways, in more hazardous areas. A long-term systemic failure to develop a built environment that is durable to the range of extreme weather experienced in Australia is now catching up with some regions. Insurers, required to price in accordance with risk, are forced to transmit a price signal, through higher premiums, that reflect this systemic failure.

Disability and accident compensation reforms

5.13 National developments in the area of disability support are influencing significant reforms to State accident compensation schemes. The National Disability Insurance Scheme (NDIS), and the associated National Injury Insurance Scheme (NIIS), are major developments in the support for Australians with a serious disability. The National Injury Insurance Scheme is intended to be a federated framework of no fault lifetime care and support schemes for those who have sustained a catastrophic injury in an accident — such as a motor or workplace accident. The Hon. Bill Shorten MP, Minister for Financial Services and Superannuation, has noted that the NIIS “will work to reduce the large inequities in lifetime care and support that currently exist across jurisdictions and ensure the long-term fiscal sustainability of the NDIS.” It could be said that the NDIS and the NIIS are influencing a greater level of harmonisation between motor accident and workers’ compensation schemes in the States and Territories, and between jurisdictions.

Access to insurance: anti-discrimination

5.14 With greater public and political attention being given to equity issues and the larger numbers of people who are seniors or disabled, concern is growing about access to general insurance for all members of Australian society. This is manifesting itself in debate over whether insurers should continue to be able to differentiate their product offerings on the basis of age, gender and disability. It also raises issues around the data needed to justify use of the exemptions from anti-discrimination laws. At stake is the ability of insurers to offer insurance on terms that allow them to effectively manage the risk being underwritten.

The volume and speed of regulatory change

5.15 The general insurance industry has been through more than a decade of constant regulatory change. On the prudential side, there has been the introduction and bedding down of a rigorous risk-based regulatory regime. In relation to market conduct, there has been the introduction of the financial services reform regime with an almost constant process of adjustment to make it work for the general insurance industry. This is not to say that these reforms were unnecessary or not well intentioned. However the cumulative effect of continual general insurance regulatory change, combined with other generic reforms such as consumer credit, privacy, and future of financial advice, has produced extensive regulatory fatigue. The number of reforms attempted simultaneously has stretched the resources of all stakeholders.

**Changes to the Insurance Contracts Act**

5.16 Currently there is hope that the Insurance Contracts Act Amendment Bill will complete its passage through Parliament by mid-2013. There will be a significant amount of work in complying with the new provisions (particularly on disclosure), but the changes should lead to better outcomes generally for both insureds and insurers. While the Assistant Treasurer has issued a set of guiding principles, the text of a further amendment to introduce a remedy for unfair contract terms into the IC Act remains to be agreed amongst stakeholders, and to be legislated. This will require careful attention from stakeholders to achieve a workable outcome.
6 The Review in context — the Code and consumer protection law

Introduction

6.1 The Code is placed and works within a matrix of insurance consumer protection law. It is necessary to describe that developing matrix because it affects not only the Code standards but relevant insurance practice.

6.2 Australia has a range of laws dealing with the relationship between the insurer and the insured. The Code refers to some of the relevant statutes.18

Corporations Act and sales

6.3 The Corporations Act requires that the terms and conditions of a general insurance policy must be presented in a ‘clear, concise and effective manner’.19 The ASIC Act prohibits misleading and deceptive conduct or unconscionable conduct20 in relation to financial products — including insurance products. The IC Act introduced a statutory framework for insurance contracts and imposes a number of statutory obligations on insurers to inform clients of policy details.21 The Treasury Paper summarised the position:

The combination of these requirements means that insurers produce, in respect of each relevant type of policy, a Product Disclosure Statement (PDS). The PDS must be issued by the insurer to persons when they first enter the contract. The PDS is required by the law to contain a range of information, including: the terms and conditions of the policy; the costs, any amounts that may be payable; information about the dispute resolution system and how that could be accessed; and information about the cooling off regime. The information must be presented in a ‘clear, concise and effective’ manner. If the PDS relates to certain class of household/domestic contracts that are prescribed under the Insurance Contracts Act 1984, then it must also ‘clearly inform’ the consumer of any terms of the contract that differ from the standard cover for that type of contract.22

6.4 The broad objective of the PDS is to help consumers to compare the key elements of financial products so that they can check whether the products meet their needs and thereby make informed choices.23

6.5 Section 35 of the IC Act requires insurers to offer consumers ‘standard cover’ for prescribed general insurance policies24 which set out prescribed events. The NDIR Report noted “Essentially all natural disasters, including flood, are required to be included as ‘standard cover’. Also to be included as ‘standard cover’ are policies that provide replacement cover”.25 An insurer which wishes to limit or exclude standard cover must prove that the insurer clearly informed the insured whether by providing the insured with a document containing the provisions, or the relevant provisions, of the proposed contract or otherwise.26

6.6 The Code standards on buying insurance require that the sales process is conducted in a fair, honest and transparent manner. There are standards for the insurer to give the applicant: access to the information relied on in assessing the application; an opportunity to rectify

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18 Code, section 1.18.
19 Corporations Act 2001, section 715A.
20 See paras 7.10–7.23 above.
22 Treasury Paper, paras 41, 42.
23 Treasury Paper, paras 40–44.
24 Prescribed under the Insurance Contracts Regulations 1985, Divisions 2 and 3.
26 ICA, section 35(2) — there is an alternative ‘reasonable person would have known’ test; NDIR Report, para 13.21.
errors; and, on a decline, a referral to another source of insurance options. There are standards for employees, AFSL holders and authorised representatives including training standards.27

Insurance Contracts Act

An Act in four Parts

6.7 The Insurance Contracts Act 1984 (Cth) (IC Act) has four main purposes. The first purpose is captured in sections that deal with pre-contract issues: insurable interest and conduct.28 A fundamental feature of these provisions is the limitation of an insurer’s remedies for an insured’s conduct. Importantly, the effect of a misrepresentation or non-disclosure must be proportionate to the prejudice to the insurer, not the loss of the whole contract, no matter how minor the wrong nor how disconnected from the loss. Secondly, the IC Act sets out standard terms of cover, which could be derogated from by the insurer by giving notice of the difference to the customer. The third purpose is captured in provisions that explicitly or implicitly add or subtract terms in the insurance contract, or give them limited effect, in certain circumstances. There are some limitations and prohibitions on the legal effect of certain common terms of the insurance contract. Some modify the general law so that the insurance contract operates differently. Some require notification of a term for it to be effective under the IC Act.30 Importantly, the effect of a breach of the contract must also be proportionate to the prejudice to the insurer, not the loss of the whole benefit and contract, no matter how major the wrong nor how disconnected from the loss. The fourth purpose is captured in provisions that require the insurer to give information, notices or reasons on a subject.31

Gender and natural disasters

6.8 Gender specific language and references were removed from the IC Act in 2008.32 After the natural disasters of 2010 and 2011, and on the recommendation of a number of reviews, commissions and reports,33 the Insurance Contracts Amendment Act 2012 (Cth) was passed to insert a standard definition of ‘flood’ and to provide for a KFS to be a part of the disclosure and sales process for general insurance. Section 37 of the IC Act was amended34 to provide that the standard definition of flood would apply to prescribed contracts entered into and events occurring after the transition period. An insurer must ‘clearly inform’35 an insured if the contract does not include flood cover. Section 37D provides that if an insurance contract does offer flood cover then it does so on the terms of the standard definition and there is no ‘opt out’ by notifying the insured. An insurer must supply a KFS with the content and in the circumstances prescribed by the regulations.36 The supply of a KFS does not, of itself, discharge the obligation to clearly inform the insured of a matter.37

27 Code, section 2.
28 Part III.
29 Part IV.
30 They are found in ICA Parts V–VIII.
31 Parts IX and X and sprinkled in Parts V–VIII.
33 See section 10, Issues 6 and 7, and Appendix G.
34 Inserting sections 37A–37E.
35 But see above the view that the test should be ‘clear, concise and effective’.
36 Sections 33–33D.
37 Section 33D.
Insurance Contracts Amendment Bill

6.9 Shortly before Christmas 2012, the Hon. Bill Shorten MP issued the Insurance Contracts Amendment Bill 2013. The Bill reflects not only the Cameron/Milne report from 2003–2004 but extensive stakeholder consultation. The most relevant changes for the general insurance industry are:

1. an insurer can give an insured a notice under the Act electronically;
2. an increase and consistency in the rights and obligations of third party beneficiaries;
3. sections to make ‘unbundling’ clearer so that an insurer can avoid or reduce its liability under one cover under an insurance contract even if another cover under that same contract are not affected; and
4. an increase in ASIC’s regulatory powers under the Act.


Fairness in insurance contracts

6.11 The relationship among the fairness standards under the Code, the utmost good faith duty and unfair contract terms remedies is an important issue for this Review. It is necessary to sketch the background and to comment on current proposals for the purposes of this Review.

6.12 The Code contains a number of standards that require a Code Participant to act fairly:

1. to be open, fair, and honest in dealings with customers and be committed to high standards of service when selling insurance, dealing with claims, responding to catastrophes and disasters and handling complaints;\(^{38}\)
2. the sales process will be conducted in a fair, honest and transparent manner;\(^{39}\)
3. employees and authorised representatives will conduct their services in an honest, efficient, fair and transparent manner;\(^{40}\)
4. employees and service providers will conduct their services in an honest, efficient, fair and transparent manner;\(^{41}\) and
5. by conducting complaints handling in a fair, transparent and timely manner.\(^{42}\)

6.13 I recommend that these precepts are gathered together in one place in the Code and should apply consistently to each phase of the Code Participant’s relationship with the customer.

6.14 There are two current proposals for statutory change which are particularly relevant for the Code fairness standards. The first is that a breach of the duty of utmost good faith should constitute a breach of the IC Act. The second is that the unfair contract terms provisions of the ASIC Act should be grafted into the IC Act. These proposals were commented on in more detail in the Issues Paper Appendix F.

6.15 The Code fairness standards are important. The FOS QF Survey emphasised the importance — see the Issues Paper and Appendix D of this Report. The effect of the unfair contract terms legislation would be to excise an unfair term from a contract. An alternative might be that the insurer cannot rely on the unfair term. The effect the utmost good faith changes would be to

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38 Code 1.20.
39 Code 2.2.1(4).
40 Code 2.2.4(1).
41 Code 3.3.7(1).
42 Code 6.6.1(1).
imply a fairness standard into each contractual term; the effect of the fairness standards in the Code is to establish a benchmark for conduct.

6.16 The combined effect of the fairness standards under the Code, the utmost good faith duty and unfair contract terms remedies is complex. If the Government proposals proceed there will be a right for a party to have an unfair term made void, varied or not reliable. Further, unfair conduct which breaches the utmost good faith duty, will constitute a breach of the IC Act and unfair conduct under the Code will be a breach of, or non-compliance with, the Code. The Government proposals usher in a new era for insurance contracts, with some things old and some new. The IC Act should remain as the main consumer statute for insurance contracts. The doctrine of utmost good faith would end its period as a panacea for unfairness in insurance contracts. The new measures, in main subject matter and the tests of significant imbalances, legitimate interests and detriment, will merit close attention in the development of the legislation. It is in the community’s interest that the three parts of the law on fairness in insurance contracts — the fairness stands under the Code, the IC Act utmost good faith duty and the unfair contract terms laws — mesh coherently to give all stakeholders a high standard of fairness and certainty in their dealings.

6.17 It is not a part of the Review’s work to comment on the principles involved in these proposals but it is critical for all stakeholders that the principles are rendered into the IC Act in a workable way and in a way which is consistent with the Code’s approach and its fairness standards.

6.18 Assistant Treasurer Bradbury announced on 20 December 2013 that the Federal Government would legislate to introduce consumer protection legislation on unfair contracts terms in relation to general insurance contracts. The IC Act would be amended to include provisions based on the ASIC Act and take into account the unique features of insurance contracts. ASIC would be granted a range of enforcement powers to administer the new laws. The proposed legislation would apply to new and renewed contracts entered into after the commencement of the legislation and there would be an adequate transition period.

Development of the Code

Introduction and legislative background

6.19 The Banking Industry Ombudsman scheme was initiated in 1989 and its Code of Practice, (recommended by the Martin Committee in 1991) was released in 1993.

6.20 The insurance industry established its Ombudsman scheme, the descriptively named General Insurance Enquiries and Complaints Scheme (IEC) and the Life Insurance Complaints Service, both in 1991. The Superannuation Complaints Tribunal commenced in 1994. The life insurance Code of Practice was launched in 1995 — the same year as the Life Insurance Act 1995 (Cth).

6.21 The period 1989 to 1995 had seen the advent of Codes and ombudsman schemes for the insurance industry as a whole. The Wallis Inquiry, a year later, considered the role of Codes: “a regime of co-regulation where statutory provisions provide the enforcement and broad principles for regulation, but the details are left to more flexible industry-based Codes and dispute resolution arrangements”.43 It also considered amending the provisions in existing laws to “make penalties proportionate to losses incurred through Code breaches”.44

6.22 Codes of Practice occupy a fragile place in the matrix of insurance regulation. The prohibition on a corporation in trade or commerce contravening an applicable industry code is limited to a

code that is prescribed\textsuperscript{45} and the General Insurance Industry Code of Practice is not. The ASIC Act provides that a court may have regard to an applicable industry code in determining whether the conduct of a financial services supplier is unconscionable.\textsuperscript{46} The reference includes both mandatory and voluntary codes, but only if they are in the Regulations.\textsuperscript{47} The Code is not. The reference also includes any industry code but only if the service recipient acted on the reasonable belief that the supplier would comply with that code.\textsuperscript{48} On this basis the Code is a benchmark for unconscionable conduct.

6.23 The first General Insurance Code of Practice came into effect in 1994. It was one of the first.\textsuperscript{49} The Code was developed by the ICA and aimed to raise the standards of practice and service in the insurance industry. It was developed in anticipation that the Insurance Act 1973 (Cth) would be amended to require each authorised insurer to adopt the Code approved by the Insurance and Superannuation Commission (the precursor to the Australian Prudential Regulation Authority).\textsuperscript{50}

The 2009 Code

6.24 The Independent Review in 2009 made ten recommendations. Some recommendations were for amendments to the Code. One important recommendation was that participating companies ensure that the training they provide to their employees meets the requirements set out in clause 3.6.7 of the Code. Another recommendation was for a larger role for the CCC to enable it to better monitor compliance with the Code and to identify serious or systemic issues with the Code or its application. There were also changes to the terms of the Code on hardship and the prominence given to the duty of utmost good faith.

The 2012 amendments to the Code

6.25 In February 2012, the ICA approved amendments to the Code, with effect from 1 July 2012, to enhance the section 3 claims handling standards and to remove section 4.3 from the Code.\textsuperscript{51}

6.26 Section 3.4 is enhanced by standards for informing the customer of rights in relation to a claim and dispute as well as the supply of experts’ reports.

6.27 The 2012 Code introduces the category of specified policies.\textsuperscript{52} There is a ‘right to claim provision’ which dictates the insurer’s response to an inquiry about whether a policy covers a claim. The insurer must invite the making of a claim; promise to assess coverage fully; and not discourage the making of a claim.\textsuperscript{53} The 2012 Code importantly includes a time limit of four months for a decision on a claim unless exceptional circumstances apply\textsuperscript{54} and a time limit of 12 months where exceptional circumstances apply.\textsuperscript{55} The 2012 Code adds a time limit of 12 weeks to obtain an expert report and an obligation to supply reports to the policyholder on which the insurer has relied in assessing the claim.\textsuperscript{56}

6.28 The 2012 Code\textsuperscript{57} embellishes the specific terms of the 1994 Code on investigators, assessors and loss adjusters\textsuperscript{58} and adds training requirements.\textsuperscript{59}

\begin{itemize}
  \item \textsuperscript{45} Australian Competition and Consumer Act 2010 (Cth), Part IVB, sections 51ACA(1) and 51AE.
  \item \textsuperscript{46} Section 12CC(1)(g) and (3).
  \item \textsuperscript{47} Section 12CC(1) (3); Australian Competition and Consumer Act 2010 (Cth) section 51ACA(1).
  \item \textsuperscript{48} Section 12CC(1)(h) and (3).
  \item \textsuperscript{49} The Code of Banking Practice was released in 1993.
  \item \textsuperscript{50} First page.
  \item \textsuperscript{51} See FOS QF Survey, section 5 and Appendix D.
  \item \textsuperscript{52} Section 3.4.
  \item \textsuperscript{53} Section 3.4/3; FOS QF Survey, section 6(c).
  \item \textsuperscript{54} Section 3.4/1; FOS QF Survey, section 6(b).
  \item \textsuperscript{55} Section 3.4/2; FOS QF Survey, section 6(a) and (g).
  \item \textsuperscript{56} Sections 3.4/4 and 3.5/5(d); FOS QF Survey, section 6(d).
  \item \textsuperscript{57} Section 3.7.
\end{itemize}
6.29 The 2012 Code omits section 4.3 which allowed some flexibility in Code standards during catastrophes and disasters. It also omits the standard for Code Participants establishing internal processes for responding to catastrophes and disasters.\(^{60}\) Employee and service provider training and education in dealing with the aftermath of a catastrophe or disaster is required.\(^{61}\)

**Code Changes from the 1994 to the 2012 Code**

6.30 In addition to the 2012 Code changes noted above, the 2012 edition of the Code exhibits significant similarities to and some important differences from the 1994 Code. The objectives are phrased very differently but have similar themes. There is a commitment: to good, then high, standards of customer service;\(^{62}\) to informed relationships between insurers and customers;\(^{63}\) and to better mechanisms for complaint and dispute resolution.\(^{64}\)

6.31 One principle omitted in the 2012 Code is the reference to the need for consumers to be made aware of the provisions of the Code.\(^{65}\) Another omitted principle is the need to protect customers and insurers from increased costs from fraud.\(^{66}\) The 2012 Code says, like the 1994 Code, that it does not provide any legal entitlement or right of action.\(^{67}\) The 2012 Code omits the specific 1994 objectives of promoting product disclosure\(^{68}\) (no doubt because that matter is now covered by the ASIC Act, Chapter 7 of the Corporations Act, its regulations and ASIC regulatory guidelines), and of facilitating the education of customers about their rights and obligations under insurance contracts.\(^{69}\) The 2012 Code applies not only to retail insurance products but also to some wholesale insurance products.\(^{70}\) It contains the general requirement on insurers to be ‘open, fair and honest’.\(^{71}\)

6.32 The 2012 Code omits entirely the 1994 section on policy documentation — the reasons noted above would justify the omission. Section 2 of the 2012 Code deals with buying insurance and focuses on the application and underwriting process. It also sets out conduct standards for employees and agents\(^{72}\) in their sales tasks and functions. These standards are similar to the standards for all insurance services by agents and employees under section 3 of the 1994 Code.

6.33 Both the 1994 and the 2012 Codes have detailed provisions on claims. The 2012 Code introduces a duty to conduct claims in a ‘fair, transparent and timely manner’.\(^{73}\) The 2012 Code is also marked by an attempt at a timetable for the insurer’s dealing with the assessment of a claim and the requirement to keep the customer informed about its progress.\(^{74}\) The 2012 Code now allows an insurer to agree a timetable for a specific claim.\(^{75}\) Both Codes require an insurer to give reasons for rejecting a claim\(^{76}\) and to advise the customer about internal and

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58 Sections 5.2–5.4.
59 Sections 3.7/6&7; FOS QF Survey, section 6(e).
60 Section 4.
61 Sections 3.6, 6 and 7.
62 1994 Code, section 1.2(a) and 2012 Code, section 1.18(d) and section 1.20.
63 1994 Code, section 1.2(d) and the 2012 Code, section 1.17(a).
64 1994 Code, section 1.2(c) and 2012 Code, section 1.17(c).
65 1994 Code, section 1.3(f).
66 1994 Code, section 1.3(e).
67 2012 Code, section 1.12 and 1994 Code, section 1.2: no ‘legal right or liability’.
68 Section 1.2(b).
69 1994 Code, section 1.2(c).
70 Sections 1.4 and 1.5.
71 2012 Code, section 1.20.
72 Australian Financial Services Licensees and Authorised Representatives.
73 Section 3.5/1: for claims employees and service providers, it is ‘honest, efficient, fair and transparent’ — section 3.7/1.
74 Compare the 1994 Code, sections 5.1(c)–(f) with the 2012 Code, sections 3.1–3.4.
75 Section 3.3.
76 1994 Code, section 5.1(g) and (h) and 2012 Code, sections 3.5/3 and 5.
external dispute resolution arrangements. The 2012 Code adds an obligation to supply reports on which the insurer has relied in assessing the claim. The 2012 Code embelishes the specific terms of the 1994 Code on investigators, assessors and loss adjusters and adds training requirements. The 2012 Code also adds provisions on hardship and repair workmanship and materials.

6.34 The 2012 Code adds new sections on responding to catastrophes and disasters (section 4) and training and education.

6.35 Under the 2012 Code an insurer must have an internal complaints handling process. The insurer must establish a timetable with the consumer or respond in 15 days. The insurer must rely on relevant and accurate information. A consumer can elevate the complaint to a dispute. The insurer must keep the consumer informed about progress and must have reasons in writing for its decisions. If the matter is not resolved in 45 days, the consumer can take the matter to FOS.

6.36 An insurer must report a Code breach to FOS in ten business days and must apply any corrective measures agreed with FOS. FOS receives and investigates allegations of Code breaches. It determines whether a breach has occurred and agrees corrective measures with the insurer. FOS reports on Code compliance, reports alleged Code breaches, and supplies Code breach data, to the CCC. FOS also reports any failure to agree corrective action on an insurer Code breach to the CCC. The CCC makes determinations of a Code breach, or can remit the matter back to FOS, and can impose sanctions if an insurer has failed to correct a Code breach. The process for sanctions and the available sanctions are the same as in the 1994 Code.

6.37 Cameron/Milne recommended that best practice guidelines on claims handling processes should be deployed and included in the relevant industry Codes. This issue is one of the main ones for this Review.

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77 1994 Code, section 5.1(a)(i) and the 2012 Code, sections 3.4, 3.5/3 and 3.5/5.
78 Section 3.5/5(d).
79 Section 3.7.
80 Sections 5.2–5.4.
81 Sections 3.8–3.13.
82 Section 3.14.
83 Section 4.
84 Sections 6.1–6.5.
85 Sections 6.6–6.9.
87 Sections 7.1–7.6.
88 Section 7.11.
89 Sections 7.7–7.9.
90 Section 7.12.
91 Sections 7.12–7.17.
92 Sections 7.18–7.23.
93 Cameron/Milne recommendation 1.1.
94 Paras 1.2–1.9.
Comparisons with other Codes — benchmarking

6.38 The Review has considered and compared a number of codes with the Code. The most relevant are the codes on the ASIC website. I have selected a number of relevant standards on code promotion, coverage, legal status and sanctions. I set them out in the table below with comparisons with relevant ASIC codes. I refer to this benchmarking in the relevant sections of the Report.

**Code Benchmarking Table — Selected Standards**

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7 Self-regulation and the Code — principles for general insurance

7.1 It is essential, in my view, that a review of the Code, its operation and related industry practice should be within a matrix of the principles for good consumer protection self-regulation for general insurance. These principles not only guide the work of the Review but also and more importantly, enable the Code standards and operation to be measured against a principled position.

7.2 In this section, I set out a working definition of self-regulation and then consider the proper domain of self-regulation. It is then possible to assess the advantages of self-regulation. The advantages need to consider not only the current elements and criteria for good self-regulation but also the comparative advantages against some recent shortcomings in regulation by government agency.

7.3 Self-regulation is a living system and that has volatility. It is helpful to consider self-regulation’s recent past in general insurance.

7.4 Finally, the analysis enables a statement of the principles for good consumer protection self-regulation for general insurance in the Code. These principles form an important theme of this Review.

7.5 It is time, and essential, for self-regulation to claim its principled place in our regulatory system for general insurance.

Definition — regulation and self-regulation

7.6 What is self-regulation? Self-regulation is difficult to define or distinguish. It is like a chameleon, taking its colour from its surroundings. It is necessary to begin with a snap-shot of regulation to frame the creature in its habitat.

7.7 There is a plethora of legislation, regulations, standards, guidelines and codes which affect general insurance in Australia. These laws have numerous purposes: to define insurance; regulate prudentially the entities which carry on insurance business; regulate the entities and contracts which form the insurance matrix; regulate the selling of insurance and disclosure about its products; and affect the meaning of terms in insurance contracts. Certain insurance products are the subject of specialised legislation.

7.8 There are four main types of regulation in the financial system: regulation to promote financial market integrity; competition regulation (mergers and anti-competitive conduct); prudential regulation; and consumer protection regulation. All these types have the purpose of ensuring that financial promises are both understood and met.

7.9 The first two of these types of regulation are less directly relevant to insurance than the last two. Prudential regulation involves authorisation, limitations on corporate form, approval of ownership, capital, solvency and liquidity standards, asset quality and valuation, investment controls, liability quality and valuation, risk management and strategies to prevent or minimise contagion of financial risk within the system. More recently, corporate governance, group supervision, outsourcing, executive remuneration and the hunt for systemically important financial institutions (as an antidote to the ‘too big to fail’ venom) have also become the domain of the prudential regulator.

95 See for example, Financial System Inquiry, Discussion Paper, November 1996, Chapters 4 and 7.
The discussion or analysis of self-regulation never includes prudential regulation and therefore, apart from some observations about the reason for this distinction, prudential regulation does not feature in this account or analysis.

Consumer protection regulation covers financial product and intermediary terms disclosure, regulating the conduct of business and customer contracts: ‘conduct of business rules’; requirements for conduct towards customers and dispute resolution arrangements. It applies usually to retail products and customers only. ASIC states that: “We encourage applicants developing codes to extend code obligations beyond retail clients where this is appropriate.”

The Hockey Taskforce said:

In a broad sense, regulation can be considered as a spectrum ranging from self-regulation where there is little or no government involvement, through quasi-regulation which refers to a range of rules, instruments or standards that government expects businesses to comply with, to explicit government regulation.

And on self-regulation it said:

... regimes which have been generally developed by industry (sometimes in cooperation with government but enforced exclusively by industry). Self-regulation excludes explicit government legislation and regulation as well as regulation developed by government and handed over to industry for implementation ... . Self-regulation could include ... Industry service charters, guidelines and standards as well as industry accreditation and complaint handling schemes.

ASIC has indicated a definition for self-regulation as follows:

... Regulation where there is substantial industry-level involvement in the development or implementation of the regulation, and where the regulatory arrangement is adopted and funded by industry.

ASIC then places codes in the self-regulation sphere as follows:

We believe that codes sit at the apex of industry self-regulatory initiatives. To us, a code is essentially a set of enforceable rules that sets out a progressive model of conduct and disclosure for industry members that are signed up. Codes should therefore improve consumer confidence in a particular industry or industries.

We believe that the primary role of a financial services sector code is to raise standards and to complement the legislative requirements that already set out how product issuers and licensed firms (and their representatives) deal with consumers. We expect an effective code to do at least one of the following:

- Address specific industry issues and consumer problems not covered by legislation;
- Elaborate upon legislation to deliver additional benefits to consumers; and/or
- Clarify what needs to be done from the perspective of a particular industry or practice or product to comply with legislation.

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97 Compare ASIC RG 183.18, 22(c), 28–30 and 37.
98 Hockey Self-Regulation Taskforce, Executive Summary, p 1.
99 Hockey Self-Regulation Taskforce, p v.
100 Jillian Segal, Deputy Chair of ASIC, Speech to the National Institute for Governance Twilight Seminar, Canberra, 8 November 2001.
101 ASIC RG 183.17.
102 ASIC RG 183.5.
The domain of self-regulation

History

7.16 It is convenient to begin a short account of the effect of regulation and the place of self-regulation in it with the Gower Report. The UK financial services industry was largely self-regulated in its nature until the 1980s, with only a random shot of legislation and a scattering of case law with regulatory effect. In 1981, the UK Government commissioned and in 1985 received Professor Gower’s white paper on regulation for the financial services industry in the United Kingdom. The Report recommended regulation to harmonise investor protection — the simple idea that the investor protection for similar products sold in similar ways should be similar. The Financial Services Act 1986 used a mixture of governmental regulation and self-regulation. It established the regulator, the Securities and Investments Board (SIB), as the statutory agency for the supervision of investment business within the UK, the forerunner to the Financial Services Authority (FSA). The SIB presided over various new self-regulatory organisations (SROs) covering the various parts of the market and various securities and investments. There were also recognised professional bodies, recognised investment exchanges and recognised clearing houses. Thus self-regulation was an important component of the regulatory scheme that was introduced: ‘practitioner (the regulated entities)-based, statute-backed regulation’ was the catch-cry. It is important to note that, as the labels ‘securities’ and ‘investments’ suggest, this regime did not include or affect general insurance.

7.17 The Act was repealed and superseded by the Financial Services and Markets Act 2000. Under this, the SIB and SROs were merged to form the Financial Services Authority (FSA), general insurance was included and a clear statutory but industry-based framework for self-regulation was lost.

7.18 It is important to note that the Financial Services Act 1986 was not prudential regulation. In the UK, that was the Insurance Companies Act 1982, which of course did not cover Lloyd’s of London. And in Australia it was the Insurance Act 1973 (Cth). In both jurisdictions, prudential regulation preceded consumer protection and market conduct regulation. The fear of promises not being kept for lack of capital was greater than the fear of promises not being kept because of inadequate disclosure or contract terms.

7.19 Meanwhile in Australia, 1986 saw the commencement of the IC Act, the first wide-ranging consumer protection legislation for insurance and general insurance; and 1994 saw the introduction of the first General Insurance Code of Practice — see section 6 ‘Development of the Code’ for a more developed account of the Code and this history. In 2001, Australia also leapt to a similar regime for a harmonised approach to financial services through the Financial Services Reform Act 2001 (Cth) which amended the Corporations Act. It included general insurance as a financial product — a risk management product.

7.20 This sketch history points to a number of features of self-regulation. The first is that general insurance is an after-thought to concerns about securities and investments. One consequence is that the harmonisation program has meant that securities and investments concepts and language have been thrust onto general insurance and blurred or obscured important features of that market for the purposes of effective regulation. The second is that the pre-eminence given to prudential regulation has led to insufficient attention to good self-regulation for consumer protection or market conduct. The third is that in Australia, self-regulation has never had a principled place in the regulatory framework — it is an orphan child of good intentions and political compromise.

103 The Prevention of Fraud (Investments) Act 1958 was the main but limited legislation.
Criteria

Introduction

7.21 The domain for self-regulation is shaped by the reasons for establishing each regime. The reasons vary from promotion of customer confidence in the industry, avoidance of regulation, to satisfying legislation.104

7.22 There is an incentive for self-regulation to mitigate ‘market failure’ to deliver the optimal efficient allocation of resources in the economy, including insufficient information available to consumers to allow them to make informed choices; and high transaction costs for consumers.105 The Hockey Taskforce stated:

Industry self-regulation is increasingly being seen as an alternative means of promoting fair trading, ethical conduct and streamlining compliance with agreed product and service standards in an industry. While industry self-regulation can advance consumer confidence in products and individual companies, it also can promote good business practices.106

7.23 The Taskforce recognised that self-regulation may not be appropriate in all circumstances. Other forms of regulation may provide more cost effective outcomes in certain cases: “As well, community cynicism regarding industry regulating itself may lead to a distrust of self-regulatory schemes unless schemes operate effectively and consumers have confidence in them.”107

Stakeholder participation

7.24 It is important that customers are important stakeholders in the self-regulation framework and standards.108

The Taskforce supports the proposition that self-regulation should be developed and maintained in partnership between industry, the regulator and consumer organisations. This partnership is essential to identify specific problems and to arrive at effective minimum solutions. The Taskforce also recognises the important role that consumer groups can play in self-regulation development and growth.109

Coherence with regulation

7.25 A critical feature of self-regulation is its coherence with government agency regulation: “Government can assist in integrating schemes into the regulatory framework.”110 ASIC puts the matter this way:

For self-regulation to be effective, it needs to be properly integrated into the overall regulatory framework ... It needs to dovetail with the law and the regulator’s policies — not repeating or confusing requirements, but assisting and possibly extending them in some areas.111

7.26 A code should also harmonise with other codes which affect the same industry.112 This requirement is met for general insurance. The Code dovetails well with the NIBA Code and a review of one should be carried out in consultation with the other Code Governance Body.

104 Hockey Taskforce, Executive Summary, p 2; paras 32, 33 and pp 89, 90; Chapter 7.
105 Hockey Self-Regulation Taskforce, p 18.
106 Hockey Self-Regulation Taskforce, p 17.
107 Hockey Taskforce, Executive Summary, p 1.
109 Hockey Self-Regulation Taskforce, pp 64, 65 and 104–106.
110 Hockey Self-Regulation Taskforce, para 36 and p 96, Chapter 7.
111 Jillian Segal, Deputy Chair of ASIC, Speech to the National Institute for Governance Twilight Seminar, Canberra, 8 November 2001.
There should be and is liaison and consultation from time to time among the stakeholders about the codes.

7.27 A number of organisations also raised the issue with the Hockey Taskforce of centralising responsibility for self-regulation into one government agency. Some organisations considered that it was confusing and bureaucratic for industry to know which regulator(s) to deal with.\footnote{Hockey Taskforce, pp 103, 103.} The Taskforce considered that centralising government responsibility for self-regulation would result in a loss of expertise. The Taskforce considered that government needs to ensure Departmental and agency roles in self-regulation are clear.\footnote{Hockey Taskforce, Chapter 7, p 100.} The Taskforce also rejected the idea of one regulatory agency per industry. The difficulty that leaves industry and other stakeholders is that there is little co-ordination among the various government agency regulators. I return to this issue in Section 8: Code governance.

7.28 Government involvement or intervention in a self-regulation scheme should be the minimum for the scheme to achieve its purpose: “The degree of monitoring by government will depend on the degree of market failure and the consequences of self-regulation failing to achieve its objectives.”\footnote{Hockey Taskforce, Executive Summary, paras 8–11, 14–16, 18; Chapters 3, 5 and 7. Jillian Segal, Deputy Chair of ASIC, Speech to the National Institute for Governance Twilight Seminar, Canberra, 8 November 2001.}

Conditions for self-regulation

7.29 There are three distinct parts of the analysis. The first is what conditions in an industry make self-regulation effective. The general insurance industry clearly satisfies these criteria:

1. a cohesive market;
2. a common industry interest;
3. a viable industry association or industry commitment;
4. a competitive market;
5. clear objectives developed with stakeholders;
6. the pre-eminence of customer relationships is recognised;\footnote{Hockey Self-Regulation Taskforce, Executive Summary, paras 8–11; Chapter 3, 5 and 7.}
7. integration into the regulatory framework.\footnote{Hockey Self-Regulation Taskforce, Executive Summary, paras 8–11; Chapter 3, 5 and 7. Jillian Segal, Deputy Chair of ASIC, Speech to the National Institute for Governance Twilight Seminar, Canberra, 8 November 2001.}

Implementation

7.30 The second step in the analysis is the steps to implement a self-regulatory model. The critical feature is consultation among industry, consumers and government.\footnote{Hockey Self-Regulation Taskforce, p 5.} I set out an analysis of this aspect in relation to ASIC RG 183 approval in Section 4.

Content

7.31 The third step in the analysis is the content for self-regulation as follows:

1. wide industry coverage;
2. clarity in scheme documentation;
3. consumer and industry awareness;
4. good administration and data collection;
5. conditions for self-regulation.
5. identification of systemic issues;
6. accountability: “... Self-regulation must have vigorous and active accountability mechanisms”; 119
7. compliance and enforcement;
8. dispute procedures and sanctions;
9. monitoring and reviews; and
10. cost-effectiveness.

7.32 The prime concern of regulation for consumer protection has always been the provision of a low-cost, informal, lawyer-free scheme for complaint and dispute resolution. 120 Self-regulation’s importance here continues, as well as constituting a standing rebuke to the legal system and its lawyers’ inability to achieve accessible justice.121

7.33 The Hockey Taskforce is an example of the emphasis placed on disclosure as an important feature for the role of regulation in financial services markets and products. 122 Better information was: “providing the fundamental conditions necessary for markets to work efficiently”. 123 An example was information to market participants about the risk of an adverse event occurring (e.g. campaigns advising of the damage caused by bushfires and the benefits of valuing home and contents appropriately to avoid being left out of pocket).124

7.34 Self-regulation could also establish standards for good insurance products and business practices for insurers to adhere to.125 The issue of product standards in a code is difficult. I deal with it under Section 9, Issue 6.

7.35 Standards for the training of employees were important features of self-regulation.126

7.36 The Hockey Taskforce summarised it as follows:

Self-regulation includes a host of options ranging from a simple code of ethics, to codes that are drafted with legislative precision together with sophisticated customer dispute resolution mechanisms.127

Advantages of self-regulation

Comparison with regulation — some examples of regulatory shortcomings

7.37 The task of an independent reviewer is not only to identify shortcomings and areas for improvement in the Code and related general insurance industry practices but also in its relevant regulation. The history of Australian financial services regulation is that consumer protection regulation, until the natural disasters of the last two summers, has been introduced through a careful process of inquiry, report consideration and consultation. It is prudential regulation which has been introduced usually in response to a crisis. The natural disasters generated some regulatory change and there are calls for more. Our track record on the consumer protection regulation of the insurance industry argues strongly that legislative

119 Jillian Segal, Deputy Chair of ASIC, Speech to the National Institute for Governance Twilight Seminar, Canberra, 8 November 2001.
120 Hockey Self-Regulation Taskforce, paras 42, 43, Chapter 3 and pp 115, 116; Chapter 8.
121 Hockey Self-Regulation Taskforce, Chapter 7, pp 81–85.
122 Hockey Self-Regulation Taskforce, Chapter 3.
127 Hockey Self-Regulation Taskforce, Executive Summary, p 2.
intervention and government agency regulation can produce inadequate outcomes for Australian consumers.

7.38 In June 2000, ASIC published a report on consumer understanding of flood insurance, following severe storms and flooding, particularly in Wollongong. ASIC recommended that the standard use of key common terms should be explored and that the distinction between flood, storm and rainwater needed to be clear and consistent. A finding of that report was that there was scope for improved industry practices and better consumer understanding about flood insurance. ASIC recognised that consumer education, sales processes and disclosure were key issues in improving consumers’ access to cover for flood damage in home and contents insurance policies. In March 2008, the ICA proposed a common flood definition and proposed that insurance companies would adopt it voluntarily. The ACCC saw it as a critical issue and proposed a number of conditions for transparency and consumer education, including data collection. The ACCC in July 2008 proposed to grant conditional authorization. In early September, the ACCC released a determination denying authorization on the grounds that the definition had the potential to introduce new concepts and to increase customer confusion. The ACCC had concerns that the ICA proposal would deliver limited benefits to consumers. The effect of this determination was that there was no common definition of flood until mid-2012, after the two summers of natural disasters described in Section 5. It is common ground that Australians would have been better served in the last two summers with a common definition of flood, rather than none at all.

7.39 The disclosure regime has long been the centrepiece of consumer protection legislation. The first in insurance in Australia were the disclosure requirements under ISC guidelines in the early 1990s, initially for life insurance. Under the FSR reforms to the Corporations Act, the disclosure regime blossomed into financial services guides, product disclosure statements and statements of advice. The Major Reports condemned the PDS regime as ineffective to protect consumers. The continuing theme from the Review Issues Paper, consultations and forums was to the same effect. It is extremely expensive and resource intensive for insurers. The evidence is that even when the sales process is document-based, the PDSs are not read. The sales process is becoming increasingly through telephone and internet; soon apps on smart phones will be a dominant channel. There are not sufficient financial literacy skills in the community to make disclosure an effective consumer protection measure. The NDIR Report referred to ample evidence that the disclosure regime with its axiomatic extensive documentation had failed consumers.

7.40 The IC Act was amended to an extent in the 1990s. Alan Cameron and Nancy Milne (Cameron/Milne) were subsequently appointed in September 2003 to conduct a general review of the IC Act. Following the HIH collapse in 2001, there was a focus on section 54 of the IC Act in the context of reform of the indemnity insurance market — including measures to introduce professional standards legislation, proportionate liability, and amendments to the Trade Practices Act 1974 (Cth). Cameron/Milne reported on section 54 in October 2003. Cameron/Milne then reported on the balance of the IC Act in June 2004. In the Review Issues Paper, I concentrated on the areas that are mainly relevant to the Review: codes of practice; utmost good faith; standard cover; and third party beneficiaries. But there were others: application to bundled policies; interface with marine insurance; application to discretionary mutual funds, offshore foreign insurers and other products; entering a contract and electronic communications; ASIC’s powers; disclosure and representations; standard cover; insured’s remedies; insurer’s remedies; contract cancellation; restrictions on insurers’ contractual rights and remedies; interim cover; subrogation and reasons for underwriting decisions. The Insurance Contracts Bill 2010, giving much of the Cameron/Milne report and proposal

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128 Dr Peter Boxall, Commissioner, Australian Securities and Investments Commission, Speech at the ICA Regulatory Update, 9 March 2011.

had passed in the House of Representatives in June 2010 and was introduced in the Senate. The 42nd Parliament was prorogued before the Senate could vote and the Bill lapsed. Another attempt at the legislation began in 2011 and by 2013 the Bill had passed the House of Representatives but on 21 March 2013 was referred to a Senate Committee for enquiry and report. The effect of this history is that important changes many of which assist both insurers and customers with insurance contracts have been delayed for over a decade. The legislative process has meant that insurance has been less effective and less cost effective than it would have been with prompt IC Act amendment.

7.41 In these three examples, a problem has lingered for more than a decade and in two, the problem remains at large. The causes and the allocation of responsibility for the regulatory failure are irrelevant. The point is that the community has waited on government agency regulation for a solution to improve the position, but this regulation has failed it. The community has suffered for the delay: distress, confusion, unfairness, expense and wasted resources. The examples, in my view, should make us cautious about an assumption that government agency regulation is a solution to a community or industry issue.

Principles and practice

7.42 The Hockey Taskforce’s fundamental criterion for good self-regulation was:

Good practice in self-regulation can be understood as significantly improving market outcomes for consumers at the lowest cost to businesses.132

7.43 The costs of a self-regulatory scheme, whether establishment, maintenance or the costs of the participants in complying with it, must be less than the alternatives to benefit participants and their customers.133

7.44 The Hockey Taskforce commented that there had already been work done in identifying industry environments and market circumstances that are more likely to lead to effective self-regulation. In particular, a general guide to whether self-regulation is appropriate can be found in the Best Practice Regulation Handbook from the Australian Government Department of Finance and Deregulation. The section on alternative regulatory forms notes:

Self-regulation is generally characterised by industry-formulated rules and codes of conduct, with industry solely responsible for enforcement. You might assess self-regulation as a feasible option if:

- There is no strong public interest concern, in particular no major public health and safety concerns
- The problem is a low-risk event, of low impact or significance, and
- The problem can be fixed by the market itself. For example, there may be an incentive for individuals and groups to develop and comply with self-regulatory arrangements (industry survival, market advantage).

Self-regulation is not likely to be effective if industry has an incentive not to comply with the rules or codes of conduct.134

7.45 In addition, for self-regulatory industry schemes, the checklist determined success factors to include:
1. presence of a viable industry association;
2. adequate coverage of the industry by the industry association;

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130 It had first been recommended by Cameron/Milne — see Section 7.
131 HOR Report, para 54.
132 Hockey Self-Regulation Taskforce, p 59.
133 Hockey Self-Regulation Taskforce, pp 81–85, 97, 98.
134 Australian Government Department of Finance and Deregulation Best Practice Regulation Handbook as at April 2013.
3. cohesive industry with like-minded and motivated participants committed to achieving the goals;
4. voluntary participation;\(^\text{135}\)
5. effective sanctions and incentives can be applied, with low scope for the benefits being shared with non-participants; and
6. cost advantages from tailor-made solutions and less formal mechanisms such as access to quick complaints handling and redress mechanisms.\(^\text{136}\)

7.46 The Hockey Taskforce identified the following benefits of self-regulation:

Self-regulatory schemes tend to promote good practice and target specific problems within industries, impose lower compliance costs on business, and offer quick, low cost dispute resolution procedures. Effective self-regulation can also avoid the often overly prescriptive nature of regulation and allow industry the flexibility to provide greater choice for consumers and to be more responsive to changing consumer expectations.\(^\text{137}\)

7.47 ASIC has indicated advantages for self-regulation as follows:

1. it utilises expertise of the regulated;
2. the consent of the regulated is more likely to be enlisted;
3. it is flexible and adaptable; and
4. it offers consumers benefits of economies of scale, which can be derived from collective monitoring by a self-regulatory scheme.\(^\text{138}\)

7.48 Self-regulation gives better risk management and a better risk management framework:

... Self-regulation can and should play an important ‘risk identification’ role within the overall regulatory framework — the information generated under such a model, can help identify problem areas with industry practice, consumer knowledge, and government or regulator policies before they become bigger problems.\(^\text{139}\)

7.49 There is an important human dimension to self-regulation and industry codes: they are effective in improving industry standards of service, the quality of customer response and the esteem of industry participants and employees.\(^\text{140}\) ASIC Chairman Greg Medcraft was quoted in *The Australian* newspaper as saying:

My approach is very much about working with industry to see if they can better self-regulate or co-regulate … I am a believer that if we can get an industry to self-regulate or co-regulate we can focus on other things.\(^\text{141}\)

**Advantages in general insurance**

7.50 There is a good role for self-regulation in general insurance. It works best to join seamlessly the best legislation with the best market practice. It cannot substitute for either. Its benefits are harnessing the enthusiasm and pride of the industry to develop and test best practice and controls to produce agile, flexible,\(^\text{142}\) quick and cost-effective\(^\text{143}\) implementation within a framework of effective control, accountability and sanctions.

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135 Hockey Self-Regulation Taskforce, Executive Summary, paras 8–11, 14–16, 18, Chapters 3, 5 and 7.
136 Hockey Self-Regulation Taskforce, Chapter 5.
137 Jillian Segal, Deputy Chair of ASIC; Speech to the National Institute for Governance Twilight Seminar, Canberra, 8 November 2001.
138 Jillian Segal, Deputy Chair of ASIC; Speech to the National Institute for Governance Twilight Seminar, Canberra, 8 November 2001.
139 Insurance Council of Australia, 1999 Submission to the Taskforce on industry self-regulation.
140 14 December 2012.
141 Hockey Self-Regulation Taskforce, Executive Summary.
7.51 The systems of regulation through government agency are, and remain, externally regulated systems with a sovereign and subject (or master and servant) relationship. In a self-regulation system the regulator and the regulated entities have a mutuality: the regulator and regulation is constituted and shaped at least in part by the regulated entities. The mutuality can have disadvantages and advantages. A prominent risk is that the system can be subject to ‘regulatory capture’ — that is, the danger that the ‘self-regulator’ comes to serve only the interests of the self-regulated industry.\textsuperscript{144} This risk must be avoided.

7.52 It is necessary to consider the advantages of self-regulation from the perspectives of customers, the self-regulatory agency, government regulatory agencies and the regulated entities as peers.\textsuperscript{145}

7.53 This first advantage is that a self-regulatory system allows and encourages enthusiastic rather than grudging adherence to its standards. The regulated entities are more likely to follow their spirit and out-perform an externally regulated system. The system also harnesses the participants’ pride in their industry — its own regulatory governance must be seen to be good.

7.54 Self-regulation is never regarded as an alternative to government agency prudential regulation. This is a critical distinction. The key difference is that capital adequacy does not directly or immediately affect the customer experience and outcome. While prudential regulation is key to ensure that promises are kept, it is noticed by customers only in a market failure or collapse. A customer experiences consumer protection regulation on a daily basis in each interaction with the industry. This leads to the second advantage. The system should be more effective because market participants prosper only through their customers, and the closer the regulated entities are to the ‘regulator’ the more the customer relationship drives the standards and their implementation.

7.55 A related advantage is that reputation is made both a goal and a sanction — where the market can value a brand on a balance sheet, the potential for volatility in that value will drive positive behavior.

7.56 Thirdly, a self-regulation system can deliver expertise in market and industry understanding with laser focus on issues for the customer. The industry and market with expertise and resources and without the machinery of legislation can change standards quickly to respond to changing customer needs.

7.57 Fourthly, the advantages of an accessible, low cost and quick dispute resolution scheme are now axiomatic.\textsuperscript{146}

7.58 Fifthly, while industry resources are limited, it has more abundant resources and expertise than the public sector — the self-regulatory standards can be made to work. Government agencies then have resources to deploy elsewhere.

7.59 Sixthly, the regulation is cost effective because it is funded directly by the regulated entities and it is not more invasive than is necessary for its purpose.

7.60 Seventhly, the sanctions are more likely to be considered fair by the regulated entity because they are imposed by the regulated entity’s peer group.

\textsuperscript{141} Hockey Self-Regulation Taskforce, Executive Summary.
\textsuperscript{144} Jillian Segal, Deputy Chair of ASIC, Speech to the National Institute for Governance Twilight Seminar, Canberra, 8 November 2001.
\textsuperscript{145} Hockey Self-Regulation Taskforce, Chapter 7.
\textsuperscript{146} Hockey Self-Regulation Taskforce, Chapter 8.
The Code and current self-regulation in general insurance

7.61 The Code is a part of the regulatory framework for general insurance. Section 6 describes this matrix in more detail.

7.62 The Code has always been voluntary. In late 1997, following concern that some non-ICA member general insurers had not subscribed to the Code, legislative changes were proposed to the Insurance Act 1973 (Cth) to make it a condition of registration for general insurers to belong to an approved code. 147

7.63 The Hockey Taskforce Consultant Report stated the purpose of the Code:

The Code sets out standards of practice for insurers. It is not intended to provide a bare minimum nor is it best practice. The IEC (FOS predecessor) claims that insurers can and do compete on the basis of service offered that is higher than the Code standard (IEC 1999). To date, the ICA has intended that the Code be used as a device to ensure the industry stays aligned with the needs of its clients (ICA 1996). The Code is intended by the ICA to be a ‘living code’, that is, one which is progressively developed over time after consultation with stakeholders including government and other interested groups such as consumer groups. It also is intended to be capable of adaptation to the legislative framework, changing market conditions and consumer expectations over time. 148

7.64 The Hockey Taskforce Consultant Report also set out the other self-regulatory initiatives in the general insurance industry at the time, in addition to the General Insurance Code of Conduct and the complaints and disputes resolution arrangements:

1. The Knock for Knock Agreement applying to motor vehicle insurance claims whereby each insurer agrees to pay the cost of their insured’s claim without resorting to legal action. The Agreement aims to reduce costs associated with investigation and litigation and reduce delays in the claims settlement process. Currently around 88 insurers are signatories to the Agreement.

2. The General Insurance Information Privacy Principles, which is the privacy code of the general insurance industry launched by the ICA in August 1998. It sets the standards by which the industry collects, uses, stores and disposes of the personal information of its customers; and

3. The Insurance Disaster Response Organisation which is a self-regulatory agreement to coordinate the industry’s response to the community following a major disaster. The organisations functions include coordinating an efficient industry response to the disaster, providing a single point of contact to assist policyholders, establishing contact with the government, providing accurate information to insurers, assisting the industry to respond to claims and conducting any post disaster review. 149

7.65 Each of these initiatives has met its end in the form set out by the Taskforce. The knock for knock agreements are redundant. The privacy principles were superseded substantially by the Privacy Act 1988 which however preserved the concept of principles but which were finally removed by the Privacy Act 2012. The Insurance Disaster Response Organisation became a part of the Code and was disbanded in 2006 after being replaced by an enhanced catastrophe response mechanism managed by ICA and in continuous operation since that time.

Self-regulation and the Code — principles for general insurance

7.66 There are principles for the Code self-regulation framework and principles for the Code content — I refer to them together as ‘Code Principles’.

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147 The provisions of the short-lived Financial Laws Amendment Act 1997 (Cth), seem not to have been activated: Hockey Self-Regulation Taskforce, Consultants Report, Tasman Asia Pacific, p 170.


149 Hockey Self-Regulation Taskforce, Consultants Report, Tasman Asia Pacific, pp 161, 162.
7.67 The **Code Framework Principles** are:

1. The regulated entity community adopts voluntarily a code of practice that contains standards for the conduct of their businesses with the community and retail customers.\(^{150}\) The adoption of the code by a regulated entity should be through a contract directly with the Code Governance Body.\(^{151}\)

2. The Code Governance Body should be well credentialed and expert and have a sufficiently balanced representation of stakeholder interests and independent representation to give authority to its work and decisions.\(^{152}\) It should have the information and resources necessary to do its work.\(^{153}\) The governance framework, its process and conduct should be visible and accountable.\(^{154}\)

3. All stakeholders should participate in the development of the standards in the code and its governance. The regulated entities should have an influential but not decisive involvement in the development of the standards in the code and its governance. The views of the regulated entities should be given weight as a factor in these aspects. The Code Governance Body should have ultimate responsibility for the development and setting of the standards.

4. The regulated entities should fund and resource the self-regulation model to a level necessary for it to work effectively.

5. The self-regulation model should be properly integrated into the overall regulatory framework; it should dovetail with the law and government agency regulation.

6. The best place for a code to work is to link legislation to market practice. Its standards link the law that affects the customer’s relationship with the regulated entity and endorses, enhances and improves the industry’s best practice.\(^{155}\)

7. The framework and code should enhance stakeholder trust and confidence in each other and enhance the esteem of each individual involved in it.

7.68 The **Code Content Principles** are:

1. The Code content should address all stakeholder relevant issues.\(^{156}\)

2. The Code should be adequately promoted.\(^{157}\)

3. The Code objectives and scope should be clear.\(^{158}\) The standards should cover the full range and all relevant phases of the regulated entity’s interactions with its customers. The standards should be a “comprehensive body of rules (not single issue)”.\(^{159}\)

4. The standards in the Code should promote good business practices, set a high standard of service and have legal minimums. The standards should be supported by education and training. The standards should contribute to the regulated entity’s risk management.

5. The standards in the Code should contain ethical statements, principles, rules and guidelines.\(^{160}\) The standards should be enforceable.\(^{161}\)

\(^{150}\) Compare ASIC RG 183.18, 22(c), 28–30 and 37.

\(^{151}\) Compare ASIC RG 183.66.

\(^{152}\) ASIC RG 183.13(c); ASIC RG 183.15; 27; ASIC 183.73–RG 183.75.

\(^{153}\) Hockey Taskforce, Executive Summary, paras 22–24 and pp 69–71.

\(^{154}\) Hockey Taskforce, Executive Summary, paras 22–24 and pp 69–71; Chapter 7.

\(^{155}\) See also ASIC RG 183.17, 18, 22(b), (c), 28–30, 37 and 62–66.

\(^{156}\) ASIC RG 183.56–RG 183.61; Hockey Self-Regulation Taskforce, Chapter 7.

\(^{157}\) ASIC RG 183.15; ASIC RG 183.50–RG 183.55; Hockey Self-Regulation Taskforce, Executive Summary, para 21 and p 68, Chapter 7.

\(^{158}\) ASIC RG 183.44(b) and 56.

\(^{159}\) ASIC RG 183.13 and ASIC RG 183.23, 56(c) and 59.
6. The Code should be in plain English and accessible.\textsuperscript{162}

7. The standards which are rules should be expressed as rules which are measurable and can clearly be complied with or breached to enable the regulated entity to assess what conduct is needed to comply with the standard.\textsuperscript{163}

8. Compliance with the Code should be monitored, audited and enforced by the Code Governance Body.\textsuperscript{164}

9. The consequences for the breach or non-compliance with a standard, the remedies and sanctions, should have regard to the principles of procedural fairness\textsuperscript{165} and be:
   
   (a) sufficient to deter breach or non-compliance and consistent with the Code objectives;\textsuperscript{166} and
   
   (b) clear, fair and reasonable in order to promote the spirit and effect of the Code.\textsuperscript{167}

10. A customer should have the right to complain about a regulated entity’s conduct under the code and be informed about that right.\textsuperscript{168}

11. A customer should have the right to refer a dispute about a regulated entity’s conduct under the Code to an external dispute resolution scheme and be informed about that right.\textsuperscript{169}

12. The code standards and its operation should be reviewed periodically by the Code Governance Body and reviewed from time to time by an independent reviewer.\textsuperscript{170}

\begin{footnotesize}
\textsuperscript{160} Compare ASIC RG 183.18, 22(c), 28–30, 37, 56(c) and 59. \\
\textsuperscript{161} ASIC RG 183.13–15; ASIC RG 183.56; see also ASIC RG 183.17, 22(a), (e), 24, 25, 39, 40 and 44(c). \\
\textsuperscript{162} ASIC RG 183.99 and ASIC RG 183.44(b) and 56; Hockey Self-Regulation Taskforce, Executive Summary, para 19 and p 65, Chapter 7. \\
\textsuperscript{163} See also ASIC RG 183.17, 22(a), (d), (e), 24, 25, 31, 39, 40, 44(c) and (d), 56(c) and 59. \\
\textsuperscript{164} ASIC RG 183.13(c); ASIC RG 183.15; ASIC RG 183.69–71; ASIC RG 183.76–RG 183.78. \\
\textsuperscript{165} ASIC RG 183.69. \\
\textsuperscript{166} See also ASIC RG 183.17, 22(a), (d), (e), 24, 25, 31, 39, 40 and 44(c) and (d); Hockey Taskforce, Executive Summary, para 20 and p 66; paras 25–28 and pp 71–77. \\
\textsuperscript{167} See also ASIC RG 183.13(c), 15, 17, 22(a), (d), (e), 24, 25, 31, 39, 40 and 44(c) and (d); ASIC RG 183.67–RG 183.72. \\
\textsuperscript{168} ASIC RG 183.15(d); Hockey Self-Regulation Taskforce, Executive Summary, para 20 and p 66; paras 25–28 and pp 71–77, Chapter 7. \\
\textsuperscript{169} ASIC RG 183.15(d); Hockey Self-Regulation Taskforce, Executive Summary, para 20 and p 66; paras 25–28 and pp 71–77, Chapter 7. \\
\textsuperscript{170} ASIC RG 183.8, 44(c) and 79–81; Hockey Self-Regulation Taskforce, Executive Summary, para 29 and p 78. 
\end{footnotesize}
8 Code governance

Introduction

8.1 The framework for Code governance involves a series of formal and informal relationships among Treasury, ASIC, FOS, ICA and the Code Compliance Committee (CCC).

8.2 The framework and the functions of each body are set out in the diagrams below; there is more detail in a summary based on the Independent Review Issues Paper and amended on factual matters based on submissions — see Appendix E. It is important to note that the FOS Terms of Reference deal with its role as an EDR provider not as a provider of services in relation to the Code. I distinguish in what follows between ‘FOS Code’ and ‘FOS EDR’.

8.3 I consider firstly the relevant Code Framework and Content Principles and the criteria in ASIC RG 183 as the benchmarks for testing the adequacy of the Code governance framework. I set out and summarise the themes from the submissions on Code governance. In the context of the Code Framework and Content Principles, the criteria in ASIC RG 183, the submissions and the feedback from the Review consultations and forums, I set out the case for change and my views on the nature of the changes for the Code governance framework.

Self-regulatory principles and ASIC RG 183

8.4 The Code governance framework should be measured against the Code Framework and Content Principles which themselves are based partly on ASIC RG 183. There are, in the context of consideration of the Code for approval by AISC under RG 183, some provisions of RG 183 which require attention.

8.5 Code Framework Principle Two calls for the Code Governance Body to be independent, expert, informed and resourced. It is axiomatic in modern corporate governance that the governance body must be responsible for and supervise all aspects of the operation of the code. This precept underpins each of the Code Principles. Code Framework Principle Three calls for the independent Code Governance Body to be the ultimate standard setting body for the code with the influential involvement of the regulated entities and with the involvement of all stakeholders.

8.6 The Code Principles are mutually supportive. A diminution, absence or negation of one, diminishes and negates each other Code Principle. A Code Governance Body must be expert, representative, independent, informed and resourced for all of the Code Principles to be real and effective. This is particularly true for the monitoring, compliance, enforcement and sanctions functions under a code.
ASIC RG 183 sets criteria for code administration for an approved code. I set them out below in tabular form with the ASIC RG 183 criterion in the first column and my comment in the second column.

Table 4: ASIC RG 183

| RG 183.73 | A code applicant must establish that the code is effectively administered. For a code to work effectively, there needs to be an administrative body charged with overseeing the operation of the code that:
<p>|           | (a) is independent of the industry or the industries that subscribe to the code and provide the body’s funding (e.g. With a balance of industry representative and consumer representatives and an independent Chair); and (b) has adequate resources to fulfill its functions and to ensure that code objectives are not compromised. | • The ICA to some extent oversees the operation of the Code: promotes it, leads consultation about it, amends it, and commissions the independent review. • The CCC also has an oversight role including in the Code, section 7. • FOS Code supplies services for Code administration and CCC functions. • This criterion applies to some extent to each of the ICA, CC and FOS but assumes that there is one oversight body. |
| RG 183.74 | Without such a body, there is a risk that oversight of industry compliance with the code will be reduced, systemic problems will not be identified, and industry and consumer awareness of the code will be low. | • These risks remain real for the Code. |</p>
<table>
<thead>
<tr>
<th>RG 183.75</th>
<th>The code administration body should also be responsible for:</th>
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<tbody>
<tr>
<td>(a) Establishing appropriate data reporting and collection procedures;</td>
<td></td>
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<tr>
<td>(b) Monitoring compliance with the code;</td>
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<tr>
<td>(c) Publicly reporting annually on code compliance;</td>
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<tr>
<td>(d) Hearing complaints about breaches of the code and imposing sanctions and remedial measures as appropriate;</td>
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<tr>
<td>(e) Reporting systemic code breaches and instances of serious misconduct to ASIC;</td>
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<tr>
<td>(f) Recommending amendments to the code in response to emerging industry or consumer issues, or other issues identified in the monitoring process;</td>
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<tr>
<td>(g) Ensuring that the code is adequately promoted;</td>
<td></td>
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<tr>
<td>(h) Ensuring that their staff are appropriately trained about the code and that code subscribers make provision for employee training about the code; and</td>
<td></td>
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<tr>
<td>(i) Ensuring that there is a regular, independent review of the content and effectiveness of the code and its procedures (see RG 183.79–RG 183.81).</td>
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| FOS Code does this but it is not clear how involved the CCC is in this aspect. |
| The CCC monitors compliance with the Code through FOS Code and to some extent by itself. |
| FOS Code and CCC both report annually, including on Code compliance. |
| FOS Code and the CCC both hear complaints and impose remedial measures. The CCC can impose sanctions. |
| FOS EDR reports to ASIC. |
| It seems that both FOS Code and the CCC recommend amendments. CCC recommendations are for its role only. The ICA has the power to make amendments to the Code. |
| ICA promotes the Code. |
| The ICA has a training role. |
| The ICA commissions the independent review of the Code. |

| RG 183.76 | The monitoring process overseen by the code administration body should also provide for some form of external or independent monitoring or auditing from time to time. Further, if the monitoring process relies on self-reporting by subscribing members, then the code administration body should consider selected shadow shopping exercises to verify code compliance. |
| FOS does the monitoring. It is not clear whether the monitoring or the process is overseen by the CCC. |
Submissions

8.8 The IAG submission stated:

In our view the CCC has considerable insight into the industry wide practices and issues relating to the Code which would enable them to provide valuable advice or guidance to FOS about its arrangements and processes for Code monitoring and investigation. Consequently, we would support an amendment to the Code which would support the CCC giving guidance to FOS in this respect.

There is some overlap in the roles of FOS and the CCC in monitoring compliance and the Code could more clearly describe the relationship between FOS and the CCC in terms of code monitoring. Overall, however, we do not believe there is a compelling argument for altering the respective roles of the CCC and FOS in regard to Code monitoring, breach investigations and reporting and their relationship with each other. We are not aware of evidence that reporting on serious misconduct and systemic breaches to ASIC would be better undertaken by the CCC than FOS. If there are concerns about FOS’s processes these need to be addressed through FOS. Similarly, the CCC does not have the capacity to carry out all investigations into allegations of Code breaches or non-compliance. The resources for the CCC would have to be significantly boosted to enable it to fulfil such a role and it is not clear how this would improve on current processes.175

8.9 The RACQ Insurance submission stated:

RACQ Insurance strongly believes that FOS should not have the dual role of deciding disputes with customers as well as monitoring and enforcement of the Code. Its two functions are necessarily in conflict because a finding that the Code had or had not been breached by a FOS panel would make it very difficult for a subsequent systemic breach investigation to impartially look at the matter. This is particularly so where the same personnel are involved in both determining disputes and investigating breaches of the Code.

FOS’s function in determining disputes is quasi-judicial. Its functions in investigating Code breaches is executive. The mixing of executive and judicial functions within one body obviously leads to the concern of the possible unsatisfactory use of the power invested.

For industry and consumers to have confidence that the determinations function and the monitoring and enforcement functions will be carried out fairly and impartially, FOS should be required to demonstrate that it can provide effective functional separation between its two arms or otherwise it ought not retain both functions.176

8.10 RACQ Insurance submitted that the CCC should:

(a) have the capacity to provide direction to FOS in relation to its Code monitoring role; and

(b) be responsible for reporting systemic breaches because it would provide oversight to ensure that FOS is exercising its powers and functions appropriately.

8.11 Suncorp’s submission on governance stated:

Suncorp believes transparency and reporting of Code-related issues could improve to be more informative, assisting both the industry and policyholders. One simple measure could be reporting complaints by type as a proportion per thousand policies. This would complement the moves taken to begin publishing reports of the Code Compliance Committee (CCC). Suncorp believes the Financial Ombudsman Service (FOS) and the CCC could also make recommendations to the Australian Securities and Investments Commission (ASIC) where they suspect a serious breach or systemic issue, and ASIC could decide whether the action was worthy of being publically notified.177

175 IAG submission, Issue 12, p 20.
177 Suncorp submission, Executive Summary, p 3.
8.12 Suncorp supported developing a Code of Practice work stream, or similar, in the ICA’s National Consumer Reference Group (NCRG) which would provide further opportunity to review the Code should any serious issues arise.\textsuperscript{178}

8.13 The ICA submission disputed that the appointment process for FOS Panels was superior to the CCC appointment process: there was no apparent reason why the CCC should be appointed in the same way as a FOS Panel and there was already input from relevant stakeholders.

8.14 The ICA opposed extension of CCC responsibilities; the current role and structure was appropriate. Any greater clarity of roles was a drafting matter. The CCC should not give guidance to FOS because it can raise concerns about Code operations with the ICA, which concerns are considered carefully.

8.15 NIBA saw merit in the Code being promoted better by Code Participants, the CCC and FOS as it would help increase compliance with the standards. NIBA saw an amendment to the Code, to provide that the CCC should be able to give guidance or direction to FOS about its arrangements and processes for Code monitoring and investigation, as valuable given the broad representation of those on the CCC. NIBA saw an amendment to the Code, to provide that the CCC not FOS should report to ASIC on serious misconduct and systemic breaches, as valuable given the broad representation of those on the CCC. NIBA also queried whether the CCC should play a role in reviewing unresolved systemic matters. NIBA saw merit in the Code being amended to provide that the CCC carry out all investigations into allegations of Code breaches or non-compliance. NIBA would not support the Code being amended to provide that FOS or CCC reports should name a Code Participant who is under investigation for Code breaches or non-compliance because it would be unfair on those who are later found not to have breached or failed to comply. NIBA thought a working group could be formed between FOS, the CCC and ASIC to identify any issues as they arise and seek to manage them and “avoiding duplication in reporting of information under the Code and FOS TOR may be valuable”.

8.16 NIBA supported the view in the Issues Paper that:

The insurance industry is both intensely competitive and subject to substantial regulation. The industry, its markets and practices are evolving rapidly. Some of the regulation, as observed in this Paper, has been thwarted, late, or not well implemented. Some regulation has delivered outcomes different from the original purpose of the regulation. The history of the regulation of insurance in Australia suggests that prudential regulation is stimulated by financial crisis and that consumer regulation is stimulated by Government or industry reports. The natural disasters of the last two summers and the regulatory response give a rare example of consumer regulation being stimulated by a crisis. The history indicates that we should proceed with care. There does not seem to be a mechanism, process or forum which can, as much as competitive pressures permit, bring all stakeholders together to consider the changing context of their relationships and future needs, so that future changes can be considered away from the compulsions of crisis but in a considered and measured approach to continuous improvement. There may be some benefit in considering such a mechanism, process and forum.\textsuperscript{179}

8.17 The ILS submitted that CCC members should be appointed in the same way as FOS Panels. On the role of the CCC, the ILS submitted:

The Code and related documents should be amended to implement the following:

(a) Appointments to the CCC should be conducted in the same fashion as FOS Panels;

(b) The role of the CCC should be to closely monitor compliance of the Code by insurers, investigate breaches where appropriate and publicly publish breaches and outcomes, identifying all relevant insurers;

\textsuperscript{178} Suncorp Submission, on Issue 17.

\textsuperscript{179} NIBA submission, para 10.185.
(c) The CCC should adopt a principle of transparency;

(d) The CCC should publish data (quarterly) on coverage for main natural disaster risks including flood, bushfire and cyclones;

(e) The CCC should publish claims handling and complaints reporting per insurer, per industry on a quarterly, annual basis. These should be up to date. These reports should include cases of natural disasters or catastrophes where relevant for that reporting period and should cover:

(i) claims rejected;

(ii) claims withdrawn;

(iii) complaints to IDR; and

(iv) complaints to EDR.\(^{180}\)

8.18 The ILS also submitted that the CCC should be able to give guidance to FOS Code on monitoring and investigation. ILS considered that FOS EDR should continue to report serious misconduct and systemic issues directly to ASIC. The CCC should report serious misconduct and systemic issues on the Code to FOS for FOS to report to ASIC.

8.19 The ILS submission on governance and dispute resolution stated:

The roles of FOS in dispute resolution and reporting to ASIC and the CCC in investigating all allegations of code breaches or non-compliance should be clearly defined. Where FOS has identified potential code breaches or non-compliance, it should refer those issues to the CCC for a more thorough investigation.

In our experience where Code breaches are referred to the CCC and a formal dispute is lodged with FOS, the CCC have typically responded by saying that while there is a dispute in progress they are unable to continue with any investigation of Code breaches. Also, where the FOS systemic issues team is looking at a matter that may involve Code issues, the CCC will similarly put on hold their investigations of code breaches. These investigations could take an indefinite time to resolve meaning that the CCC could indefinitely be putting on hold their investigations of Code breaches.

It is clear that currently, the various divisions of FOS and the CCC are too intertwined. A more flexible approach should be adopted for these situations and the CCC and FOS should work together to develop this approach.

The CCC should be able to commence/continue their investigations separate from the influence of FOS whether that be the dispute resolution, systemic issues or any other team in FOS.\(^{181}\)

8.20 The ILS submission on Code enforcement and sanctions stated:

The Code and the FOS Terms of Reference should also be amended to provide the CCC with a clear right to obtain information (with all details) from FOS (all departments) about any identified Code issues.\(^{182}\)

8.21 I should state expressly and clearly that I have given considerable weight to the CCC Submission on Code governance and related issues. This is not only because of the calibre and credentials of the members of the CCC but also because of its important role in Code governance. The CCC submission noted that:

The Code Compliance Committee (the Committee) is an independent Committee established under the Code to:

\(^{180}\) ILS submission, Issue 16, p 56.

\(^{181}\) ILS submission, Issue 12, p 43.

\(^{182}\) ILS submission, Issue 13, p 45.
Monitor compliance by Code Participants with the Code’s obligations, through reports received from the Financial Ombudsman Service (FOS), and

Make determinations and impose sanctions where FOS has reported a failure by Code Participants to correct a Code breach.

8.22 The CCC supported an expansion of its functions to include a Code promotional role consistent with the views in ASIC RG 183. The CCC submitted that one approach might be for it to have a Code promotion role through a Code Promotion and Education Group made up of appropriate industry and consumer representatives to: “share its experience of good industry practice and Code compliance with industry, and to assist in raising awareness of Code obligations and customer rights with customers and consumer advocacy groups.”

8.23 The CCC has no role in the context of training and education. It noted a view that for industry training to be effective, the training should result in a general lift in knowledge or professionalism.

8.24 The CCC also saw a more active role for itself in relation to the content of the Code:

The Committee seeks to share its experience of Code compliance through this guidance and would also seek to recommend changes to the ICA’s Code Guidelines from time to time as appropriate, based on its Code monitoring experience … the Guidelines should be seen as a living document with updates to be distributed as required to Code Participants. 183

8.25 A theme of the CCC’s submission was the importance of stakeholder participation, transparency and public confidence in the success of the Code:

… the importance of transparency at all levels of the Code’s operations, to the achievement of the Code’s operations, to the achievement of the Code’s objectives. This theme is a feature of the Committee’s submission and one of the key principles on which its content is based. 184

8.26 ASIC submitted that it had concerns about the adequacy of Code provisions relating to governance, monitoring and compliance, in part because of an apparent lack of transparency about governance arrangements and the roles of FOS and the CCC in monitoring, investigating and enforcing the Code.

8.27 The submissions themselves have different views about the current arrangements but they evidence a broad consensus that the Code governance arrangements must be clearer, more transparent and reduce conflicts of roles. The CCC, NIBA, RACQ, IAG, Suncorp, the ILS, NIBA and the CCC itself all supported an enhanced role for the CCC. A number of submissions — IAG and RACQ — proposed that the CCC should direct FOS Code in its work. It is clear, from the Code Principles and ASIC RG 183, that all relevant information should come before the CCC to enable it to effectively discharge its functions. A number of submissions called for improved reporting arrangements on Code matters.

The case for change

8.28 The ICA submission argued for the status quo on Code governance. This status quo reflects various governance and code monitoring changes made during late 2011 and early 2012 which were intended to give greater clarity to each role and the governance, monitoring and reporting structures.

8.29 The other submissions which dealt with governance argued for change. The case for change has, in my view, been persuasively made. I also consider that change would be required for the Code to meet the Code Principles and the ASIC RG 183 criteria for code administration or governance. I set out the case for change and my views on the nature of the changes, taking into account the Code Principles, ASIC RG 183 and the submissions, state my reasons.

183 CCC submission, Issue 2, p 3.
184 CCC submission, p 1.
8.30 The Code Principles suggest, in the context of my observations on Code governance, three matters for comment:

1. direction and accountability;
2. communication and information flow; and
3. independence of the Code Governance Body.

These three matters form the outline of the case for change.

8.31 The Review consultation process, forums and submissions narrated two conflicting perceptions about Code governance on the critical issue of the imposition of Code sanctions. There has been no sanction imposed by the CCC (other than sanctions on one company, in egregious circumstances, which is no longer carrying on insurance business) under the Code; since its inception in 1994. One view is that this history shows that the Code processes of identifying breaches by Participants and FOS Code, the investigation by FOS Code, the work by FOS Code with a non-compliant Participant to remedy the matter and the positive ethos of industry support for the Code all indicate that the Code is working well. The other view is that it is so extraordinary that in 18 years there has been only one occasion of sanctions imposed by the CCC is itself evidence that the Code is not taken and enforced seriously. This view cites in support the FOS QF Survey which, in the matters and subject to the methodology of the survey, indicates that Code compliance evidenced in those matters was lower than Code compliance evidenced in previous FOS Annual Reports.

8.32 It is not, in my view, practically possible to reconcile these two different narratives or perceptions. The required minute review of each instance of Code non-compliance over 18 years would demand a practically impossible level of resources but more importantly I consider that even such a review would not resolve the conflicting perceptions. The importance of transparency, independence and wide public confidence in the system cannot be overstated. For these reasons, I consider that it is more important to focus on the future, to establish a modern and sound framework of governance which will deliver public confidence through enhanced transparency and independence, than to embark on a forensic archeological expedition into the past.

8.33 The first step should be to change the way FOS Code relates to the process. FOS Code proposals for the methods by which FOS Code meets its commitments to the ICA in its Code administration role, and the review of FOS Code performance, should be the subject of approval, monitoring, review and direction by the CCC as an independent body. It would be, in my view, required under ASIC RG 183. The contract by which the CCC outsources services from FOS Code should be referred to in the Code.

8.34 The second step should be to ensure that the relevant data circulates consistently and transparently through the channels in the governance framework. Currently, FOS Code is the source of the principal data, whether in the form of industry surveys, audit reports, investigations on Code breaches, recommendations for remediation on Code compliance breaches and recommendations on Code sanctions, and there is, from FOS EDR, reports on systemic and serious misconduct derived from the FOS EDR case work. This data is supplied to, variously, the ICA, ASIC and the CCC. The consequence is that each role in the governance framework has incomplete data and makes decisions and takes actions on incomplete data. All the relevant data should be supplied to the CCC and it should be mandated to consider the data in its various functions (see below) and to make recommendations and supply the data to the relevant body. This would ensure transparency, independence and consistency. The full range of decisions (see below) would be better informed.

8.35 The CCC should then be mandated to decide what reports should be made public with full transparency and disclosure as the policy position in the absence of strong contrary factors.
The CCC was not entitled to decide or implement its own view on making its reports public until 2012. This would have militated against its independence and must have affected adversely stakeholder confidence in its independence and its central role in the Code governance framework.  

8.36 The third step would be to have one Code governance body and to enhance the independence of the Code governance body. The sense of confusion, opaqueness and conflicts can be cured partly by clarifying and eliminating any duplication in the roles of ICA, FOS Code and the CCC. The primary cause in my view is that there must be, consistent with the Code Principles and ASIC RG 183, one Code Governance Body. I must record here with emphasis that in my view the CCC Chairman and industry and customer representatives serve and have served with integrity, dedication and skill; my observations and recommendations about governance are based on structural considerations not the performance of individuals or the CCC as a body. The core function of the CCC was to consider and, if thought fit, apply sanctions under the Code but with limited data and limited involvement in key facets of the framework. The original governance structure was established in 1994. The focus was on complaints and disputes; the IEC was therefore at the centre of the Code. But as the Code standards developed and expanded, and Code administration became more important, the IEC then FOS Code, with the ICA, remained at the centre of the Code without an express re-balancing of the Code governance framework. There is sense that the CCC should or might be the Code hub and custodian. The CCC was not entitled to decide or implement its own view on making its reports public until 2012. This militated against its independence and affected adversely stakeholder confidence in its independence and the centrality of its role in the Code governance framework.

8.37 The role of independent individuals to approve, monitor, review and direct an entity is now the foundation of modern corporate governance. It follows that the CCC constitution and charter should be changed in two ways. The first should be, while retaining an independent Chairman, that two independent members be appointed to the CCC. The criteria for independence should be on the basis of the ASX Governance standards but with adaption to recognise the difficulty of attracting qualified individuals (the criteria for qualification must mean some relevant experience in relevant matters) and should emphasise the character and substance of independence rather than its form.

8.38 The CCC could also make recommendations to ASIC where the CCC suspects a serious breach or systemic issue.

8.39 For this function, the members of the CCC who carry it out must be and be seen to be independent. Therefore, the CCC in its role on sanctions should comprise only the three independent members. I refer to this part of the governance structure as the Sanctions Committee. The Sanctions Committee should comprise only the three independent members.

8.40 The CCC so constituted would absolve, and resolve, the appearance of two conflicts of interest within the current Code governance arrangements. The first appearance of conflict arises in FOS Code’s variety of functions and accountability lines. I must record here with emphasis that in my view, the FOS Code personnel serve and have served with integrity, dedication and skill; my observations and recommendations about governance are based on structural considerations not the performance of individuals or FOS Code (or FOS EDR) as a body. FOS Code has multi-faceted roles including investigator, prosecutor and judge. FOS EDR refers matters to ASIC. There is the appearance of conflict among these roles. FOS Code is contracted by the ICA as an outsourced service supplier of Code-related services. Some issues are put before the CCC. The current approach is inconsistent with modern corporate governance standards on separation of powers, independence and transparency and it is without clear structural accountability to an independent entity. The enhancement of the
CCC in the way suggested would overcome the appearance of conflicts of interest. The second appearance of conflict is within the CCC itself in the roles set out in Appendix E. The division of responsibilities into committees as I have suggested would functionally and practically absolve and resolve these appearances of conflicts of interest.

8.41 A purist approach to these matters would urge a complete separation of these roles into different entities. I do not consider that would be necessary, practical or cost effective. In the context of a voluntary and principled self-regulatory regime, the steps and measures I have suggested would ensure that the governance arrangements were soundly consistent with modern corporate governance standards.

8.42 I am conscious that the proposals set out above on CCC appointments differ from both sides of the debate on whether CCC appointments should be on the current basis or on the same basis as FOS Board appointments. The view I have come to means that it is not necessary for me to comment on or adjudicate that debate. The current CCC through its Chairman should make the new independent appointments, with good consultation with stakeholders, and after that the CCC should make its own appointments, with good consultation with stakeholders. The ICA should be closely involved particularly in the transitional appointments and the first independent appointments.

8.43 Fourthly, there is a need to enhance education and training in the industry. This emerges strongly from the FOS QF Survey. It is also strongly supported by the consensus range of feedback in the Review consultations, forums and submissions. There is a persuasive case for the CCC to be involved to set, monitor and uphold standards. While there is a responsible view that education and training should be solely a matter for the industry through the ICA, there is substantial room for improvement and an independent custodian of this core feature is consistent with the narrow and wider aims for Code governance. Therefore, the CCC should also have an Education and Training Committee. Its membership should include:

1. the three independent members;
2. equal numbers, but I would have thought no more than two, of insurance industry and customer advocates or representatives; and
3. representatives from the ICA, FOS Code, ASIC and Treasury, consistent with their statutory or contractual authority and mandate.

8.44 Fifthly, the CCC so constituted becomes an entity with good data, resources, and with an independent but representative perspective and with an overview of industry issues. Its contribution to the development of government and regulatory policy for the general insurance industry becomes a significant resource which should be used effectively. The CCC becomes the Code custodian. An important part of its functions in this area would be to ensure that the Code, between its regular independent reviews, be maintained as a living Code and responsive to changes in customer needs, industry practice and market conditions. I note that the ICA was able to move quickly in 2012 to amend the Code in response to the natural disasters of the previous two summers. The development and review of Code Guidelines would be an important part of this work. Therefore, the CCC should also have a Policy Committee. Then the ICA could decide whether to retain the NCRG or to change it to meld the NCRG functions into this governance structure. The same would apply to Treasury and IRAG. The Governance structure would enable reviews as needed. There should be consideration of lengthening the period for mandatory independent reviews to every five years. The CCC charter should be referred to in the Code.
In summary, the CCC would be reconstituted as follows:

1. CCC: three independent members and one insurance industry and one customer advocate or representative;
2. Sanctions Committee: three independent members;
3. Education and Training Committee: the CCC plus representatives from the ICA, FOS Code, ASIC and Treasury; and
4. Policy Committee: the CCC plus representatives from the ICA, FOS Code, ASIC and Treasury.

It would be congruent for the CCC to take a new name to reflect its wider charter. I refer to it relevantly in this report as the Code Governance Body and in the diagrams and recommendations and the New Code as CGB.

The governance model set out above would also have significant benefits in relation to Code coverage and Code sanctions.

In summary, the CCC constitution or charter would be amended to include:

1. working with the ICA to promote the Code and on industry education and training;
2. industry and Code data flowing from FOS Code, FOS EDR, ICA and other bodies into the Code Governance Body. The Code Governance Body and ASIC would share relevant information. The Code Governance Body would refer Code serious misconduct and systemic issues to ASIC;
3. directing FOS code administration service, receiving data and reports from FOS and monitoring FOS performance;
4. dealing with industry conduct and code breach allegations;
5. consulting with ASIC and Treasury on general insurance policy issues;
6. liaising with, and making recommendations to ASIC, on Corporations Law, IC Act and Code matters for general insurance. Treasury and ASIC should consider GIC recommendations before action;
7. the Code Governance Body as a co-ordinating body to host and focus insurance policy forums involving all stakeholders for planned and measured proposals for industry continuous improvement; and
8. the Code Governance Body would source the resources and services it needs for its work under its charter from FOS Code.

This enhanced governance model would:

1. be consistent with modern corporate governance standards;
2. reduce the practical effect of conflicts of interest;
3. eliminate perceptions of conflicts of interest;
4. provide a balanced blend of market self-regulation combining a voluntary scheme with real sanction power; and
5. produce better outcomes for all stakeholders from the gains from embedded independence and expertise.

See Section 9, Issue 3.
See Section 9, Issue 13.
8.50 The governance model above, involving some enhancements to the current arrangements, is the keystone of this Report. The governance model would be based on the principles stated by the CCC:

As a general principle, the Committee believes that a governance model which includes the active participation of consumer and industry representatives in the oversight of the Code’s administration and monitoring functions and which is independent of the sponsoring industry, has significant benefits for the effective administration of a Code of Practice and seems to enhance stakeholder confidence in the Code’s operations.  

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189 CCC submission, Issue 16, p 10.
I set out the proposed governance model in diagram form below:

Diagram 1

CA means customer advocates.

Diagram 2
Benefits in context

8.52 I set out my views about the benefits to the Code stakeholders of the Code governance framework I have recommended. Our community is rightly wary of bureaucracy. It is trite to observe that all regulatory cost is ultimately borne by taxpayers and customers and therefore the recommendations need to be assessed in the context of the cost, time and change they involve. It is also right and proper to set out the benefits because it is important in my view for these to provide both background and some elements of detail to the recommendations.

8.53 The Code Governance Body would have two additional independent members; there is a cost in fees to be paid to the independent members. The Code Governance Body would function largely as it does now; its work would be largely based on reports supplied to it by FOS Code, but the Code Governance Body would direct FOS Code on the content and structure of those reports. Its charter would be expanded on education and training and on policy matters. FOS Code, as it does now, would supply all necessary services to the Code Governance Body. The first difference would be that the Code Governance Body would direct FOS Code and FOS Code would be accountable to the Code Governance Body. The second difference is that the Code Governance Body would have a service level agreement with FOS Code. It is not, in my view, necessary in order to implement my recommendations, for FOS Code to be moved outside the FOS corporate structure, although I accept that this would be consistent with my recommendations or it might so evolve. It will be necessary for the ICA Board to consider these matters. It is not my function to budget or prescribe the operational detail for my recommendations. In summary, apart from the independent members’ fees, some administrative support and some transitional costs in redrafting charters and service agreements, I do not envisage other material costs.

8.54 In this context, I set out my views on the benefits for each stakeholder of the recommended Code governance framework:

1. **Customers and customer advocates**: customer representatives who are also advocates for a constituency:

   (i) An increase in trust and confidence in the Code and its governance by a single independent entity.

   (ii) A confidence that corrective action and sanctions will be imposed, when justice and fairness demand it, by an independent, expert, balanced and resourced Code Sanctions Committee.

   (iii) Participation in reviewing and giving feedback on Code training and education so that their experiences though their representatives on the Code Promotion, Education and Training Committee can assist the industry in improving and monitoring education and training.

   (iv) Participation in general insurance policy matters by making a contribution in the Policy Committee forum that benefits from the views of all stakeholders, with policy debates well informed through well developed and channelled data, and whose guidance on policy settings is sought and valued by government, ASIC and FOS.

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190 See this Report Section 9, Issue 1 on Promotion.
(v) It could, if stakeholders chose, reduce the number of bodies which function as forums on general insurance industry issues. The focus into one forum would create time and cost efficiencies and avoid duplication.

2. **FOS Code**: multi-faceted roles (surveyor, auditor, investigator, prosecutor and judge) inconsistent with modern corporate governance standards on separation of powers, independence and transparency and without clear accountability:
   (i) Could operate clear of perceptions of conflict of interest and with direction directly from the independent Code Governance Body;
   (ii) Clarity of functions; reporting content and channel responsibilities; and accountability should produce increased cost effectiveness and stakeholder confidence;
   (iii) Over time, its reporting and reporting lines would be streamlined creating resource efficiency.

3. **CCC**: a role, shared with FOS, on Code compliance with an independent chair, but with limited data and limited involvement in key facets of the framework:
   (i) Originally intended, in my view, as the single Code Governance Body, has a more limited and ambiguous role with a lack of clarity about its relationship with FOS Code and the ICA on Code governance;
   (ii) Will engender increased trust and confidence in its work on Code matters from having an independent, expert, balanced and resourced Code Sanctions Committee;
   (iii) Its work puts it in an excellent position to review and provide feedback on industry training and education;
   (iv) Its work also puts it in an excellent position to host and participate in general insurance policy matters in the Policy Committee forum. While the CGB would clearly not be a statutory body or a mandated regulator, relived from those formal yokes, it can contribute independent informed expertise to policy debates. It could also carry out a policy co-ordination role as contemplated by the Hockey Taskforce: organisations considered that it was confusing and bureaucratic for industry to know which regulator(s) to deal with.\(^\text{191}\) The Taskforce considered that government needs to ensure Departmental and agency roles in self-regulation are clear.\(^\text{192}\)
   (v) If the CCC’s guidance on policy settings were sought and valued by government, ASIC and FOS, a model could evolve of planned and measured regulatory development, responsive to customer needs and industry prosperity.

4. **ASIC**: as a statutory body, with authority to regulate market conduct aspects of general insurance, it suffers the perennial public sector challenges of financial, systems and human resources to marshall and deploy the breadth and depth of expertise necessary for cost effective regulation:

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\(^{191}\) Hockey Taskforce, pp 103, 103.
\(^{192}\) Hockey Taskforce, pp 103, 103.
(i) It could look to the Code Governance Body as the single independent Code Governance Body under ASIC RG 183.

(ii) It would have increased trust and confidence in general insurance industry self-regulation and the reality of corrective action and other remedies, as well as sanctions, through an independent Sanctions Committee.

(iii) It could receive data, from the Code Governance Body (without precluding ASIS from receiving data from any other source) which presented a whole and balanced view because it would be industry data sourced from FOS EDR and FOS Code with context and comment from their work and the work of the Code Governance Body. ASIC with better data becomes a better resourced and more cost effective regulator.

(iv) It could both participate in the review and feedback on Code promotion and industry education and training through the Code Promotion, Education and Training Committee. If ASIC chose not to participate, it would nevertheless have an increased trust and confidence in general insurance industry self-regulation.

(v) If the Code Governance Body’s guidance on policy settings were sought and valued by ASIC, a model could evolve through the Policy Committee of planned and measured regulatory development, responsive to customer needs and industry prosperity.

(vi) ASIC could, if it and stakeholders chose, reduce the number of bodies which function as forms on general insurance industry issues. The focus into one forum would create time and cost efficiencies and avoid duplication.

5. **Government**: is in the position of most power but less ‘coal-face’ information and insufficient visibility of the other governance bodies and stakeholders:

   (i) It is generally at more distance than other stakeholders on day-to-day issues but is held accountable by the electorate for the performance of the industry without prior warning or insight into the issues. It can feel compelled to react without adequate data and expertise.

   (ii) Government would derive the same benefits as ASIC from the recommended Code governance model.

6. **The ICA and Code Participants**: an industry association with a charter to “influence, ethically and expertly, the political, social, business and economic environment in order to promote members’ roles in providing insurance protection and security to the community.” It is and is seen to be an advocate for its constituency. It has insurance expertise and a commercial approach and is better resourced than other stakeholders. But even a balanced approach from the ICA and its members on Code matters has the potential to be perceived as a defence of traditional industry positions and as advocating its members’ interests at the expense of other stakeholders. Its role as Code guardian is seen as compromised:

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193 See this Report, Section 9, Issue 1 on Promotion.
194 ICA website.
(i) An increase in trust and confidence in the Code and its governance by a single independent entity. There is a real role for self-regulation.

(ii) A confidence from stakeholders that corrective action and sanctions will be imposed, when justice and fairness demand it, by an independent, expert, balanced and resourced Code Sanctions Committee. Industry can be confident that sanctions which might be imposed would be by an independent and impartial body.

(iii) Participation in reviewing and giving feedback on Code training and education so that industry experiences through their representatives on the Code Promotion, Education and Training Committee can assist the industry in improving and monitoring education and training.

(iv) Participation in general insurance policy matters by making a contribution in the Policy Committee forum that benefits from the views of all stakeholders, with policy debates well informed through well developed and channelled data, and whose guidance on policy settings is sought and valued by government, ASIC and FOS.

(v) It could, if stakeholders chose, reduce the number of bodies which function as forums on general insurance industry issues. The focus into one forum would create time and cost efficiencies and avoid duplication.

8.55 The benefits of the proposed Code governance framework are, in my view, in summary:

1. better outcomes for customers, industry and regulators;

2. all stakeholders resolve their main concerns with the current Code governance structure and the effectiveness of the Code: Customers, ICA, FOS, ASIC, Treasury, CCC;

3. all, except Treasury, cede some control. All gain from embedded but balanced independence and expertise;

4. balanced blend of market self-regulation combining a voluntary scheme with real sanction power; and

5. continuous improvement in education and training.

8.56 It could be, in short, a model for the business of regulation.

**Recommendation 1**
The CCC should become the Code Governance Body (CGB).

**Recommendation 2**
The CGB should be established and maintained consistently with the Code Principles.

195 See this Report, Section 9, Issue 1 on Promotion.
Recommendation 3
The CGB should be reconstituted as follows:

- CGB: three independent members and one insurance industry and one customer advocate or representative;
- CGB Sanctions Committee: three independent members only;
- CGB Promotion, Education and Training Committee: CGB plus representatives from industry and customers and the ICA, FOS Code, ASIC and Treasury;
- CGB Policy Committee: the CGB plus representatives from industry and customers and the ICA, FOS Code, ASIC and Treasury.

Recommendation 4
CGB should source the resources and services it needs for its work under its charter from FOS Code.

Recommendation 5
The CGB constitution or charter should be amended to provide that the CGB should:

- Work with the ICA and Code Participants to promote the Code and on industry education and training;
- Receive industry and Code data flowing from FOS Code, FOS EDR, ICA and other bodies. CGB and ASIC should share relevant information. CGB should refer Code serious and systemic issues to ASIC;
- Direct FOS Code’s administration service, receiving data and reports from FOS Code and monitoring FOS Code’s performance;
- Deal with industry conduct and Code breach allegations;
- Consult with ASIC and Treasury on general insurance policy issues;
- Liaise with, and make recommendations to ASIC, on Corporations Law, IC Act and Code matters for general insurance.

Recommendation 6
The CGB should decide what reports it commissions or publishes in relation to the matters under its jurisdiction.

Recommendation 7
The CGB should be a co-ordinating body as the host and focus of insurance policy forums involving all stakeholders for planned and measured proposals for industry continuous improvement.

Recommendation 8
The Code should refer to the CGB constitution or charter and the CGB’s outsource contract with FOS Code.
9 Issues

Issue 1 — Code publicity, awareness and engagement

9.1 The Review Issues Paper asked for submissions on whether the Code is adequately promoted:
1. to the insurance industry;
2. to service providers to the insurance industry; and
3. to customers.

9.2 The IAG submission stated:

IAG believes the Code is currently adequately promoted but we would be happy to support additional industry wide efforts to further promote the Code including a consumer awareness campaign. We note that although Participants have an obligation under Clause 5.4 to provide ‘clear and accessible information’ about the Code. Only the ICA is required to ‘promote’ the Code [Clause 5.3]. In our view the ICA is best placed to lead ‘promotion’ of the Code. This is because it is the body representing the general insurance industry. However, Participants can also assist in this promotion process through including details about the Code in PDSs and on their websites.196

9.3 RACQ Insurance submitted:

RACQ Insurance agrees that there is a relatively low level of awareness of the Code among the general community. That said, the recent natural disasters, particularly in Queensland, have significantly raised the level of awareness of the Code.

Further awareness initiatives relating to the Code should be driven at the industry body level by the ICA. In RACQ Insurance’s view, leaving the task of promotion of the Code to individual insurers would risk creating an inconsistency of approach which may confuse consumers.197

9.4 The Suncorp submission stated:

The provision of ongoing mail outs of the Code to policyholders is cost prohibitive however electronic distribution may be feasible. The electronic communications provisions contained in the Insurance Contracts Act Amendment Bill 2013 will allow insurers to cheaply and quickly distribute the Code to policyholders with disclosure documents when they send the schedule/PDS/renewal.198

While the industry works hard to make its policyholders, staff and suppliers aware of the Code, there are opportunities to improve the distribution of Code information. There is acknowledgement within the industry that insurers and the Insurance Council of Australia (ICA) could possibly do more to promote the Code more prominently and uniformly on their websites. A requirement to ensure the Code is easily available on insurer’s websites may assist with more obvious promotion.199

Other third parties which may benefit from improved Code awareness and understanding include financial counsellors, community legal centres and state legal aid centres. Suncorp believes this is where great progress can be made to ensure the most vulnerable consumers as well as those in dispute with insurers are made aware of the Code and its service level standards.200

9.5 The WRLC submission stated:

196 IAG submission, Issue 1, p 4.
197 RACQ Insurance submission, paras 2.6–2.8, p 3.
198 Suncorp submission, p 4.
199 Ibid.
200 Ibid.
The review paper asks for submissions on whether the code is adequately promoted to customers and service providers to the insurance industry. Our view is that all parties dealing with the insurance industry should be informed of the existence of the code. As such, we submit that the most effective means of promoting the code is to require insurers to advise all concerned parties, in writing, of the existence of the code and to provide instructions detailing how to access a copy of the code.\(^{201}\)

9.6 The CCC submitted:

The ongoing low levels of referrals of alleged Code breaches from customers and their advocates may indicate a need for the Code to be more actively promoted with that stakeholder group. The Code offers consumers many benefits that may not be readily appreciated …

The Committee’s view therefore is that the Code should outline clear responsibilities for the promotion of the Code, its obligations and accountabilities to all stakeholders …

The Committee would support an expansion of its functions to include a promotional role, which it would use to share its experience of good industry practice and Code compliance with industry, and to assist in raising awareness of Code obligations and customer rights with customers and consumer advocacy groups. This seems consistent with views expressed in ASIC Regulatory Guide 183.75.

The Committee also supports the establishment of other strategies to ensure effective promotion of the Code. It suggests these might include the convening of an appropriately resourced Code Promotion and Education Group, with industry and consumer representation.\(^{202}\)

9.7 The consensus range from the Major Reports and from my consultations, forums and the submissions was the strong view that the Code was not adequately promoted, and that it must be better promoted by the ICA and Code participants. The selected extracts above from that material make a strong case for better Code promotion. Code promotion is consistent with Code Framework Principle Two and Code Content Principle Two.\(^ {203}\) It is clear that the Code should contain a standard which requires not only the ICA but also each Code Participant to promote the Code. I recommend accordingly. The more difficult question is how the outcome of a well-promoted Code can be achieved in a cost effective manner. I have recommended an enhanced Code Governance Body with a Code Promotion, Education and Training Committee. The material in the Major Reports and my consultations, forums and the submissions adds additional weight to this recommendation in relation to Code promotion. Code promotion, in my view, is a priority matter for the Code Governance Body and I recommend accordingly. I do not consider that it is practical for the review to prescribe or recommend the measures that might be necessary or desirable to achieve the outcome of a well-promoted Code. There were three main ideas to promote the Code: firstly, through the Code Participants’ websites; secondly, through electronic notification under the IC 2013 Bill;\(^{204}\) thirdly, through training and education with particular focus on Service Suppliers. I suggest that these ideas be considered by the Code Governance Body.

9.8 A table of the Major Report recommendations on Claims, including the FOS QF Survey recommendations, and my responses to them, consistent with my views and recommendations, is set out in Appendix G.

\(^{201}\) WRLC submission, p 1.

\(^{202}\) CCC submission, Issue 1, p 2.

\(^{203}\) Section 6 above.

\(^{204}\) See Section 7 above.
**Recommendation 9**

The Code should contain a standard which requires the ICA as well as each Code Participant to promote the Code.

**Recommendation 10**

The CGB should lead and co-ordinate the promotion of the Code.

**Recommendation 11**

A Code Promotion, Education and Training Committee should be established to support the CGB’s work in leading and co-ordinating the promotion of the Code.
9.9 The Review Issues Paper asked for submissions on whether:

1. the Code should consist of principles, including ethical principles, or rules, or both principles and rules; and
2. the Code should be in plain English.

9.10 RACQ Insurance submitted:

Therefore, where principles are used, it should be made clear that the principles can be achieved by Code participants by a variety of means and a failure to adopt what a regulator may consider to be ‘best practice’ is not, itself, a breach of the Code. On the other hand, there are instances where it is important to use rules so as to be specific. Time frames are for claims handling and other decisions should be prescribed in specific rules or otherwise they will become meaningless.

9.11 The ICA supported improvements to the design and flow of the Code. It suggested consideration of whether the Code would be more effective if it were separated into two components: principles and ‘guidance on best practice’.

9.12 The CCC submitted:

The Committee also supports the proposal to develop general guidance for industry and consumers about the interpretation and application of the Code’s obligations in practice. This may assist in ensuring a consistent understanding across stakeholders to the revised Code’s operation and application.

9.13 The FOS QF Survey strongly supported the development of Code guidelines for claims handling. The FOS QF Survey also FOS recommended the Code should be interpreted using a principles-based approach, consistent with the Code’s objectives, spirit and intent.

9.14 Suncorp submitted that simplification of the Code from a presentation, readability and style perspective would be a positive step. The CCC submission captured the consensus: “The Committee is therefore of the view that the Code must be in plain English, understandable and accessible to its consumer audience.”

9.15 The consensus range from my consultations, forums and the submissions was that the Code should:

1. consist of ethical principles, principles, objectives, rules or standards and guidelines;
2. be clearly and simply structured and set out; and
3. be in plain English.

9.16 This approach is consistent with Code Framework Principles One, Three and Six and Code Content Principles Three, Five and Six.

9.17 Appendix F is a New Code which attempts to reflect these aims. I recommend accordingly. The NIBA Code, is in my view, an outstanding example of a layout which assists clarity and comprehension. The ICA may wish to consider adopting a similar style of layout for the Code.

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205 RACQ Insurance submission, para 3.4, p 4.
206 FOS QF Survey, p 5, paras (b), (c) and p 6, para (e).
207 See Section 7 above.
Recommendation 12
The Code should:

• consist of ethical principles, principles, objectives, rules or standards and guidelines;
• be clearly and simply structured; and
• be in plain English.

Recommendation 13
The Code should be substantially in the terms set out in Appendix F.
### Issue 3 — Code coverage

**Code participants — insurers**

9.18 The Review Issues Paper asked for submissions on applying the Code to:
1. all insurers that conduct business in Australia;
2. all insurers that conduct business in Australia, with a condition being authorisation by APRA under the Insurance Act 1973 (Cth);
3. all insurance industry participants holding an AFSL; and if
4. a condition of an AFSL should be that the licensee is a Code Participant.

9.19 The Major Reports included recommendations that the Code should apply compulsorily to all AFSL holder general insurance operations as a condition of the AFSL, or to all APRA-regulated general insurers.

9.20 The Suncorp submission stated the Code could have a wider coverage, and possibly be mandatory through APRA for insurers. The ILS submission was to the same effect.

9.21 The more important and effective the Code, the more important it is for Code Participants, their customers and the community that the Code applies as widely as possible. The Code now covers 147 participating companies. However, it would be inimical to the spirit, purpose and effectiveness of the Code for it to be compulsory — see Self-Regulation Framework Principles One and Three.

9.22 The consensus range from my consultations, forums and the submissions was that the Code should apply to all general insurers and insurance operations which conduct business in Australia, but that it was beyond ASIC’s powers and the ICA’s charter and membership to achieve this. I therefore recommend the ICA, ASIC and the CCC work more closely together to bring all general insurers and insurance operations in Australia into the Code as Code Participants. This recommendation depends for its effectiveness on enhancing the Code governance framework, which I have recommended.

**Code Participants — agents and service suppliers**

9.23 The Review Issues Paper asked for submissions on the following matters:
1. if the Code should apply, in relation to its participants, to the conduct of selling agents; and if so,
2. should the Code apply differently to different categories of selling agents;
3. should the Code apply, in relation to its participants, to the conduct of claims service providers; and if so,
4. should the Code apply differently to different categories of claims service providers?

9.24 The Issues Paper identified a number of areas where the Code’s coverage in relation to the conduct of agents and service suppliers was unclear and inconsistent. The coverage here is the coverage of the conduct of the Code Participant in relation to the activities of the agent or service supplier; it is not the case that the agent or service supplier should become a Code

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209 See Section 7 above.
Participant. These issues and gaps arose because of the drafting of the Code, and did not reflect any principle of excluding service suppliers.

9.25 The issues and gaps affect three categories:
1. product distributors;
2. service providers and external experts; and
3. brokers and agents.

9.26 The RACQ Insurance submission distinguished between its online agents who should be covered by the Code and its offline agents who, in its submission, should not be covered by the Code:

For example, RACQ Insurance makes a distinction between ‘online agents’ who are granted access to RACQ Insurance’s system to process sales and ‘offline’ agents who has no power to sell products on behalf of RACQ Insurance but who refer customers to RACQ Insurance’s telesales department.210

9.27 The CCC submission took a different view:

The Committee notes that section 2.5 of the current Code — in relation to the standards surrounding the selling and distribution of general insurance products — is limited to the conduct of employees of the Code Participant or its authorised representatives. The Code does not currently extend to the activities of general insurance distributors which are increasingly being utilised by Code Participants to sell their products. The Corporations Act 2001 (Cth) (the Act) deems that general insurance distributors are not authorised representatives. Excluding general insurance distributors from the scope of the Code appears unintended. In this regard, the Code may not have kept pace with the various distribution models being used by Code Participants to sell general insurance products. Accordingly, the Committee recommends that you give consideration to extending the obligations of Code Participants, to the conduct of their distributors.211

9.28 The RACQ Insurance submission also distinguished between service providers and experts. The former were internal and the latter were external:

… the Code rightly makes a distinction between service providers and experts. RACQ Insurance’s position is that the intention of the drafters of the Code is for those classes to be mutually exclusive, however RACQ Insurance agrees that there is some ambiguity on this point and the Code should be clarified in this respect.

The reason why RACQ Insurance believes that a distinction needs to be made between service providers on the one hand and experts on the other is that there is a risk that, if an insurance company is required to enforce certain standards in respect of those experts (and in particular if an insurance company is required to audit compliance with those standards), the independence of those experts may be called into question if the evidence is used later in court proceedings. Whether or not the imposition of such obligations on the insurer would in fact compromise the independence of an external expert, there might be a perception that the expert is less than fully independent which could compromise consumer confidence in the claims decision process.

Finally, in some cases reports by external service providers will be the subject of legal professional privilege or otherwise be protected from disclosure by law. It needs to be made clear in those cases, that the provisions of the Code do not override fundamental legal rights and obligations relating to privilege.212

9.29 The NIBA submission was concerned about duplication in Code coverage for brokers and agents:

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210 RACQ Insurance submission, para 4.10, p 5.
211 CCC submission, Issue 3, p 4.
212 RACQ Insurance submission, para 4.15, p 6.
NIBA understand:

... that this is not intended to be a proposal that the Code be extended to cover insurance brokers acting for insureds. This would be inappropriate for a number of reasons, as the Code is drafted to cover insurers and their activities not insurance brokers acting for clients, which is a completely different type of service already well covered by the Insurance Brokers Code of Practice (NIBA Code).

In relation to requiring all insurance agents to join, NIBA would oppose this. Insurers are bound by the Code and in practice must require their agents to comply with the Code on their behalf where relevant to their activities for the insurer.

To add all agents would be likely to increase complexity and cause agents to incur unnecessary additional costs.

Currently, Lloyd’s cover holders are members principally because of the unique Lloyd’s structure. NIBA members that act for insurers are covered for their agency activities by the NIBA Code. This NIBA Code imposes obligations applicable under other codes such as the GICOP on such members.\(^\text{213}\)

9.30 I confirm that NIBA’s understanding is correct. I accept the CCC submission that obligations of Code Participants should be extended to the conduct of their distributors. The drafting will need to be careful here. The Code should also, following the RACQ insurance submission, distinguish between service providers and experts, both internal and external. I recommend the Code should apply to cover all service suppliers and relevant agents, including distributors.\(^\text{214}\) Thirdly, the Code should work well with the NIBA code and therefore if a broker is covered under the NIBA code, the broker should not be covered under the Code. This approach is consistent with Code Framework Principles One and Three and Code Content Principles One and Three.\(^\text{215}\)

9.31 Appendix F is a New Code which attempts to reflect these aims.

**Third party beneficiaries**

9.32 The Review Issues Paper asked for submissions about the Code applying to third party beneficiaries of insurance contracts to whom the IC Act applies.

9.33 The position on third party beneficiaries was set out fully in the Issues Paper. On balance, the submissions, forums and consultations considered that a third party beneficiary, as defined in the IC Act, should have the benefit of the Code.

9.34 This approach is consistent with Code Framework Principles One, Three and Six and Code Content Principles One, Three, and Four.\(^\text{216}\)

9.35 The effect of common law developments, FOS rulings, the IC Act and the ICA Bill 2012 puts a third party beneficiary on the same footing as an insured. The Code should, for consistency and fairness, follow the law on this matter. I recommend the Code should apply to all Third Party Beneficiaries, following the definition in the IC Act. Appendix F is a New Code which attempts to reflect these aims.

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\(^{213}\) NIBA submission.

\(^{214}\) CCC submission.

\(^{215}\) See Section 7 above.

\(^{216}\) See Section 7 above.
The Review Issues Paper asked for submissions on if the Code should:

1. continue to apply to general insurance products as it does now;
2. not apply to wholesale products;
3. apply to wholesale products but for some parts of the Code, to apply differently or not at all to wholesale products;
4. further, if (b) or (c) are preferred, should the definition of wholesale be as set out in the Corporations Act, the IC Act definition of prescribed products or the Code definition of specified class of products?

The position on Code products was set out fully in the Issues Paper. On balance, the material in the Issues Paper and submissions, forums and consultations considered the Code should apply differently to Code Retail Insurances and Code Wholesale Insurances. The Suncorp submission stated:

Further to the above considerations relating to Code coverage on the supply-side, the Issues Paper raises a series of issues relating to the appropriateness of the Code for some demand-side stakeholders. Questions around the appropriateness of the Code applying to wholesale products appear justified, as there are definite disconnects and inconsistencies in scope and definitions between the Code, Insurance Contracts Act, Corporations Act, Financial Ombudsman Service (FOS) terms of reference (TOR) and the wholesale and retail dispute resolution practices. These differences provide a prima facie case for considering the removal of wholesale products from the Code to maximise focus on retail consumer interests.

It is difficult to craft a Code that adequately meets the needs of all general insurance products and customers, including individuals, families, small businesses, conglomerates and industrial special risks. Suncorp questions whether the Code achieves this, but is uncertain whether sweeping changes to the Code’s coverage are justified or the best way to address current concerns. It would be possible to simplify reporting, monitoring and compliance by removing wholesale products from the Code but this must be balanced with the desire to maintain a high standard for policyholders.

As an alternative, reporting requirements and external compliance monitoring could be removed while maintaining the Code as a service promise for wholesale products. This would ensure FOS and the Code Compliance Committee (CCC) could focus on monitoring compliance only for policies that fall within the FOS TOR, and provide insurers the flexibility to meet the expectations of wholesale clients under the Code.217

The Insurance Council submitted:

… the Code should be restricted to retail products. The Code does not apply comfortably to wholesale business such as lender’s mortgage insurance (where there is no relevant ‘consumer’). FOS GI Code of Practice annual reports illustrate the majority of issues raised under the Code relate to retail products. Consumers of retail products would benefit from a targeted focus (as currently reflected in the specified classes of policies in 3.4). Having regard to the high claims amounts typically involved in a wholesale claim and the FOS limits for determinations, members’ experience is that wholesale complaints are more likely to utilise alternative dispute processes such as the legal system. Narrowing application would also reduce FOS’s workload in monitoring Code compliance, allowing it to better focus its resources.218

This approach is consistent with Code Framework Principles One, Three and Six and Code Content Principles One, Three and Four.219
The Code is the centrepiece of consumer protection self-regulation for the general insurance industry. It works in a matrix in which other vectors include legislation, rules and forums which assist retail customers differently from wholesale customers: the IC Act, FOS EDR, and the Corporations Act. The ASIC Codes apply to retail customers and products only. The Code is the only one, and only since 2009, that, with the minor exception of section 3.4, does not make a material distinction on this basis. The licensing of entities in the selling process and the disclosure regime links the Corporations Act to the cognate sections of the Code covering selling and disclosure. It is rational and efficient that there is continuity and consistency of regulation between the Corporations Act approach and the Code approach. Wholesale clients are treated by Parliament after consultation, debate and due process, as needing less assistance than retail Customers. I therefore propose that the same approach be adopted in the Code. It is therefore sensible for the Code also to focus on retail Customers who need assistance rather than wholesale clients — adopting the distinction in the Corporations Act.

It would be wrong and retrograde to exclude Wholesale Code Insurances from the Code altogether. The Code principles and objectives should apply to all Code Insurances, including Wholesale Code Insurances. It is critical in my view for the education and training standards to apply to all Code insurances, including Wholesale Code Insurances. The other sections, standards and guidelines should apply to Code Retail Insurances only. One aim of this recommendation is to unburden the general insurance industry from Code standards on buying insurance, claims, IDR and monitoring and sanctions for Wholesale Code Insurances so that it has more resources to devote to more effective aspects of the Code standards. The ethical principles and principles should apply to all Code Insurances.

A Code Participant is free and encouraged to consider which standards and guidelines might apply with adaptation to its own Wholesale Code Insurances.

I do not recommend any change to the insurance contracts excepted from the Code.

Appendix F is a New Code which attempts to reflect these aims.

**Recommendation 14**
The ICA, ASIC and the CGB should work even more closely together to bring all general insurers and insurance operations carrying on insurance business in Australia into the Code as Code Participants. The CGB should be given powers to effect this purpose.

**Recommendation 15**
The Code should apply to cover all Service Suppliers and relevant agents, including distributors.

**Recommendation 16**
The Code should apply to all Third Party Beneficiaries, as defined in the Insurance Contracts Act 1984.

**Recommendation 17**
The Code principles and objectives should apply to all Code Insurances, including Wholesale Code Insurances. The education and training standards should apply to all Code Insurances, including Wholesale Code Insurances. The other sections, standards, guidelines and service levels should apply to Code Retail Insurances only. The distinction between Retail Code Insurances and Wholesale Code Insurances should follow the Corporations Law definitions.
Recommendation 18
There should be no change to the insurance contracts excepted from the Code.

Recommendation 19
A Code Participant should be free and encouraged to consider which standards and guidelines might apply with adaptation to its own Wholesale Code Insurances.
Issue 4 — Principles, objectives and legal status

9.45 The Review Issues Paper asked for submissions on the following questions:

1. whether the Code principles and objectives are an adequate basis for the Code standards in the light of the criticisms of this aspect of the Code;
2. the extent to which the Code does or should create enforceable legal rights in the customers; and
3. whether the Selected Statistics or the FOS QF Survey indicate that changes to the principles, objectives or legal status of the Code are necessary and appropriate.

9.46 The submissions, consultations and forums exhibited a consensus that the Code principles and objectives were an adequate basis for the Code standards; although the call for plain English would have an effect on the phrasing in the Code. The consensus range from my consultations, forums and the submissions was that the Code principles and objectives do not need substantive change.

9.47 This approach is consistent with Code Framework Principles One and Six and Code Content Principles One, Three, Four and Five.220

9.48 The question of the legal status and legal enforceability of the Code was more debated.

9.49 The IAG submission stated:

Further, in our view making the Code part of an insurance contract would not be beneficial to consumers or insurers. The terms of a contract of insurance need to be drafted with precision to avoid ambiguity and uncertainty. If the Code was part of the contract it follows that the Code would also need to be drafted with greater precision which would make it more ‘legalistic’ and undermine its flexibility. The Code would become more of a rules based document rather than the existing combination of principles and rules. Further, to make compliance with the Code a term of the contract of insurance would make the Code subject to the operation of the law including the IC Act creating an additional layer of complexity … We submit that the enforceability of the Code through the FOS and the sanctions for non-compliance already associated with the Code afford Consumers sufficient protection without needing to make the Code legally enforceable through legislation or making it a term of insurance contracts.221

9.50 The Suncorp submission stated:

… hopes the Code continues to integrate smoothly with other relevant legislation and regulation.222

9.51 We advocate for the Code to continue to cover general insurance as it currently does, but with changes to align the Code with best practice and improve its accessibility and standing. The Code must retain its flexibility to change.

In this sense, the Code does not need to create additional rights for policyholders or be considered part of the insurance contract.223

9.52 The ILS submission advocated that the Code should be a term of the insurance contract. The submission argued that the Code of Banking Practice and the Code of Mutual Banking Practice — a part of the Review benchmarking exercise — set a precedent and the comparison sent a clear message that the Code was ‘weak and unenforceable’ and not as effective as the cited codes. The ILS submission also sought the imposition of a monetary

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220 See Section 7 above.
221 IAG submission, Issue 4, p 9.
222 Suncorp submission, p 3.
223 Suncorp submission, Issue 4, p 6.
penalty regime for breaches of significant sections of the Code. The HOR recommendations included making the Code compulsory and regulating claims handling through ASIC.

9.53 It would in my view be wrong to underestimate the latent power of the current sanctions. A Code Participant stands or falls on its reputation and publication of a Code Participant’s non-compliance by the CCC is in my view a strong deterrent. A submission to the Hockey Taskforce said that public shaming is like being ‘dumped into custard — it is a soft landing, but it sticks’.225

9.54 The flaw in this position is the history; no sanction, with one relevant exemption, has been imposed in the Code’s history, since 1994. This line of argument reinforces my recommendations on Code governance. The CCC Annual Report records that a Code Participant agreed corrective action including to make additional payments to policyholders in an amount of about $5.3m arising from a Code breach:

… a Code Participant significantly breached section 3.4.1 of the Code, which required claims handling to be conducted in a fair, transparent and timely manner. The Code Participant had failed to include stamp duty when assessing the market value of vehicles considered a total loss, under both personal and commercial motor vehicle insurance policies. This conduct was considered to be unfair.

The Code Participant’s corrective action included:

- Identifying all eligible personal and commercial motor vehicle claimants as far back as 1 January 2004, including customers who were no longer insured by the Code Participant.
- Paying 9,307 commercial and personal insurance customers a total of $5,287,370.17 in payments together with interest.
- A commitment to meet any future claims from eligible consumers that the Code Participant was previously unable to identify or contact.

9.55 This was a powerful remedy giving the policyholders the result of a class action without the difficulties of beginning and prosecuting an action against the insurer. Similarly, a rectification sanction, another powerful remedy, would do the same work. A compliance audit and corrective advertising also would be practical and compelling sanctions.

9.56 There are important dimensions in which I consider the Code is already legally enforceable. I deal with these in Issue 9: Claims.

9.57 I have considered the view in favour of monetary penalties or fines. I do not recommend monetary penalties or fines as sanctions for a Code breach. This position was, I consider, only faintly argued in the end. There is no support for this view from the Review benchmarking exercise — none of the ASIC codes have this feature. It is difficult to understand why a commercial entity would voluntarily submit itself to a regime which included monetary penalties or fines as sanctions for a Code breach. The monetary penalties or fines as sanctions for a Code breach would function only as a deterrent because they would not compensate the customer or rectify the position. Yet, if monetary penalties or fines as sanctions for a Code breach were to be an effective deterrent, the amounts would need to be significant. This prospect compounds the difficulties for the proposal. The very nature of monetary penalties or fines as sanctions for a Code breach would also mean that the Code would need to include criminal processes and procedures, for justice to be done and seen to be done, and that would involve complexity, confusion and significant expense. I should also observe that for AFSL holders, a Code breach might include matters affecting the AFSL or for an insurer, matters

224 Code, section 7.22(d).
225 Hockey Taskforce, p 54.
226 Under the Code, section 7.11 as distinct from a Code sanction under section 7.22.
228 Code, section 7.22(a).
under the IC Act; a Code breach might therefore involve a matter which ASIC could action under its powers under the IC Act or the Corporations Act respectively.

9.58 The last issue on the legal status and enforceability of the Code is whether a Code standard should be a term of a Code Insurance. I do not recommend this for the Code as a whole. On the basis of my recommendation for the Code to include ethical principles, principles and guidelines, it would be inconsistent and unworkable to make all of the Code standards legally enforceable. I do recommend that the Code Claims Service Levels be a term of a Code Retail Insurance. I deal with this matter in Issue 9: Claims.

9.59 This approach is consistent with Code Framework Principles One, Five and Seven and Code Content Principles One, Four, Five, Eight and Nine.²²⁹

Recommendation 20
The Code should not provide for monetary penalties or fines as Sanctions for a Code breach.

Recommendation 21

²²⁹ See Section 7 above.
Issue 5 — Education and training

9.60 The Review Issues Paper asked for submissions on whether:

1. the Code standards on training and education for selling insurance (section 2.4) remain necessary, and if so, whether they are adequate;

2. the Code standards on training and education for claims handling (section 3.7) are adequate;

3. the Code standards on financial hardship (3.8–3.13) should include training and education standards; and

4. the Code standards on information and education (section 5) produce sufficient understanding of the Code and Code standards and insurance in the community to attain better outcomes for insurers and customers.

9.61 The IAG submission stated that training and related matters were required under the Corporations Act:

We also note the Corporations Act requires AFSL holders to ensure staff and agents are competent and have relevant expertise. Insurers must maintain competence to provide financial services and ensure their representatives are adequately trained (see particularly section 912A(1)(e) and (f) of the Corporations Act 2001. Note also ASIC RG 105 and 146).230

9.62 The WRLC submitted:

(a) The attached examples from our case files demonstrate a general course of conduct that includes:

(i) Unreasonable delays in communication;

(ii) Failing to confirm actions in writing;

(iii) Incomplete or inadequate responses to requests;

(iv) Failing to negotiate with third parties during the recoveries process;

(v) Lack of awareness that debts are able to be waived during third party recoveries; and

(vi) Incorrect claims of a failure to respond to correspondence.

Recommendation 3: Insurance industry employees require further training in order to achieve greater code compliance.231

9.63 The Suncorp submission stated:

Suncorp would support the introduction of training and education standards for financial hardship in claims and recoveries …

The ICA could consider expanding 3.7.7(d) to apply in all claims situations, as policyholders suffer traumatic losses every day. This could be achieved by adding a clause stating that all staff will be trained in relevant areas, and possibly simplify the Code by allowing the more prescriptive or situation-specific training requirements be removed. One possible improvement to the training requirements could be to amend the Code so that all staff will not just be trained in the Code, but also be educated about why the Code is important.232

9.64 The CCC submitted:

The Committee recognises that the training and education of Code Participant staff and service providers in the Code’s obligations is important to the achievement of the Code’s

230 IAG submission, Issue 5, p 10.
231 WRLC submission, Issue 5, p 2.
objectives. The Committee is also aware of the enormous effort, resource and cost which the industry has generally committed to training, since the inception of the first Code.

The Committee supports the view that for industry training to be effective however, it should result in a general lift in knowledge and professionalism. Further, refresher training for both employees of insurers and their service providers is very important to ensure they can competently apply the Code’s standards in practice.

The Committee encourages consideration of the following:

(a) An ongoing benchmarking and trends survey to track and measure relevant educational outcomes of Code training.

(b) Identifying what seems to work and what does not, in education and training.

(c) Establishing a monitoring mechanism to ensure training and education does not fall short of industry benchmarks and objectives.

(d) Regularly publishing the findings of this work so that the industry and its customers can benefit from the learning.

During the course of monitoring compliance with the current Code, the Committee has noted instances of noncompliance with the Code’s obligations concerning dealing with customers and uninsured third parties who may be in financial hardship. The Committee has previously recommended that Code Participants recognise the importance of the content, language and delivery of financial hardship training to insurance staff in relation to third party debt and motor vehicle claims.233

9.65 The CCC in its 2011–2012 Annual Report said:

The Committee has identified that these instances of noncompliance with the Code do not always arise because of a failure to adequately train staff in Code obligations or internal policy. Rather, they appear to be associated with a failure to provide refresher training, as well as human error: that is, staff not following policies and procedures they have been trained to adopt. Whilst human error will always occur, Code Participants should be vigilant through their Code monitoring procedures to ensure that documents are checked, that staff refresher training occurs and that action is taken to reduce the risks associated with administrative error and failure to adhere to process. Code Participants should take additional steps to achieve these objectives.234

9.66 The NIBA submission stated:

The criticisms seem to be that this is not the result at present. If this is correct, consideration should be given to whether changes to the standards will fix the issue or other steps such as increased audit activity to ensure the standards are being met.235

9.67 The FOS QF Survey stated on training:

In this regard staff training, record keeping and monitoring compliance against ethical obligations are also identified as areas for industry improvement. In addition, the new obligations for Code participants to train employees to deal with customers professionally may be enhanced if that training included conduct and behaviour, including reference to the fairness and transparency provisions.

The legal centres advised that there were some stand out examples of insurance staff who acted in accordance with the Code’s spirit and who were responsive, diligent, compassionate and professional in their approach.236

235 NIBA submission, Issue 5, p 7.
236 FOS QF Survey, section 9, para 16, p 36; section 2, para 16, and p 9.
9.68 The FOS QF Survey recommended on training:

The revised Code now includes the obligation to train employees to deal with customers professionally in times of natural disaster. This initiative is supported by the data. We encourage Code participants to incorporate the ethical aspects of Code compliance in all their claims handling training modules, including references to notions of fairness and transparency. ²³⁷

9.69 The IAG submission also commented that there may be a case for a separate section in the Code that just deals with training as distinct from the current drafting where training is split out under separate headings.

9.70 The Major Reports, the ILS and WRLC submissions supplied many examples of conduct by representatives of general insurers which fell short of the Code principles and objectives, involved breaches of Code standards or which did not honour the spirit of the Code.

9.71 There was a strong and deep consensus from my consultations, forums and the submissions that, even with the considerable work to date and continuing, the ICA, Code Participants and the CCC must redouble their resources and efforts in training and education. The terms of the Code are a clanging symbol only, if the performance of Code Participants, employees, agents and Service Suppliers who work with customers and the community do not understand and implement the spirit and the standards in the Code. There are sufficient instances of matters which involve a breach of the law, policy or the ICA as well as the Code, to cause concern. The education and training that is currently being carried out is clearly not adequate for its purpose. I endorse fully the CCC submission on this matter.

9.72 This approach is consistent with Code Framework Principles One, Two and Seven and Code Content Principles One, Three, Four and Five.

9.73 While the Corporations Act requires training, that is not, in my view, an argument that the Code should not have education and training standards. On the contrary, I consider and recommend that the Code should have a developed section on Education and Training and that the Code Governance Body should review and give feedback on industry approaches to education and training.

9.74 The Suncorp, FOS QF Survey and CCC submissions are important here in their call for training to deal with hardship matters and with claimants who are traumatized by events leading to their claim. It is in the best interests of the frontline staff and the customer for those grief struck interactions in the aftermath of a catastrophe to be handled with empathy, compassion and human feeling.

²³⁷ FOS QF Survey, section 9, para 16, p 36.
Recommendation 22
The Code standards on education and training should be enhanced. The recommended Code standards are in Appendix F. The standards should include education and training on financial hardship and on dealing with personal stress in natural disasters.

Recommendation 23
There should be an increase in the quality and quantity of training and education for Code Participants, particularly on Code principles.

Recommendation 24
A Code Promotion, Education and Training committee should be established to support the CGB’s work in leading and co-ordinating education and training under the Code.
**Issue 6 — Buying insurance**

9.75 The Review Issues Paper asked for submissions on whether:

1. the Code standards on selling insurance (section 2) remain necessary, and if so, whether they are adequate;
2. the Code should contain standards for retail product simplification;
3. in the absence of legislation, the Code should contain a ‘clear concise and effective’ disclosure standard;
4. the Code should contain standards for phone and internet sales;
5. a model for scaled advice could be developed for general insurance and phone sales in particular;
6. the KFS and health warning regime might be applied to all Code retail products; and
7. the Code should contain a standard committing Code Participants to fuller involvement in financial literacy.

9.76 There was a consensus from the Major Reports and the Review consultations, forums and submissions that it remained necessary for the Code to cover buying insurance, despite the plethora of regulation of that activity. The Major Reports, the consultations, forums and submissions maintained serious and persuasive criticisms of the product disclosure regime. However, the consultations, forums and submissions expressed serious reservations about the Code dealing with these matters. The consensus was that these were important issues to resolve but too difficult to achieve through the Code. This approach was echoed on the other issues for buying insurance.

9.77 The ICA submitted:

> There is already a requirement that the PDS be clear, concise and effective. We do not support duplicating this provision in the Code.  

9.78 The ICA submission stated:

> We do not believe it is necessary to contain specific standards for telephone and internet sales. It is more appropriate to ensure the Code section on selling insurance is drafted adequately so that it is suitable for application to both telephone and internet sales.

9.79 Suncorp said that: “Furthermore, it is important that the Code remain technologically neutral.”

9.80 The ICA said:

> ASIC has recently released guidance in relation to scaled advice. It would be premature to also insert provisions into the Code when the industry is currently considering the implications of the guidance.

9.81 IAG put the same point in more detail:

> On the issue of scaled advice we note that ASIC issued a consultation paper in August this year on giving information, general advice and scaled advice (ASIC Consultation Paper 183) which sets out proposed guidance for AFS licensees. Given ASIC is likely to produce regulatory guidance on this issue we do not consider it necessary or appropriate for the Code to address it as well.

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238 ICA submission, p 5.
239 Ibid.
240 Suncorp submission, Issue 6, p 7.
241 ICA submission, p 6.
242 IAG submission, Issue 6, p 11.
9.82 The ICA said:

The KFS is not yet in effect and therefore its effectiveness is not yet known. It would be premature to consider applying a KFS requirement to all Code retail products.\(^{243}\)

9.83 The breadth and depth of financial illiteracy in our community is one of our greatest challenges. The insurance industry faces these challenges. Recent research supports both the concern and the importance of progress to a solution.\(^{244}\) David Gonski referred to the challenge recently:\(^{245}\)

In considering challenges the concept of increased information available to the public generally in circumstances of no real increase in education in financial matters should concern institutions. However I don’t believe that most have been educated enough in financial matters to understand risk and reward, what really affects Australia and their investments. This is a comparatively new phenomenon. Institutions can play a part in financial literacy and I believe not only need to do so but also to encourage more understanding of these matters in the community generally.

9.84 ASIC has put it like this:

The recent ANZ Survey of Adult Financial Literacy indicates that, while consumers have an increased understanding of cooling-off periods, there is still progress to be made in terms of reducing underinsurance, consumer understanding of the duty of disclosure, and the need to regularly review levels of cover.\(^{246}\)

9.85 Findings in recent review reports that the PDS regime has significant shortcomings are credible and persuasive. It is an inadequate solution to a problem of an inability or unwillingness to read, to rely on a different type and presentation of disclosure. While that might improve the position, by definition, it cannot solve the problem.

9.86 There are a number of programs and initiatives for financial literacy. ASIC is involved in the Financial Literacy Board and a number of other programs.\(^{247}\) ASIC in 2011–2012 organised itself around three priorities, the first of which was confident and informed financial customers.\(^{248}\)

9.87 RACQ Insurance supported financial literacy in principle. The ILS submission and Suncorp supported the Issues Paper’s proposal that the Code “contain a provision committing Code participants to be engaged in financial literacy promotion and believes this could be easily inserted into the introduction.”\(^{249}\) The ICA commented:

The ICA has already engaged in projects to improve financial literacy such as the Understanding Insurance website currently under construction and the consumer referral tool.\(^{250}\)

9.88 The recommended Code governance model makes initiatives of this kind a matter for the Code Governance Body in consultation with stakeholders. I therefore recommend that the Code standards should reflect a fuller commitment to financial literacy. The Code Governance Body should be tasked with involving Code stakeholders in such programs.

9.89 There are, in summary, serious and justified criticisms of the standards, law and practice in relation to the matters identified in the Issues Paper for buying insurance. However serious and justified the criticisms are, these issues are not, in my view, matters that the Code should now cover. The reasons are that there are policy debates continuing on some, no clear

\(^{243}\) ICA submission, p 6.

\(^{244}\) UMR Research, Home Insurance, December 2012.

\(^{245}\) In a speech to an ASIC occasion on 25 March 2013.

\(^{246}\) Peter Kell, Commissioner, ASIC, ICA Regulatory Update 2011–2012, p 9, 22 February 2012.


\(^{248}\) ASIC Annual Report for 30 June 2011, pp 3, 4, 12, 33.

\(^{249}\) Suncorp submission, Issue 6, p 7.

\(^{250}\) ICA submission, p 6.
principles towards a solution on others, inadequate or non-existent legislation or regulation and no coherence in market practices. It is important that the Major Report Recommendations envisaged legislative change to effect a number of their recommendations. It would not be compatible with the Code Framework Principles One, Five, Six or Seven or Code Content Principles Four and Seven\textsuperscript{251} for the Code to intervene. I therefore recommend that, with the exception of a standard on financial literacy, there should be no change to the substance of the Code standards on buying insurance.

\begin{center}
\textbf{Recommendation 25}

The Code standards should include a commitment to improving the financial literacy of insurance customers.
\end{center}

\textsuperscript{251} See this Report, Section 6.
9.90 The Review Issues Paper asked for submissions on whether:

1. the standard flood definition approach should be extended by a review of the current appropriateness and adequacy of the terms for prescribed contracts under the IC Act and the terms for retail products under the Corporations Act;

2. the Code should contain standards for retail product simplification;

3. whether the availability and terms for total replacement value insurance can be enhanced;

4. in the absence of legislation, the Code should contain a ‘unfair contract terms’ standard; and

5. other terms in insurance contracts, in addition to those currently the subject of derogation notices under the IC Act, should also be the subject of derogation notices under the Code.

9.91 These matters were concerns of the Major Reports. Utmost care must be taken before any regulatory prescription of product terms. The development of consumer protection legislation, law and regulation in Australia has not accepted the principle of regulatory prescription of product terms. The reasons are clear and do not need repeating in detail here. A sample of exceptions for general insurance test and prove the rule: some notoriously onerous and unfair terms made void by the IC Act; limited prescribed contract terms under the IC Act which can be set aside by a derogation notice; terrorism exclusions; and, most topically, a standard flood definition.

9.92 The principle is that there should be regulatory prescription of product terms in the most notorious cases only and only after the widest consultation and careful enquiry established the strongest case for intervention. This approach is consistent with Code Framework Principles Three, Five, Six and Seven and Code Content Principles Four and Seven.

9.93 The ILS submission was to similar effect on retail product simplification; it was more a question of access to good and suitable products. It was an important issue to resolve but too difficult to achieve through the Code. This approach was echoed on the other issues for policy terms and coverage.

9.94 The Major Reports, the consultations, forums and submissions maintained serious and persuasive criticisms of the notices insurers give for a product which derogates from the standard cover under the IC Act. However, the consultations, forums and submissions expressed serious reservations about the Code dealing with these matters.

9.95 This was a theme of the Review’s consultations, forums and submissions:

To this end, the powers and suitability of the Code to set standards for policy terms, coverage and other product manufacture considerations is questionable, and possibly unnecessary.\(^{252}\)

9.96 Total replacement cover was a matter of particular difficulty:

The provision of TRC is dependent on a number of factors including the availability of reinsurance. Other relevant factors include the insurer’s underwriting methods, and the standard practices of the relevant market. Obtaining reinsurance is becoming substantially more difficult.\(^{253}\)

9.97 Assistant Treasurer Bradbury announced on 20 December 2013 that the Federal Government would legislate to introduce consumer protection legislation on unfair contracts terms in relation to general insurance contracts. The IC Act would be amended to include provisions

\(^{252}\) Suncorp submission, p 7.

\(^{253}\) Ibid.
based on the ASIC Act and take into account the unique features of insurance contracts. ASIC would be granted a range of enforcement powers to administer the new laws. The legislation would apply to new and renewed contracts entered into after the commencement of the legislation and there would be an adequate transition period.

9.98 It is in the community’s interest that the three parts of the law on fairness in insurance contracts — the fairness stands under the Code, the IC Act utmost good faith duty and the proposed unfair contract terms laws — mesh coherently to give all stakeholders a high standard of fairness and certainty in their dealings.

9.99 It is not a part of the Review’s work to comment on the principles involved in these proposals but it is critical for all stakeholders that the principles are rendered into the IC Act in a workable way and in a way which is consistent with the Code’s approach and its fairness standards. I set out a summary of the position in the Issues Paper. The Code should and does contain standards for fair conduct by Code Participants. Any proposal that the Code should go further and do the work of unfair insurance contracts legislation would not be compatible with Code Framework Principles Three, Five, Six and Seven and Code Content Principles Four and Seven. I recommend that the Code should not contain standards similar to the Federal Government’s proposals.

9.100 There are, in summary, serious and justified criticisms of the standards, law and practice in relation to the matters identified in the Issues Paper on policy terms and coverage. However serious and justified the criticisms are, these issues are not, in my view, matters that the Code should cover. The reasons are that there are policy debates continuing on some, no clear principles towards a solution on others, inadequate or non-existent legislation or regulation and no coherence in market practices. It is important that the Major Report Recommendations envisaged legislative change to effect a number of their recommendations. It would not be compatible with the Code Framework or Content Principles for the Code to intervene.

9.101 I therefore recommend that there should be no change to the substance of the Code standards on policy terms and coverage.

**Recommendation 26**
The Code should not contain standards on policy terms and coverage.
Issue 8 — Premium: payment and cancellation

9.102 The Review Issues Paper asked for submissions on whether:

1. the Code should contain a standard for an insurer to notify an insured before cancelling an instalment insurance contract;

2. any of the recommendations of the Major Reports on premiums should be implemented; and

3. IRAG should be given any specific direction on these issues.

9.103 Suncorp supported including an obligation in the Code, for an insurer to notify an insured before cancelling an instalment insurance contract although the correct vehicle should be the IC Act. If notification was included, Suncorp submitted, it would need to be technology neutral to allow insurers different methods of contacting the customer.

9.104 I have dealt with this matter partly under Issue 14 on Financial Hardship under the Financial Hardship Guideline.

9.105 The Issues Paper, the consultations, forums and submissions reported that many insurers do notify the insured before cancelling an instalment insurance contract. That is consistent with the consensus that the IC Act should be amended to include the duty to before cancelling an instalment insurance contract. The ICA submission supported the position in principle. It was not, against expectation and without explanation, included in the IC Bill 2013. It is unfair to cancel a contract without notice. The availability of electronic communications means that notice can be quick, effective and at a reasonable cost. The same arguments apply to a confirmation of cancellation. In these exceptional circumstances, I recommend that the Code should contain a standard accordingly.

9.106 This approach is consistent with Code Framework Principles One, Five, Six and Seven and Code Content Principles One, Three, Four, Five and Seven.\(^{254}\)

9.107 The Major Report Recommendations on premium were in relation to increases in insurance premiums and the rising costs of premiums across Australia.

9.108 These and the other matters and questions under this issue did not attract any supporting comment and I therefore do not develop them any further. I have offered some observations and suggestions on these matters in Section 12: Reflections and suggestions.

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**Recommendation 27**
The Code should include a standard for an insurer to notify a Customer before and after cancelling an instalment insurance contract.

\(^{254}\) See Section 7 above.
### Issue 9 — Claims

**9.109** The Review asks for submissions on whether:

1. the Code claims handling standards should be based more expressly around the stage of a typical claim: lodgement; supply of information by claimant; investigation; assessment; and repair, replacement, payment;
2. the industry’s practices and Code standards could improve customers’ awareness of their rights under their insurance policies;
3. the recommendations on time limits — a claim not determined in four months should automatically become an IDR complaint and a seven rather than six month limit for reopening a natural disaster claim\(^{255}\) — should be implemented;
4. the recommendations on communications — insurers to record conversations with customers and using a customer’s preferred method of communication\(^{256}\) — should be implemented;
5. the Code’s standards on skills, experience, independence and training of service suppliers should be enhanced;
6. the recommendations on reasons and evidence on claim denials\(^{257}\) should be implemented;
7. the recommendations on assessment process and outcomes — claims handling guidelines\(^{258}\) — should be implemented; and
8. there should be a time limit on the finalisation of claims once accepted.

**9.110** The broad consensus from the Review’s consultations, forums and submissions was firstly that the 2012 amendments to the Code dealt with the most important areas for change in relation to claims and that most of this section of the Code should be reviewed after those amendments have been in effect for a time. There were important standards identified for improvement. This need is based partly on the FOS Annual General Insurance Code of Practice Overviews which continue to indicate that section 3 is the predominant source of Code breaches. Secondly, there was a clear and consistent view that the drafting of the Code, section 3 needed improvement for practicality, simplicity and clarity; in my view some of the sequencing in the section causes problems. There is however an important issue about the legal enforceability of the Code in relation to claims — see paragraphs 9.116–9.128 below.

**9.111** The ICA supported improvements to the design and flow of the Code. It suggested consideration of whether the Code would be more effective if it were separated into two components: principles and ‘guidance on best practice’. The FOS QF Survey strongly supported the development of Code guidelines for claims handling.\(^{259}\) I have approached the issue of guidelines for claims handling in a different way from my understanding of the FOS QF Survey intention: it proposed a set of guidelines which stand outside the Code as aids to its interpretation; I am proposing standards and guidelines, as part of the Code, which are sufficiently clear in their own terms. The Issues Paper asked whether claims handling standards should be based around the stages of a typical claim. The ILS supported this approach. RACQ Insurance did not, arguing the need for flexibility to deal with unexpected or unique issues of a claim and warning against frustration caused by dealing with ‘unyielding policies and procedures’. The ICA made a persuasive case against product specific guidelines.

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\(^{255}\) Review Issues Paper, paras 10.97, 98.

\(^{256}\) Review Issues Paper, paras 10.101, 102.


\(^{258}\) Review Issues Paper, para 10.111.

\(^{259}\) FOS QF Survey, p 5, paras (b), (c) and p 6, para (c); p 7, paras 5 and 6; section 9, paras 1–6 and 11, pp 34, 35.
for claims but cautioned against unnecessary change which would result in costs for training and system changes.

9.112 I consider that the FOS QF Survey and the CCC submission are critically important to this Review because of their credentials, FOS’ data quality and their position in the Code governance framework. The FOS QF Survey had claims handling under the Code, section 6 as its focus. It acknowledged that the ICA and Code Participants ‘have already taken significant steps to address many of the issues addressed in this [FOS] review’.260

Standards for improvement

9.113 There were important standards identified for improvement, by submissions and in consultations and forums, and these had a high correlation with the issues set out in the Issues Paper. I comment on them as follows.

AWARENESS OF RIGHTS

1. The ILS submission asked for the ‘right to claim’ standard to be strengthened. The FOS QF Survey highlighted this concern.261 There are, in my view, two issues here. The first is that the current drafting of section 3.4.3 has an unreal air to it — a Code Participant representative must be allowed to answer a question honestly and fairly — and in accordance with all the Code Service Principles. Equally, it is accepted by all stakeholders that a Customer must not be discouraged from making a claim. The ILS submission offers the useful drafting suggestion that a Code Participant representative cannot say that the policy does not cover the claim unless the Code Participant forms that opinion after properly assessing the claim. I accept the view that the ‘right to claim’ standard should be strengthened. I have taken this matter into account in the drafting of the Claims Service Levels.

2. The ILS submission proposed that the claimant must be notified about IDR and EDR on claim lodgement. This approach was rejected in many submissions and in the consultations and forums. The forum on IDR developed a consensus against the proposal. I do not recommend it.

9.114 I otherwise deal with awareness of rights in relation to Code promotion and education and training.262

TIME LIMITS

1. The FOS QF Survey identified that the key contributing factors that caused difficulties for Code Participants in meeting the Code claims handling standards in relation to communications and time standards were, according to the Code Participants:

   (i) Keeping the customer informed of the progress of their claims every 20 days;

   (ii) Appointing a loss assessor and/or adjuster within ten days of receipt of the claim;

   (iii) Responding to routine requests for information within five business days; and

261 FOS QF Survey, p 9, para 20(b).
262 See Section 9, Issue 1.
Upon receipt of all necessary information, accepting or rejecting a claim within ten business days. 263

2. The FOS QF Survey’s analysis and assessment of the operation of claims handling standards during the Queensland floods found insurers had the most difficulty with the following:
   (i) section 3.2.1(a) — ten day notification of what insurer needs.
   (ii) section 3.2.3 — 20 day progress update.
   (iii) section 3.1 — notification of decision in ten days. 264

   In my view, the FOS QF Survey’s approach was not that the Code needed amendment on these issues but that there was a need for qualitative improvement in performance. In my view, that can be achieved only by education and training.

3. The broad consensus from the Review’s consultations, forums and submissions was that the time frames for claims handling were about right. Customer representatives considered that the 20 business day update standard and the four and 12 month standards were important. The insurance representatives considered that most insurers on most claims performed better than the Code time frames.

4. Suncorp submitted that it was their experience that protracted claims are rarely due to a fault of an insurer, but rather the insurer being unable to finalise the claim due to external factors: “Perversely, any arbitrary time limit could encourage poor repair practices to ensure it was met.” This is a serious matter and merits attention in the drafting of the Claims Service Levels.

5. The FOS QF Survey noted that more use could have been made of the ability to agree alternative time frames. 265 I recommend enhancing the terms of this Code standard.

6. There was no support for a time limit on finalising a claim after it was accepted. I do not recommend it.

7. There are some comments on time limits in the section on assessment processes and outcomes. 266

**COMMUNICATIONS**

1. The findings of the FOS QF Survey on communications are set out above. The FOS QF Survey also stated:

   Eight Code participants have confirmed that they are currently implementing a number of internal organisational changes, as a means of improving their claims handling management of future catastrophe events. Some of these initiatives in relation to communication are listed below:
   (i) Preparation of information packs for distribution via councils in high risk areas prior to storm season.
   (ii) Improving telephone systems enabling claims to be lodged in real time from anywhere in Australia and overflow calls to be diverted to other states if required.
   (iii) Reviewing individual customer contact plans, including primary contact details and preferred method and frequency of communication.

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263 FOS QF Survey, p 23.
266 This Report, pp 97–99 below.
(iv) Emphasising the importance of capturing customer email details as a means of keeping customers updated about their claim.

(v) Greater use of SMS communications facilities to advise of assessor appointments.

(vi) Use of online and smart phone claims lodgement.

(vii) Ensuring event response teams are located in affected town centres.

2. Suncorp also supported moves to communicate with policyholders via their preferred method, and communicate reasons for denials in line with the Code.

3. The FOS QF Survey commented that effective and proactive communication was associated with perceptions of transparency and fairness of process. Poor communications models resulted in a different effect: “These types of experiences resulted in perceptions of a lack of transparency and unfairness of process. They were also seen to create artificial barriers to the customer’s ability to both access and engage effectively in the claims handling process.”

4. The FOS QF Survey stated:

Communication models within insurance companies during natural disasters and catastrophes need to ensure active engagement with customers about how claims will be handled, the time frames within which this will occur and the roles and responsibilities of both parties in that process. Ineffective management of customer/insurer communication whilst handling claims can lead to perceptions of unfairness and lack of transparency of process.

5. The ILS proposed that Code Participants should communicate to a customer what occurs after the claim is lodged and proposed codification of the record keeping accountabilities of Code participants in relation to claims handling. The FOS QF Survey stated:

The record keeping of Code participants, in relation to claims handling and compliance monitoring differed widely during the events. There are two aspects to record keeping. One relates to the record keeping on customer files. Effective record keeping for example, may have assisted some Code participants to resolve issues in dispute with customers before they escalated, and to keep track of communications held with customers during the course of their claim. We suggest codification of the record keeping accountabilities of Code participants in relation to claims handling during a disaster at a minimum.

6. The communication is practical information. The ICA submitted that Code Participants’ usual practice was to make a record of claims calls and opposed, on costs grounds, a requirement for audio recording.

7. I do not think that it is necessary for the Code to contain this type of operational detail on communication or record keeping. The Code Participant must, from the time the claim is lodged until the claimant has given the Code Participant all it needs from the claimant to assess the claim, act in accordance with the Code Service Principles. In my view, that standard in combination with sound business practices is sufficient. The same applies to record keeping.

8. The ILS proposed that the Code Participant must notify the customer about IDR and EDR if the claim has not been determined after two months. The standard for progress updates every 20 days and the four month rule remain. That is sufficient.

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269 FOS QF Survey, p 9, para 20(a).
270 FOS QF Survey, section 9, para 14, p 36.
9. In my view, the FOS QF Survey’s approach was not that the Code needed amendment on these issues but that there was a need for qualitative improvement in performance. In my view that can be achieved only by education and training.

SERVICE SUPPLIERS

1. The CCC recommended that Code Participants should consider how their Service Suppliers comply with the Code and made detailed suggestions to that effect. The key was that the Code Participant should have a service level agreement with each Service Supplier and that the Code standards in this regard should be enhanced. I agree with this view and recommend accordingly.271

2. I note that the Major Report recommendations on Service Suppliers have been implemented. See issue 3.

REASONS FOR DECISIONS

1. The FOS QF Survey stated: “Three Code participants noted that Section 3.4.5(a) was an obligation that caused them significant difficulty. Failing to notify the customer of the reasons for the denial of a claim resulted in 47 self-identified instances of an inability to meet this standard.”272

2. The FOS QF Survey considered that:

   The data from this review suggests that ineffective decision making processes create an imbalance between the interests of the insurer and the customer and exacerbate perceptions associated with fairness and transparency. A customer’s ability to request information from an insurer under section 3.5.3 of the Code is also in large part reliant on the insurer identifying the material it relied on when making an adverse decision that affects the customer’s rights. The insertion of an active obligation on the Code member to identify and list the information relied upon in reaching a decision to deny a claim may assist in restoring the balance.273

3. The ICA supported reasons for claim denial but not an extensive or exhaustive list of claim denial information.

4. The FOS QF Survey and the ILS submission recommended guidelines on good industry practice on reasons for a decision to deny a claim and on the supply of information which was relied on to deny the claim.274 The CCC supported this view. I recognise the virtues of this approach. I recommend tightening the drafting of these standards. In my view, the Claims Service Levels, which I recommend and which retain the important 2012 amendments, with some enhancements and clearer drafting, would provide a good solution on these issues. I suggest that stakeholders allow time for the new standards, including the 2012 ones, to be assessed and then consider, through the Code governance body whether further guidelines are necessary or desirable in this area.

5. I make the same comment about the FOS QF Survey recommendation for guidelines on the application of the legal professional privilege as an exception to the standard for supplying documents to the Customer about the reasons for a claim denial.275

272 FOS QF Survey, pp 31, 32.
273 FOS QF Survey, p 5; section 9, paras 7–9, pp 34, 35.
274 FOS QF Survey, p 5; section 9, paras 7–9, pp 34, 35.
275 FOS QF Survey, p 5; section 9, para 10, p 35.
ASSessment process and outcomes

1. The FOS QF Survey stated that decision-making was affected by factual and legal complexities arising from the flood v storm policy exclusions.

2. The FOS QF Survey commented:

There are some standards within section 3 that refer to ethical, behavioural and conduct obligations in claims handling and associated decision making. It is acknowledged that monitoring compliance with ethical standards can be challenging. However, these obligations assist insurers to maintain the appropriate balance between their own interests and those of the customer, amongst other things. The data from this review also indicates that active monitoring of compliance with these Code obligations may enhance the ability of insurers to identify and respond to emerging risks in claims handling.

There were very few instances reported by Code participants of difficulty in complying with these standards both during and after the events. These standards include:

(i) 3.4.1: conducting claims handling in a fair, transparent and timely manner (six instances).

(ii) 3.4.2: only requesting and taking into account relevant information when deciding claims (none identified).

(iii) 3.4.3: reasonable access by customers to information relied upon in assessing claims (two instances).

(iv) 3.4.4: initiating action to correct errors or mistakes in claims handling (two instances).

(v) 3.4.5(a): if we deny your claim we will provide written reasons for our decision to deny your claim (47 instances).

(vi) 3.4.5(b): provision of information about complaints procedures if claim denied (five instances).

(vii) 3.6.1: honest, efficient, fair and transparent provision of services (two instances).

The small number of matters (64) identified by the Code participants seems disproportionate to the number of times the claims handling standards related to timelines were unable to be met, and inconsistent with the experience of the legal centres.

3. The ILS proposed that a claim not determined in four months should automatically become an IDR matter. The ICA and IAG opposed automatic escalation to IDR of a claim that was not resolved in four months essentially because the expiry of the period was not a necessary indication that the claim assessment process had failed and there may be no dispute. RACQ Insurance pointed to the Code standard for giving IDR and EDR information when the claim was not resolved in four months.

RACQ Insurance argued that treating a matter as a complaint where there was no dissatisfaction expressed would undermine confidence in the dispute resolution system because it would become a box ticking compliance exercise. The Suncorp submission stated: “Delays can push the determination time beyond four months, even though the insurer is acting as swiftly as possible.” The position is that the customer must receive reasons for the delay if there is no determination and notification about IDR and EDR at the four months’ limit. I consider that is sufficient.

276 FOS QF Survey, p 23.
277 FOS QF Survey, p 30.
4. The FOS QF Survey considered that:

The quality of the decision-making processes associated with claims handling can also impact on the claims handling experience of customers. A customer’s ability to access information from their insurer about reasons for decisions made and about the material relied on in making decisions are key elements in demonstrating that transparency and fairness are evident in the claims handling process.

5. The FOS QF Survey stated:

Irrespective of the Code’s obligations, there is a duty of good faith and fair dealing which requires due regard for the interests of the claimant and a duty to act reasonably in considering and determining the assessment of the claim. In addition, an insurer should not rely on material adverse to the customer’s claim without first having given him or her an opportunity to consider and respond to it, prior to the making of a final determination, nor take into account irrelevant information when making decisions.

When establishing decision making processes for the assessment of claims associated with future disasters, we encourage insurers to consider how they will actively manage their obligation to act with the utmost good faith and with due regard to the legitimate interests of a customer as well as its own interests and the types of training that may be required of decision makers to ensure this occurs. The data also suggests that in responding to disasters some recognition of an insurer’s responsibility to act consistently with commercial standards of fairness may also be required.

Some Code participants had advised that they are introducing the following modifications to their decision making processes for natural disasters as follows:

(i) Establishing a flood review panel consisting of senior management from various arms of the business to ensure that decisions about flood claims are made at senior management level, reflecting the complexity of flood claims.

(ii) Conducting on-site assessment and site specific hydrology for all flood claims.

(iii) Ensuring that hydrology expertise is arranged in advance for specific geographical areas, improving the ability to respond.

(iv) Using better computer-aided allocation tools such as satellite imagery, improving the ability to identify likely areas of flood inundation. This enables internal assessors to be allocated to affected areas as early as possible to assist in the co-ordination of the claims assessment process.

(v) Developing models/scenarios for specific weather events to develop solutions where available and link the outcomes to catastrophe plans.

(vi) Refining policies for external engagement and communications applicable both prior to and after a catastrophe event has occurred. This includes defining key contacts and key messages to be communicated, defining key messages, social media protocols and confirming common media and advertising requirements relating to the response to a catastrophe.

278 FOS QF Survey, p 9, para 20(c) and (d).
280 Sayseng v Kellog Superannuation Pty Ltd [2003] NSWSC 945 per Bryson J at p 89.
282 Ibid, per Gleeson CJ and Crennan J.
Refining communication policies and guidelines applicable before, during and after a catastrophe event to ensure all internal stakeholders and team members are accurately and adequately informed about the event and responses.\textsuperscript{283}

6. In my view, it is right and proper for the FOS QF Survey to draw attention to the important duty of utmost good faith and its importance in underpinning Code standards. The FOS QF Survey also draws attention to industry standards developing and evolving to fulfill these Code standards; the context of disaster response underlines the importance in my view of a Natural Disaster Customer Response Guideline.\textsuperscript{284}

7. The FOS QF Survey argued for the standardisation of claims handling:

A standardised approach to claims handling, such as the development of generic letters and call centre scripts can allow insurers the opportunity to flexibly and more efficiently respond to a natural disaster. The data from this review suggests that there can also be inherent risks with this strategy, including the creation of significant barriers to participation in claims handling processes by customers. Socially and economically disadvantaged customers are more likely to be excluded from claims handling processes, because of their lack of ability to properly advocate for their rights and understand process, procedure and information being communicated. Standardised processes can lead to further barriers to access and exclusion for people from a non-English speaking background, people living with a disability or mental illness and elderly customers.\textsuperscript{285}

8. The CCC submission supported the FOS QF Survey approach on this issue. I recognise the virtues of standardisation. I consider that the current Code, with the changes I have recommended, should be in operation for a period to assess whether standardisation would have benefits commensurate with the cost.

9. The ILS proposed that the period to reopening a natural disaster claim should be seven months. There was a consensus in favour of that time limit. I recommend it. The time should not run from the finalisation of the claim because that date might not be certain and because the time relates to the execution of a deed of release. The time should run from the date of the deed of release.

\textit{FOS QF Survey}

\textbf{9.115} The FOS QF Survey is a critical document for my Review. For the purposes of my review, it can be summarised as follows. The FOS QF Survey:

1. Did not recommend any changes to the relevant terms of the Code.

2. Argued strongly for Guidelines on a number of matters. I agree with that recommendation and I have recommended that the Code be structured to provide for guidelines. I have recommended a number. More may be required. The enhanced governance model I have recommended would support the development of guidelines consistent with the FOS QF Survey.

3. Was most concerned about qualitative failures to meet Code standards. I have recommended the enhanced expression of the ethical content of the Code standards through the Code Services Principles and this is consistent with the approach in the FOS QF Survey: “The ability to ensure compliance and reporting against ethical, behavioural and conduct obligations within the Code, such as those related to fairness, transparency, and the balancing of interests, is of equal importance [to timeliness] and

\textsuperscript{283} FOS QF Survey, pp 32, 33.
\textsuperscript{284} This Report, Issue 15, below.
\textsuperscript{285} FOS QF Survey, section 9, paras 12, 13, p 35.
may need more prominence during time of catastrophe.” The qualitative failures to meet Code standards also argue even more strongly for a substantial increase in the efforts and priority of training and education.

4. Set out a number of important measures being taken by some Code Participants to develop and implement disaster response plans and the emergence of the measures reinforces the importance I attach to this aspect of my recommendations. It is a classic example of industry best practice leading the way.

5. The central failing was poor communication. The Code is clear on the standards for communication and the standards are good. I do not consider that it is either a proper application of Code Framework or Content Principles286 nor useful here to establish standards or guidelines, beyond those already present or recommended, on the operations and detail of Code Participants in this aspect of their customer relations. An exception is the requirement to give reasons and documents on which a claim denial is based.

Claims handling standards — legally enforceable

9.116 In the Issues Paper I commented on the place of a code in the legislative framework for insurance customer protection:

Codes of Practice occupy a fragile place in the matrix of insurance regulation. The prohibition on a corporation in trade or commerce contravening an applicable industry code is limited to a code that is prescribed and the General Insurance Industry Code of Practice is not. The ASIC Act provides that a Court may have regard to an applicable industry code in determining whether the conduct of a financial services supplier is unconscionable. The reference includes both mandatory and voluntary codes, but only if they are in the Regulations. The Code is not. The reference also includes any industry code but only if the service recipient acted on the reasonable belief that the supplier would comply with that code. On this basis the Code is a benchmark for unconscionable conduct.

ASIC has power under the Corporations Act, to approve a code. ASIC Regulatory Guide 183 is a guideline for the process and its minimum content. However, ASIC approval has no statutory or regulatory effect beyond the ASIC Act. ASIC approval of a Code seems to have two effects, namely, it will be a signal to consumers that it is a code they can have confidence in. An approved code would also respond to identified and emerging consumer issues and would deliver substantial benefits to consumers and heighten the possibility of misrepresentations about the nature of the code and any approval. The legal effect of a code in itself is a complex question.

ASIC’s code approval power is limited to entities that are regulated by ASIC. Relevantly for the Code, these entities include Australian financial services licence (AFSL) holders. However, ASIC is prepared to consider the approval of a code that covers bodies which it does not regulate. This raises the question about general insurers who are not AFSL holders for any reason including because they are wholesale only or carrying on business offshore. ASIC encourages codes to extend beyond retail clients where appropriate.287

9.117 The Code, section 1.12 reads:

This Code does not provide to you or anyone else any legal entitlement or right of action against us, other than that you may:

(a) Ask us to address a matter;
(b) Report your concerns to FOS; and/or
(c) Access our complaints handling procedures (see section 6).

286 See this Report, Section 6.
287 Issues paper, paras 8.4–8.6, without footnotes.
9.118 I commented on the legal status and enforceability of the Code generally under Issue 4. There I recommended that there should be no change to the current position in relation to matters other than claims handling standards. I deal here with the legal enforceability of the Code in relation to claims handling standards.

9.119 There was a wide range of views in my consultations, forums and the submissions about whether the terms of the Code should be legally enforceable. I expressed the view in the Issues Paper that the Code to some extent was, despite section 1.12 to the contrary, already with legal effect. The Code Claims Service Levels on the other hand are in precise terms and they are among the most important in the Code. An important context for the consideration of whether the Code Claims Service Levels should be legally enforceable as a term of a Retail Code Insurance, is that I am not recommending any other material change in Code sanctions.

9.120 The Code is clearly not currently enforceable as a term of an insurance covered by the Code. There are no express words that make it a term of a Code Insurance and many of the Code standards as currently drafted would not be amenable to being a term of a contract. In general terms it is doubtful that the Code would be an implied term of a Code Insurance although a specific circumstance might evidence the facts which would make it an implied term. The terms of the Code, section 1.12 would also militate against the conclusion that the Code was enforceable as a term of a Code insurance. The status of the Code in relation to utmost good faith is a matter I address below.

9.121 However, there are ways in which the Code is now legally enforceable. Firstly, a Code corrective action and a sanction under section 7 are contractually binding on a Code Participant and if the Code Participant does not comply with the sanction then an appropriate legal contractual remedy would be available to FOS Code or the CCC. Secondly, the Code is clearly enforceable in the sense that it is a factor in assessing whether an insurance operation is involved in unconscionable conduct under the ASIC Act, section 12CC(1)(h) and (3). Thirdly, there may be circumstances in which a Customer can establish that the Code was a representation by the Code Participant that it would comply with the Code standards and the customer relied on that representation in order to enter into a Code Insurance. Fourthly, although there is no relevant judicial authority of which I am aware, a court would have regard to the Code when deciding whether or not an insurer’s conduct had been reasonable in the context of an award of interest under the insurance policy and the IC Act, section 57: if the Code Participant had delayed in breach of a Code standard, that would be a factor in assessing whether the insurer’s conduct was unreasonable under the IC Act. Fifthly, and of critical importance, a court would have regard to the Code in appropriate circumstances in a claim by a customer that an insurer had breached its duty of utmost good faith under the IC Act, section 13; if the Code Participant had acted in breach of a Code standard, that would be a factor for a court in assessing whether the insurer’s conduct was in utmost good faith under the IC Act.

9.122 I note here ASIC’s position under ASIC RG 139:

By this we mean that a scheme must, as a minimum, compensate a complainant or disputant for any direct loss or damage caused by a breach of any obligation owed in relation to the provision of a financial or credit product or service. This excludes an award for punitive or exemplary damages.

9.123 This analysis leads to three conclusions. The first is that the current Code is legally enforceable in a variety of situations and with a variety of remedies for the customer. The second is that the Code, section 1.12 is wrong and must be amended. The third is that a proposal to make the Code legally enforceable as a term of a Retail Code Insurance merely

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288 This Report, Section 9, Issue 4.
289 See this Report, Section 9, Issue 13.
290 ASIC RG 139.227.
makes express what is now implied and merely makes explicit what is now implicit. In particular, the Code has, since its inception, emphasised that the relation between the insurer and the insured is based on utmost good faith. The insurance industry should have no difficulty in being held to account for not acting in the utmost good faith.

9.124 The claims handling standards in the Code have long been a battleground for stakeholders. This is clear from the Major Reports, consultations, forums and submissions. I am making a number of related recommendations to put an end to hostilities and to put in place a simple, clear and practical measure for a just remedy for a breach of the Claims Service Levels.

9.125 I propose that:

1. the Claims Service Levels should be a term of each Retail Code Insurance. An insurer may offer better but not worse terms; and

2. the insurer should be entitled to defences, set out in the Claims Service Levels.

9.126 There would be two effects. The first is a legal remedy. If an insurer fails to take a Corrective Action, not comply with a Sanction, or breaches the Claims Service Levels, the insurer is in breach of the Retail Code Insurance. The insurer would also be in breach of the statutory duty of utmost good faith already implied by the IC Act into each Retail Code Insurance. The breach would result in damages, interest and costs. In any case, damages would be assessed on the basis of loss suffered by the customer by reason of the breach, so that remoteness is a controlling mechanism and only rarely would insurers face a significant claim. Where the breach also involved a breach of the IC Act, ASIC’s powers under the IC Act would also be available.

9.127 The second effect is that the availability of a clear legal remedy through FOS EDR and the courts will focus the industry’s mind on adherence to these important standards. The recommendations as a package give a clear and certain right and remedy that strikes a fair and reasonable balance in the interests of all parties. The recommendations as a package give a remedy which in turn will give a process, experience and outcomes which enhance the industry performance and customer experience.

9.128 I acknowledge with thanks Professor Robert Merkin’s consideration and comments on this section of my Report.291

Recommendations and related recommendations

9.129 This part of my Report and its recommendations must be considered in context of other, related, changes I am recommending to the Code. I am recommending a matrix of four changes to the Code to enhance the industry’s performance and the customer’s experience in the claims process:

1. an enhanced Code governance framework — see Section 8.

2. clarified Claims Service Levels which, while generally following the main principles in the current section 3, should have the changes set out in my recommendations on claims issues above;

3. the Claims Service Levels should be a term of each Retail Code Insurance and therefore be legally enforceable; a Code Participant is entitled to include terms better for the customer than the Claims Service Levels; and

4. a Code Participant must develop and maintain a Natural Disaster Customer Response Plan which meets the minimum terms of the Natural Disaster Customer Response

291 Michael Kirby, Professor Robert Merkin and Ian Enright are writing the new edition of Sutton on Insurance Law.
Guideline. The Natural Disaster Customer Response Guideline is confidential to the Code Participant under the Code — see this Report, Issue 15, below.

9.130 The approach I have indicated in this section on claims issues is consistent with the Code Framework Principles Five–Seven inclusive and Code Content Principles One–Seven inclusive.292

9.131 A table of the Major Report recommendations on Claims, including the FOS QF Survey recommendations, and my responses to them are set out in Appendix G.

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**Recommendation 28**
The Code standards should include claims service levels substantially in the terms set out in Appendix F.

**Recommendation 29**
The Claims Service Levels should be a term of each Retail Code Insurance. An insurer may offer better but not worse terms.

**Recommendation 30**
An insurer should be entitled to the defences set out in the Claims Service Levels.

**Recommendation 31**
The ‘right to claim’ standard should be enhanced in the Claims Service Levels.

**Recommendation 32**
It should not be a Code standard that the claimant must be notified about IDR and EDR on claim lodgement.

**Recommendation 33**
The terms of the Claims Service Levels in the Code should be enhanced to allow the Customer and the Code Participant the ability to agree to alternative timelines and for an agreement on alternative timelines to be binding.

**Recommendation 34**
The Claims Service Levels should acknowledge that a Service Supplier’s timeliness might be beyond the best endeavours of the Code Participant to control.

**Recommendation 35**
The Code standards should not have a time limit on finalising a claim after it is accepted.

**Recommendation 36**
The Code Participant should, from the time the claim is lodged until the Customer has given the Code Participant all it needs from the Customer to assess the claim, act in accordance with the Code Service Principles.

**Recommendation 37**
The Code standards should not prescribe a Code Participant’s methods for recording claims calls nor its record keeping measures.

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292 See Section 7 above.
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Description</th>
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<tbody>
<tr>
<td>38</td>
<td>The Code standards should not require the Code Participant to notify the Customer about IDR and EDR if the claim has not been determined after two months.</td>
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<tr>
<td>39</td>
<td>A Code Participant should have a service level agreement with each Service Supplier, reflecting the Claims Service Levels that are binding on a Code Participant.</td>
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<tr>
<td>40</td>
<td>The Code Claims Service Levels should include standards about a Code Participant giving reasons and supplying documents on denying a claim.</td>
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<tr>
<td>41</td>
<td>The Code standards should not include guidelines on the application of the legal professional privilege as an exception to the standard for supplying documents to the Customer about the reasons for a claim denial.</td>
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<tr>
<td>42</td>
<td>The Code should not include a standard that a claim not determined within four months should automatically become an IDR matter.</td>
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<tr>
<td>43</td>
<td>The Code should not include a standard for the standardisation of Code Participant’s processes and documents for natural disaster claims assessment unless such a standard is in the Natural Disaster Customer Response Guideline — see Recommendation 60.</td>
</tr>
<tr>
<td>44</td>
<td>The period for reopening a natural disaster claim should be seven months not six months. The time should not run from the finalisation of the claim but should run from the date of the deed of release.</td>
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9.132 The Review Issues Paper asked for submissions on whether the Code IDR standards, and to the extent applicable, ASIC RG 165, should:

1. require the Code Participant to notify the claimant about the IDR processes at the time a claim is lodged;
2. define a complaint more precisely and confine it to matters under a contract of insurance under the Code and impose time limits on the making of a complaint;
3. set out standards for IDR time frames;
4. set out guidelines to ensure an independent internal review as a part of the IDR processes;
5. require the IDR process to refer new information to any external expert who was involved in the matter for further review;
6. require reasons in all cases and the supply of relevant information in all cases;
7. be consistent with the complainant’s rights to reasons and information from the Code Participant in EDR;
8. be more consistent in relation to the way in which a complaint develops;\(^{293}\)
   and whether:
   (i) the recommendations on independence from the claims department and time running from when the complaint is made\(^{294}\) should be implemented;
   (ii) the recommendation that FOS Code should report the number of IDR cases for each Code Participant publicly and to ASIC\(^{295}\) should be implemented.

9.133 The IDR standards in the Code stem from the Corporations Act and an AFSL. The AFSL holder must have IDR procedures that comply with the standards and requirements made or approved by ASIC and that cover complaints made by retail clients. The AFSL holder must have EDR procedures, including membership of one or more ASIC-approved EDR schemes, that comply with the standards and requirements made or approved by ASIC and that cover disputes made by retail clients.\(^{296}\) I deal with EDR matters under Issue 11. In the context of the Code, a Code Participant, whether or not an AFSL holder, must comply with the Code IDR standards which themselves are based on ASIC RG 165 and ASIC RG 139.

9.134 The consultations, forums and submissions had some common themes. The central theme was that IDR was not working well for Code Participants or customers. Customers were lost in the IDR process. Code Participants found it resource intensive and unproductive. This position is reflected in the FOS Annual General Insurance Code of Practice Overviews which continue to indicate that section 6 is a significant source of Code breaches. The Selected Statistics supported this theme. The Selected Statistics\(^{297}\) indicate that over the 2009–2011 period:

1. about 1.7–2% of claims were declined;
2. 29–35% of declined claims (accepting that IDR matters include not only claims matter but others as well) became IDR complaints;

\(^{293}\) Review Issues Paper, para 10.120.
\(^{294}\) Issues Paper, in para 10.127.
\(^{295}\) Issues Paper, in para 10.128.
\(^{296}\) Corporations Act 2001 sections 912A(2) and 1017G(2), 912A(1)(g) and 912A(2), 912A(2) and 1017G(2); ASIC RG 165.84.
\(^{297}\) See Appendix D.
3. 67–73% of IDR matters were resolved in favour of the Code Participant;\textsuperscript{298} and

4. general insurance disputes were, in 2011, about 25% of all FOS disputes. In 2010 about 12%, and in 2011 about 10%, of all FOS disputes were resolved by FOS decision. Of those resolved by FOS decision, about 61% in 2010 and 61% in 2011 were resolved in favour of the financial services provider.

9.135 It is difficult to draw clear inferences from these statistics about the success or otherwise of the current IDR processes. It is reasonable to conclude that while there were some statistics which indicated that the period was one of increasing financial stress for the insurance industry that did not reflect in the industry’s conduct of claims: the IDR position remained steady although the EDR disputes increased. On the one hand, it seems reasonable that the claims decline rate is very different from the IDR and EDR result rates. It is less clear whether it is reasonable that the IDR and EDR result rates are as different as they are.

9.136 There is confusion about the process and the timetables. This is partly because the Code, section 6, ASIC RG 139 and ASIC RG 165 do not align. It is partly because each is not clear and even less clear when read together. While any amendment to ASIC RG 165 is a matter for ASIC, it is obvious that ASIC RG 165 should be in terms which can be interpreted and applied by the community with confidence and certainty. In my view, the community does not have that confidence or certainty. One consequence of the unsatisfactory IDR approach is that when a customer lodges a dispute with FOS, FOS refers the matter back to the Code Participant’s IDR process in order to promote a settlement of the dispute. This introduces an unnecessary step and frustration. It should be eliminated. While I appreciate that this aspect falls under the FOS EDR terms of reference, and is a matter for FOS EDR and ASIC, my finding is that this practice is a substantial interference with effective IDR and should be addressed.

9.137 There was a broad consensus that ‘complaint’ should not be, and under AS ISO 10002–2006 could not be, defined more precisely than the current definition: “An expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.” The ILS submission considered that the reference in the Code to ‘complaint’ and a ‘dispute’ both in the IDR context created confusion. This is a useful suggestion. The reference to dispute here is not only inaccurate but confusing, even in the IDR acronym. Given its universal usage, I use it in this Report but suggest a different name in the Code: “Internal Complaints Process”. There was also a broad consensus that there should not be a time limit within which a complaint should be made.

9.138 I have recommended that certain parts of the Code should apply differently to Code Retail and Wholesale Insurances. I recommend that the IDR section apply to Code Retail Insurances only. I consider that it is important for the process to be practical, simple and clear. I therefore recommend that there be a Guideline which follows the general outline of the Code section 6 and is consistent with ASIC RG 139 and ASIC RG 165. The two most substantial matters on the IDR issue were:

1. notification about IDR and EDR rights (in this context it means notification to a customer about the Code Participant’s IDR processes and about the customer’s IDR rights); and

2. IDR process and timetable.

9.139 I deal with each in the context of the Code Retail Insurances and the recommended Internal Complaints Process Guideline. It is also necessary to comment on IDR reporting.

\textsuperscript{298} The QFIC Report, para 12.4.3 indicated higher rates in favour of Participants there.
Notification about IDR and EDR rights

9.140 There was also a broad consensus that notification about IDR and EDR rights should not be given at the time a claim is lodged — see paragraph 9.113.

9.141 The ILS submission wanted a Code Participant to notify a customer about its IDR processes and about the customer’s IDR rights within two months of claim lodgement. I do not agree and I have set out my reasons in the section on Claims issues.299 The important and starting point is that under the Code, a Code Participant must notify a customer about the Code Participant’s IDR processes and about the customer’s IDR rights if a claim is not decided in four months300 or when a claim is denied.301

9.142 ASIC RG 165 sets out the timetable for notification about IDR and EDR rights and in the context of the Code. Code Participants must:

1. notify customers of their right to complain or take a dispute to an EDR scheme when a complaint is addressed at IDR. This does not mean or require that notification to be at the commencement of the IDR process;

2. including notifying of the right when:
   (i) a final response at IDR is given within 45 days; or
   (ii) a final response at IDR cannot be provided within 45 days of the receipt of the complaint;302 and

3. take their dispute directly to an EDR scheme where the dispute involves an application for hardship variation or request for postponement of enforcement proceedings in relation to National Credit Code matters.303 I mention this here because it might assist in Financial Hardship matters under the Code.

9.143 The Guideline indicates a two-step process (see below) and if the first step does not resolve the matter, the Code Participant must notify the customer about the Code Participant’s IDR processes and about the customer’s IDR rights. In my view this approach complies with ASIC RG 165 while enabling the Code Participant a less structured attempt to resolve the complaint.

Timing and process

9.144 The main precept in the Guideline is that there can be a two-step process. The first is a quick and direct review, without undue process or structure, by the original decision maker. This could occur in the five day ‘grace’ period allowed by ASIC RG 165.82. ASIC’s reasons for the five-day grace period are that the wide definition of complaint: “… may result in increased administrative burdens and compliance costs in relation to capturing and maintaining records of minor expressions of dissatisfaction.” The full IDR process — that is, to capture and record the complaint or dispute, as set out at Appendix 1 under ‘Section 8.1 — Collection of information’ does not apply to this five-day period. The five-day grace period does not apply to “a complaint or dispute relating to hardship, a declined insurance claim, or the value of an insurance claim”. A declined insurance claim includes one where “the insurer does not determine the claim within ten business days of receiving all the information necessary to do so.” There are two matters here which need attention. The first is that in my view, at the end of this first review process, the Code Participant must notify the customer.

299 See Issue 10 above.
300 Code, section 3.4.1(b).
301 Code, section 3.5.5 although this does not refer to EDR.
302 See ASIC RG 165.98–RG 165.113.
303 See ASIC RG 165.98–RG 165.130. The CCC 2011–2012 Annual Report noted a failure to notify IDR rights at p 38.
about the Code Participant’s IDR processes and about the customer’s IDR rights. The second is that the ten-day period defining a declined claim is unrealistic and impractical. I have recommended that the equivalent standard in the Code should be amended. I ask ASIC to reconsider and amend this exception and its period.

9.145 There is another dimension for this five-day grace period. In the context of the disproportionate cost and benefit of IDR it is too short and encourages unsound management practices. If the customer does not supply documents and information quickly, the matter drags on, and the five-day period passes. But IDR continues and moves into a formal procedure. I consider that there would be benefit if the period were longer — ten days — and with express lack of structure and process to encourage speedy and fair resolution.

9.146 The five-day process is not a part of the IDR process governed by ASIC RG 165, but the second part of a ten-day process would be governed by ASIC RG 165. I also consider that this approach is fair to and better for the original decision maker. It is important to encourage good first decision making. A process which removes the first decision maker from a complaint too soon means that there is an inducement not to make the best first decision but to leave the matter to what might be regarded as the inevitable complaint process. The first decision maker loses an opportunity to learn and engage with the consequences of the first decision.

9.147 The maximum time limit for the whole IDR process is 45 days. Therefore, I am suggesting that the first step occur in ten days. The first five days remain a period outside the IDR regime; the second five days are under the IDR regime. Then the second step would be limited to 45 days from the time the complaint was made. If the first step took ten days, there would be 35 days remaining for the second step, but if the first step were less than ten, there would be equivalently more days available for the second step.

9.148 The second step would be a functionally independent review within the Code Participant with clear and fair processes. The IDR processes should ensure an independent review uses the Internal Complaint Process Guideline — see Appendix F. A Code Participant may wish to offer this review directly once the complaint has been received, without the first review.

9.149 There are two ways to approach this goal. The first is to have the five-day period of grace followed by the first tier review and then the second tier review — a three-stage process. The second is to have a ten-day period of grace followed by the second tier review. Each approach provides substantial practical improvement on the current ASIC RG 165 and the current Code approach but each presents some questions about the relationship of the guideline with ASIC RG 165. The question for the first way is whether the first tier complies with ASIC RG 165. I consider that it does but there may be contrary views. The question for the second way is whether ASIC RG 165 should be amended to extend the days of grace from five to ten days.

9.150 The very nature of a Code standard on Internal Complaints Process and a Guideline is that a Code Participant is entitled to adopt a different approach from the Guideline on process or timing without committing a breach of the Code. I note here that a Code Participant who is an AFSL holder is obliged to comply with the Corporations Act and ASIC RG 165 on IDR.

9.151 A theme in the Issues Paper, my consultations and forums and the submissions was a need for the processes in IDR and EDR to be consistent and to flow in a more streamlined way to reduce inconsistency and both customer and Code Participant frustration with the arrangements.

**Reporting IDR data**

9.152 The ILS submission calls for the publication of IDR data on individual Code Participants. The RACQ Insurance, Suncorp and ICA submissions stated that an obligation on FOS to report the number of IDR matters annually for each Code Participant had the potential to erode the goodwill and purpose of IDR and that it might not genuinely reflect a Code Participant’s
commitment to good customer outcomes. Suncorp proposed the reporting of Code statistics as a ratio or rate per 1000 policies, and by class of product, ensuring fairness to all insurers. I consider that the recommendations on Code governance should lead to a framework in which the Code Governance Body over time can decide and implement good reporting channels and information. It is too early and out of sequence to make a recommendation on this matter.

9.153 The approach to IDR that I recommend is consistent with Code Framework Principles One and Five–Seven inclusive and the Code Content Principles. 304

9.154 A table of the Major Report recommendations on complaints and internal complaints resolution and my responses to them are set out in Appendix G.

<table>
<thead>
<tr>
<th>Recommendation 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Code should include an Internal Complaints Process Guideline substantially in the terms set out in Appendix F.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation 46</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Internal Complaints Process Guideline should refer to a complaint but not to a dispute.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation 47</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Code should not include a time limit within which a complaint should be made.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation 48</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Internal Complaints Process Guideline should include a standard that at the end of the first tier review process, the Code Participant must notify the Customer about the Code Participant’s internal complaints resolution processes and about the Customer’s rights.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation 49</th>
</tr>
</thead>
<tbody>
<tr>
<td>The ten-day period defining a declined claim in ASIC RG 165 should be amended consistently with the equivalent standard in the Code.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation 50</th>
</tr>
</thead>
<tbody>
<tr>
<td>The CGB should decide on and implement good reporting channels and information on internal complaints resolution and processes.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation 51</th>
</tr>
</thead>
<tbody>
<tr>
<td>The CGB, FOS Code and FOS EDR should enhance their efforts and work closely together to ensure that the processes and communications in relation to internal complaints resolution and processes and EDR be more consistent.</td>
</tr>
</tbody>
</table>

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304 See Section 7 above.
Issue 11 — Claims and disputes, IDR and EDR

9.155 The Review Issues Paper asked for submissions on whether the Code EDR standards, and to the extent applicable, ASIC RG 165 and the FOS terms of reference, should:

1. be promoted better by Code Participants and FOS;
2. require the Code Participant to notify the claimant about the EDR processes at the time a claim is lodged;
3. define complaint and dispute more precisely and confine it to matters under a contract of insurance under the Code and impose time limits on referring a dispute to EDR;\(^{305}\)
4. be amended to increase the monetary cap on Code EDR matters:
   (i) for all Code products;
   (ii) for retail Code products only;
   (iii) for home building insurance only; and, if so,
   (iv) to what amount.

9.156 I have dealt with Code promotion under Issue 1.\(^{306}\)

9.157 A Code Participant must subscribe to FOS EDR for the EDR scheme required (where an AFSL holder under the Corporations Law) as a Code Participant under the Code. The Code then connects with the FOS EDR scheme in two ways. The first is that the Code Participant must, as a part of its claims assessment and its IDR arrangements, notify the customer about the customer’s EDR rights. I have dealt with that matter under Issue 10.\(^{307}\) The ILS submitted that the word ‘dispute’ was confusing in the Code and should be deleted. I agree and recommend accordingly. I have also dealt with the definition of ‘complaint’ there.\(^{308}\) The second is the matter of whether there should be consistency between the Code standards and the FOS EDR approach in relation to reasons and giving documents, required in certain circumstances in relation to claims assessment. I have deal with that matter under Issues 9,\(^{309}\) and 10.\(^{310}\)

9.158 I comment on the FOS EDR caps and the funding of a consumer advisory position in FOS EDR in the Section 12: Reflections and suggestions.\(^{311}\)

\(^{305}\) Compare ASIC RG 139.216–RG 219.
\(^{306}\) See Issue 1 above.
\(^{307}\) See Issue 10 above.
\(^{308}\) See Issue 10 above.
\(^{309}\) See Issue 9 above.
\(^{310}\) See Issue 10 above.
\(^{311}\) See Issue 12 below.
**Issue 12 — Code monitoring and investigation**

9.159 The Review Issues Paper asked for submissions on whether the Code monitoring and investigation standards should:

1. be promoted better by Code Participants, the CCC and FOS Code;
2. be amended to provide that the CCC should be able to give guidance or direction to FOS Code about its arrangements and processes for Code monitoring and investigation;
3. be amended to provide that the CCC should report to ASIC on serious or systemic Code issues;
4. be amended to provide that the CCC carry out all investigations into allegations of Code breaches or non-compliance;
5. be amended to provide that FOS Code or CCC reports should name a Code Participant who is under investigation for Code breaches or non-compliance;
6. best structure and co-ordinate the roles of FOS Code, the CCC and ASIC.

9.160 Most of these matters have been dealt with under Section 8: Code Governance. I comment on the remaining matters below.

9.161 I have dealt with Code promotion under Issue 1.\(^{312}\)

9.162 The question of whether FOS Code or the CCC reports should name a Code Participant who is under investigation for Code breaches or non-compliance, was a part of the ICA submission:

> The Insurance Council strongly opposes the naming of a Code Participant under investigation for breach or non-compliance. The Code provides for an opportunity for response and it would be undesirable to name a participant subsequently found not in breach. The Insurance Council wishes to encourage self-reporting and would be disappointed if such a proposal had a negative impact on the current high level of self-reporting. The Insurance Council notes that the CCC has recently considered the criteria for naming in relation to significant breaches in its latest Annual Report on the Insurance Council’s Code website.\(^{313}\)

9.163 I accept this submission for the reasons it gives. There are others. Firstly, while it is normal for the accused in a criminal trial to be named publicly, the Code is voluntary and its principles are entirely different from the public criminal law. Secondly, it would put the Code governance and administration in an extremely difficult position if a Code Participant was named as being investigated for a Code breach but the investigation was flawed, or due process or natural justice failed. Thirdly, the most feared sanction under the Code is naming a Code breacher publicly; that sanction loses most of its power if naming takes place beforehand. The ILS supported this view. I recommend accordingly.

9.164 The CCC submission addressed two particular issues:

> Amongst other functions, section 7.14 of the Code requires the Committee to:

(i) monitor Code compliance through reports received from FOS.

(ii) make determinations and impose sanctions where FOS has reported a failure by a Code Participant to correct a Code breach.

\(^{312}\) See Issue 1 above.
\(^{313}\) ICA submission, Issue 12, p 11.
(iii) the Committee recognises the importance of transparency at all levels of the Code’s operations, to the achievement of the Code’s objectives.\textsuperscript{314}

To this end, the Committee requests that consideration be given to amending both the Code and the Committee’s Charter, to allow FOS to disclose to the Committee the identity of any Code Participant which is the subject of a significant breach report. The Committee accepts that there should be a corresponding obligation on its members to keep this information confidential, unless exercising the Committee’s existing power to name a Code Participant under section 7.22 of the Code.

9.165 The ILS supported this view. I accept this submission. It is, in my view, necessary for justice and fairness for the CCC to be fully informed in its consideration of any matter before it. This approach is consistent with my recommendations on Code governance and the powers and role of the CGB Sanctions Committee. I recommend accordingly.

9.166 The CCC also asked:

The Committee acknowledges the decision of the ICA in February 2012 to publicly release the Committee’s Annual Reports relating to Code Participant compliance with the Code and to make them available on the ICA website. The Committee however seeks an amendment to its Charter to formally recognise its ability to publish reports on its Code compliance activities.\textsuperscript{315}

9.167 I also accept this submission. I have recommended leaving reporting as a matter for the Code Governance Body.

9.168 There is one additional matter. Section 7 of the Code deals with governance as well as Code monitoring and enforcement. Its structure and phrasing are complex, dense and difficult. Much of it deals with the procedures and reporting arrangements among FOS Code, the CCC and Code Participants in relation to the investigation of alleged Code breaches and matters leading to any corrective action or sanction. These are not particularly relevant to a customer. I recommend that this material is extracted into a Code Monitoring and Enforcement Guideline. The CCC 2011–2012 Annual Report noted that it had developed guidelines on the criteria and processes that it may adopt, when determining whether to impose a sanction under section 7.22 of the Code, to publish the noncompliance of a Code Participant.\textsuperscript{316} This guideline might be considered, in combination with the relevant standards in the Code, section 7, as the foundation of the Code Monitoring and Enforcement Guideline.

9.169 This approach is consistent with the Code Framework Principles and Code Content Principles Seven–Nine inclusive.\textsuperscript{317}

\textsuperscript{314} CCC submission, Issue 12, p 7.
\textsuperscript{315} CCC submission, Issue 12, p 8.
\textsuperscript{317} See Section 7 above.
Recommendation 52
A Code Participant under investigation for a Code breach or non-compliance should not be named publicly. A Code Participant under investigation for, or allegation of, a Code breach or non-compliance must be identified to the CGB Sanctions Committee on its request.

Recommendation 53
The CGB Sanctions Committee should have power to make decisions about the reporting of its activities and matters before it, consistent with the other recommendations.

Recommendation 54
The terms of the Code, section 7 on processes, procedures and reporting for Code monitoring and enforcement should be removed from the body of the Code and placed in a Code Monitoring and Enforcement Guideline to be developed.
Issue 13 — Code enforcement and sanctions

9.170 The Review Issues Paper asked for submissions asks on whether the Code enforcement and sanctions standards should:

1. be promoted better by Code Participants and FOS; and
2. include sanctions from ASIC RG 183.

9.171 I have dealt with Code promotion under Issue 1.\(^{318}\)

9.172 Most of these matters have been dealt with under Section 8: Code Governance. I comment on the remaining matters below.

9.173 The Selected Statistics indicate that:

1. the IDR disputes, as a proportion of rejected claims, remained steady from 2010 to 2011;
2. the IDR outcomes for insureds and insurers remained steady from 2010 to 2011;
3. the EDR disputes as a proportion of rejected claims doubled from 2010 to 2011; and
4. most disputes are about claims (70–80%) and some are about buying.

9.174 The Selected Statistics also indicate that:

1. there is a very low rate of Code breach allegations by customers or their advocates;
2. in 2010, Code Participants self-reported 1879 breaches and others reported 314 breach allegations. In 2011, Code Participants self-reported 2010 breaches and others reported 108 breach allegations;\(^{319}\)
3. a very high percentage of breaches or non-compliance instances are remedied by FOS working with the insurer;
4. the majority of IDR complaints, EDR disputes and alleged and established Code breaches are in relation to claims;
5. in 2010, there were four significant breaches reported and in 2011, one significant breach was reported; and
6. in the period, the CCC has not sanctioned a Code Participant.

9.175 The FOS QF Survey statistics, when compared with similar statistics for the 2009–2011 period, suggest that while the latter indicate lower levels of Code breaches or non-compliance, the former indicate higher levels of Code breaches or non-compliance.

9.176 I have dealt with the legal status and enforceability of the Code in Issue 4 and under Issue 9 on claims handling.

9.177 The Major Reports and the review consultations, forums and submissions extensively considered the naming of a Code Participant. It is clear that a Code Participant who is merely accused of a Code breach should not be publicly named. It is clear that a Code Participant who is merely accused of a Code breach should be named confidentially to the CGB Sanctions Committee in its consideration of a Code Corrective Action or a Sanction. It is clear that the CGB Sanctions Committee can impose a sanction of naming a Code Participant for a Code breach. The remaining question therefore is whether a Code Participant who has agreed a Corrective Action with the CGB Sanctions Committee could or should be named publicly. The Corrective Action regime has produced some very good results. It would be inimical to the facility to agree matters with a Code Participant to have the additional penalty

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\(^{318}\) See Issue 1 above.

\(^{319}\) 2011 Annual report of the Code Compliance Committee, para 4.1.7.
of being named publicly. However, if the breach is significant or involves a ‘serious or systemic matter’, there are different considerations. While it is important to retain the co-operative ethos involved in a Corrective Action, the gravity of the breach might be such that it should be made public. This is especially so if the breach is not self-reported by the Code Participant but arose through FOS EDR, a customer, a complaint or through Code monitoring and investigation processes. It is not possible to prescribe an approach for all cases even here. The CGB Sanctions Committee should have a discretion to name the culprit in a serious, systemic or significant breach if the Code Participant did not self-report, was unco-operative in the Corrective Action phase or otherwise the breach merited the naming of the Code Participant.

9.178 Suncorp’s submission drew attention to an issue here:

Suncorp considers the definition of a ‘serious or systemic breach’ should be aligned to the breach reporting requirements in place with APRA and ASIC. It is appropriate that this definition remain consistent across the various regulatory instruments used within the industry to ensure a broad understanding of what does and does not constitute a ‘serious or systemic breach’. The Code should encourage participants unsure of whether a breach is ‘serious or systemic’ to refer the breach to the CCC for consideration.

9.179 I accept this submission and recommend accordingly.

9.180 The CCC submitted that the Code sanctions are appropriate. I agree, subject to the approach above for a significant breach or a serious or systemic matter and I recommend that there is no other change in them. There should be a clear demarcation between a corrective action and a sanction.

9.181 This approach is consistent with the Code Framework Principles and Code Content Principles Seven–Nine inclusive.

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**Recommendation 55**

The CGB Sanctions Committee should have a discretion to name publicly a Code Participant in the context of a Corrective Action, if the Code Participant has committed a significant, serious or systemic breach of, or in relation to, the Code.

**Recommendation 56**

The Code sanctions for a Code Participant, subject to Recommendation 55, should not be changed.

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320 Suncorp submission, Issue 13, p 10.
321 See Section 7 above.
Issue 14 — Financial hardship

9.182 The Review Issues Paper asked for submissions on whether:

1. the use of Centrepay as an option for payments should be a Code standard;
2. the Code should contain guidelines for dealing with hardship cases, particularly on premium payment, excess and debt collection; and
3. if so, whether the guidelines should cover the criteria for hardship and the available outcomes.

9.183 The issue of financial hardship was the subject of a number of consultations and forums — one exclusively devoted to the issue. A working group took the development of the issue from those forums and worked with me and advised me on a draft Financial Hardship Guideline which forms a part of the New Code. I am delighted to report that the Guideline reflects a broad stakeholder consensus on the issue.

9.184 It is therefore necessary to say only a number of things about the issue. There were a number of submissions that asked for a Financial Hardship Guideline that was flexible: ICA, ILS, CCC, ASIC, Suncorp and IAG. The ICA submitted that the Code should not deal with the payment of premiums nor have an explicit reference to the treatment of excesses. I agree to some extent with the first submission and accept it in part. I disagree with the second submission and do not accept it. The withholding of indemnity, services or payment by an insurer, when a customer does not pay the excess, seems to be more common than the clear common law (Calliden v Chisholm [2009] NSWCA 398) and the FOS Ruling (July 2010) would lead one to expect. The ASIC submission expressed concern about this issue: “Taking a practical and flexible approach to payment of an excess should be a standard industry response to financial hardship and ASIC would welcome a commitment to this effect in the Code.” The Code is an ideal way of setting an industry standard. FOS may wish to reconsider its Circular in the light of the Code Guideline. The ILS and WRLC submissions made a number of valuable drafting suggestions for the Guideline, some of which I have incorporated in the draft guideline. I have not adopted the ILS or WRLC suggested list of circumstances of disablement because I consider that a base of a Centrelink income statement with a list of non-exclusive factors gives a better balance of clarity, practicality and simplicity as well as flexibility.

9.185 An application for financial hardship status or a financial hardship issue can become a complaint for IDR or a dispute for FOS EDR. But if an insurer wishes to cancel a Retail Code Insurance, usually of annual duration, these processes do not conclude in time for a timely cancellation of the insurance. I have suggested in the guideline that a reference to the CGB Sanctions Committee should be available for a determination on the issue in these circumstances, as an alternative.

9.186 The ASIC submission thought that there was considerable value in low-cost basic insurance products given persistent levels of non-insurance particularly among those who are financially disadvantaged.

9.187 The WRLC, Suncorp, FOS QF Survey and the CCC submissions recommended that Code Participants recognise the importance of training.322 I agree with and accept this submission and I have attempted to render it in the drafting of section 4 on Education and Training in the Code. I recommend accordingly.

9.188 This approach is consistent with the Code Framework Principles and Code Content Principles.323

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322 See Issue 5 above.
323 See Section 7 above.
**Recommendation 57**

The Code standards should include a Financial Hardship Guideline substantially in the terms set out in Appendix F.

**Recommendation 58**

The Code standards on education and training should include education and training on financial hardship.
Issue 15 — Natural disasters

9.189 The Review Issues Paper invited submissions about whether:

1. the Code should be able to be varied by the ICA in an extraordinary catastrophe or disaster;
2. the definition of catastrophe or disaster is appropriate and sufficiently specific;
3. the criteria in the ICA Disaster Declaration Guidelines are appropriate and sufficiently specific and the consequences are appropriate; and
4. the requirement for Code Participants to have a natural disaster response plan which complies with minimum agreed standards.

9.190 The questions and issues raise two matters. The first is the ICA Disaster Declaration Guideline and the second is whether the Code should have a standard for Code participants to have a Natural Disaster Customer Response plan.

Disaster Declaration Guidelines

9.191 The FOS QF Survey supported the removal of the former section 4.3 of the Code. It is important to ensure that omission goes no further than it needs to achieve its effect and does not undermine the operation of the Code. The 2012 Code enables the ICA to declare a disaster. The effect of a declaration is that the four-month rule does not apply. The declaration of a disaster is intended to be subject to guidelines binding on the ICA. The Terms of Reference include a review of those Guidelines. I find that the precepts and drafting are fit for their purpose. I recommend that the Guidelines be adopted and incorporated as one of the Code Guidelines. I do not recommend any substantive change to the terms of the Natural Disaster Guideline.

Natural Disaster Customer Response plan

9.192 The FOS QF Survey recorded that some Code participants are implementing some additional claims handling changes as follows:

1. Consolidating state based claims operating systems into a single system to allow for a more consistent methodology of lodging, assessing and reviewing claims. This is expected to ensure consistent claims practices and processes; improve claims handlers’ skills and management control, while allowing for flexibility; and centralisation and alignment of reporting functions. Code participants have identified that a single claims operating system also enables claims to be managed from anywhere in Australia, in the event of a catastrophe or disaster.
2. Introduction of a claims operating system which consolidates a number of claims systems, including the Code’s claims handling time frames. The system is activity based and automatically creates a time frame for a claims handler’s response to a customer’s enquiry or request for example, in accordance with the time frames prescribed by Section 3 of the Code.
3. Introducing dedicated catastrophe response teams and expanding existing catastrophe response teams.
4. Improving processes for securing resources required by catastrophe response teams.
5. Increasing the number of vehicles available around Australia for the use of dedicated catastrophe response teams, to improve the speed at which on-site insurance offices can be established in regions severely impacted by a catastrophe.

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324 Code, section 3.4.
6. Development of specific reporting capability to enable monitoring of the new four month claims decision time frame.\textsuperscript{325}

9.193 The FOS QF Survey referred to the May 2010 Code requirement for Code Participants to establish their own internal processes for responding to catastrophes and disasters. The obligation was removed from the Code in February 2012. The FOS QF Survey submitted that consideration should be given to reinstating this requirement.\textsuperscript{326} The FOS QF Survey also recommended:

Consideration should also be given to including a Code requirement that Code participants coordinate their response to natural disasters with state governments and local councils, as well as organisations such as FOS, as early as possible. This could be achieved by insertion in events response plans. We note that the July 2012 Code has retained the requirement that Code participants cooperate and work with the ICA in its role of industry coordination and communications, under the ICA’s catastrophe coordination arrangements, which is now outlined in section 4.4.\textsuperscript{327}

9.194 I accept this FOS QF Survey view.

9.195 In my view, this is a fine example of industry best practice developing and evolving through experience. It enables the Code to set a standard based on best practice for all Code Participants to follow. I recommend accordingly.

9.196 I also refer to the package of recommendations in relation to claims in natural disasters in paragraph 9.129.

9.197 This approach is consistent with Code Framework Principles One, Six and Seven and Code Content Principles One–Seven inclusive.\textsuperscript{328}

\begin{table}[h]
\centering
\begin{tabular}{|l|}
\hline
\textbf{Recommendation 59} \\
The Natural Disaster Declaration Guideline should be adopted and incorporated as one of the Code Guidelines — see Appendix F. There should be no substantive change to the terms of the Natural Disaster Declaration Guideline. \\
\hline
\textbf{Recommendation 60} \\
The Code standards should include a Natural Disaster Customer Response Guideline to be developed. \\
\hline
\end{tabular}
\caption{Recommendations for Natural Disaster Guideline}
\end{table}

\textsuperscript{325} FOS QF Survey, section 8.3, p 28.
\textsuperscript{326} FOS QF Survey, p 6, para (j); section 9, para 17, p 36.
\textsuperscript{327} FOS QF Survey, section 9, para 18, p 36.
\textsuperscript{328} Cross ref.
Issue 16 — Code governance

9.198 The Review Issues Paper asked for submissions on whether Code governance and the roles of the ICA, ASIC, FOS Code and the CCC should:

1. be promoted better by Code Participants, the CCC and FOS Code; and
2. best structure and co-ordinate the roles of FOS Code, the CCC and ASIC;

9.199 I have reported and recommended on this issue in Section 8 above.

Issue 17 — General issues

9.200 I have dealt with continuous improvement under Issue 5: Education and Training.

9.201 The other matters and questions under this issue did not attract any material supporting comment and I therefore do not develop them any further. I have offered some observations and suggestions on these matters in Section 12.

9.202 A table of the Major Report recommendations on these matters, and my responses to them, consistent with my views and recommendations, is set out in Appendix G.
### 10 Commentary on New Code

10.1 The table below shows the 2012 Code section numbers and standards in the first two columns, the equivalent section number of the recommended New Code in the third column and a commentary showing the differences and similarities between the 2012 and New Codes in the third column.

<table>
<thead>
<tr>
<th>Section</th>
<th>Current Code</th>
<th>Section in New Code</th>
<th>New Code and Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>We are committed to raising standards of service to our customers. This voluntary Code sets out the minimum standards we will uphold in the services we provide to you.</td>
<td>1.5</td>
<td>We commit that our conduct in all phases of our relationship with our Customers and the community will be honest, fair, reasonable, professional, transparent, prompt and efficient. We commit to high standards of service in our conduct under the Code.</td>
</tr>
<tr>
<td>1.2</td>
<td>The 2006 General Insurance Code of Practice remains in effect for all insurance contracts which were covered by that Code and which were entered into before adopting this Code. This Code is an amendment to the 2006 General Insurance Code of Practice</td>
<td></td>
<td>The recommendations in this Report mean that transitional measures will need careful consideration but their detail is beyond the scope of my Report.</td>
</tr>
<tr>
<td>1.3</td>
<td>But all policies taken out and new claims received by us after we have adopted this Code will be covered by this Code</td>
<td></td>
<td>See above.</td>
</tr>
<tr>
<td>1.4</td>
<td>This Code covers all general insurance products except workers compensation, marine insurance, medical indemnity insurance, and compulsory third party insurance including where there is linked driver protection cover. It does not cover reinsurance.</td>
<td>14</td>
<td>No change. See 2013 Code, section 14, Dictionary. However, the Code should apply differently to retail and wholesale insurances. Third party beneficiaries should be treated like customers. There should be a wide definition of Service Suppliers including distributors.</td>
</tr>
</tbody>
</table>
| 1.5     | This Code does not apply to life and health insurance products issued by:  
   a) life insurers; or  
   b) registered health insurers. | 14                  | No change. See 2013 Code, section 14, Dictionary.                                                                                                                                                                       |
<p>| 1.6     | Under a co-insurance arrangement, if one or more of the insurers has not adopted this Code, then that policy is not covered by this Code. |                     | No change.                                                                                                                                                                                                 |</p>
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<tr>
<td>1.7</td>
<td>Members of the Insurance Council of Australia, other industry participants and service providers may adopt this Code.</td>
<td>2.1 and 14</td>
<td>No change. See 2013 Code, sections 2.1 and 14, Dictionary.</td>
</tr>
<tr>
<td>1.8</td>
<td>This Code operates together with the many laws governing the financial integrity and conduct of the general insurance industry.</td>
<td>1.2, 1.3, 2.6 and 14</td>
<td>No change. See 2013 Code, sections 1.2, 1.3, 2.6 and 14–Dictionary.</td>
</tr>
<tr>
<td>1.9</td>
<td>Where there is any conflict or inconsistency between this Code and any Commonwealth, State or Territory law, that law prevails.</td>
<td></td>
<td>This cannot be right because the Code asks for higher standards than the law. See 2013 Code, sections 1.2, 1.3, 2.6 and 14–Dictionary.</td>
</tr>
<tr>
<td>1.10</td>
<td>Where this Code imposes an obligation on us in addition to obligations applying under a law, we will also comply with this Code except where doing so would lead to a breach of a law.</td>
<td></td>
<td>This is unnecessary because the Code asks for higher standards than the law. See 2013 Code, sections 1.2, 1.3, 2.6 and 14–Dictionary.</td>
</tr>
<tr>
<td>1.11</td>
<td>FOS is responsible for monitoring our compliance with this Code.</td>
<td>11 and 12</td>
<td>Now the CGB. See sections 11 and 12.</td>
</tr>
<tr>
<td>1.12</td>
<td>This Code does not provide to you or anyone else any legal entitlement or right of action against us, other than that you may: a) ask us to address a matter; b) report your concerns to FOS; and/or c) access our complaints handling procedures (see section 6).</td>
<td></td>
<td>This is not right. It should be deleted. See this Report Section 9, Issue 9, discussion on ‘Claims handling standards — legally enforceable’.</td>
</tr>
<tr>
<td>1.13</td>
<td>If we fail to meet our obligations under this Code the Code Compliance Committee may impose sanctions on us (see section 7).</td>
<td></td>
<td>No change. See 2013 Code, sections 11 and 12 and 14–Dictionary.</td>
</tr>
<tr>
<td>1.14</td>
<td>An independent party will be appointed by the Insurance Council of Australia to review this Code every three years.</td>
<td>1, 12 and 14</td>
<td>No change but I have recommended five years. See 2013 Code, sections 11 and 12 and 14–Dictionary.</td>
</tr>
<tr>
<td>1.15</td>
<td>The review will consider whether this Code operates in accordance with its objectives. It will be conducted in consultation with FOS, the Insurance Council of Australia, insurers, consumer and business representatives, and ASIC.</td>
<td>12 and 14</td>
<td>The CGB commissions the review and will decide on its terms. See 2013 Code, sections 12 and 14–Dictionary.</td>
</tr>
<tr>
<td>1.16</td>
<td>In addition to the formal review of this Code, the Insurance</td>
<td>12 and 14</td>
<td>Now the CGB. See 2013 Code, sections 12 and 14–Dictionary and</td>
</tr>
</tbody>
</table>
Council of Australia will consult with FOS, consumer and business representatives, and other stakeholders to develop this Code on an ongoing basis.

<table>
<thead>
<tr>
<th>1.17</th>
<th>The objectives of this Code are:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1)</td>
<td>to promote better, more informed relations between insurers and their customers;</td>
</tr>
<tr>
<td>2)</td>
<td>to improve consumer confidence in the general insurance industry;</td>
</tr>
<tr>
<td>3)</td>
<td>to provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and</td>
</tr>
<tr>
<td>4)</td>
<td>to commit insurers and the professionals they rely upon to higher standards of customer service.</td>
</tr>
</tbody>
</table>

The objectives of this Code will be pursued and its provisions applied, having regard to:

<table>
<thead>
<tr>
<th>1.18</th>
<th>The objectives of this Code will also be pursued and its provisions applied having regard to the fact that a contract of insurance is a</th>
</tr>
</thead>
<tbody>
<tr>
<td>1)</td>
<td>the requirement of insurers to meet the prudential standards established under the Insurance Act 1973;</td>
</tr>
<tr>
<td>2)</td>
<td>the fact that insurance contracts and arrangements between customers and insurers are governed by the Insurance Contracts Act 1984, the Corporations Act 2001 and the Australian Securities and Investments Commission Act 2001;</td>
</tr>
<tr>
<td>3)</td>
<td>the fact that the insurance contract is the governing document of the relationship of the customer and insurer; and</td>
</tr>
<tr>
<td>4)</td>
<td>the need for effective competition and cost efficiency in the general insurance industry, and flexibility in the development and enhancement of products and services for customers.</td>
</tr>
</tbody>
</table>
contract involving the utmost good faith which requires each party to the contract to act towards the other party with the utmost good faith in respect of any matter arising under the contract.

1.20 This Code requires us to be open, fair, and honest in our dealings with customers and commits us to high standards of service when selling insurance, dealing with claims responding to catastrophes and disasters and handling complaints.

1.4 and 1.5 No material change — see 2013 Code, sections 1 and 14–Dictionary.

1.21 You should carefully consider whether the insurance product you are buying suits your individual circumstances and needs and ensure that you meet your obligations under your insurance policy.

Compare 3.3 Omitted.

1.22 Definitions are included at the end of this Code.

1.7 and 14 There are some new definitions to improve the clarity and precision of the Code standards.

2 Buying Insurance

2.1 The following standards apply to the initial enquiry and buying of insurance and renewal of cover.

1. We will only ask for and take into account relevant information when assessing your application for insurance cover.

2. You will have access to information about you that we have relied on in assessing your application and an opportunity to correct any mistakes or inaccuracies. In special circumstances, we may decline to release information but we will not do so unreasonably. In these circumstances, we will give you reasons and you will have the right to request us to review our decision through our complaints handling procedures. We will provide our reasons in writing upon

8 No material change.

8.4

8.5

No material change.
3. Where an error or mistake in assessing your application for cover is identified, we will immediately initiate action to correct it.

4. Our sales process will be conducted in a fair, honest and transparent manner.

5. If we cannot provide you with insurance cover, we will:
   a) give you reasons;
   b) refer you to another insurer, Insurance Council of Australia or NIBA for information about alternative insurance options (unless you already have someone acting on your behalf); and
   c) if you are unhappy with our decision, make available information about our complaints handling procedures.

| 2.2 | You may (if your policy permits) cancel your policy. If you cancel your policy, any money we owe you will be sent to you within 15 business days. | 8.4 | I ask whether it is practical always to meet the 15-day time limit. |
| 2.3 | Information about our products and this Code will be available when you buy insurance as well as on request. | 8.2 |  
| 3 |  
| 6.1 | The following standards apply to the selling of our products by our employees and Authorised Representatives. |
| 6.2 |  
| 1 | Our employees and our Authorised Representatives will conduct their services in an honest, efficient, fair and transparent manner. |
| 2 | Our Authorised Representatives will notify us of any complaint they receive against them while they are acting on our behalf. |
| 3 | Our Authorised |
Representatives will inform you of the service they have been asked to provide and the identity of the insurer for whom they are acting.

4. Our employees and our Authorised Representatives will not perform functions which do not match their expertise.

5. Our employees and our Authorised Representatives will receive adequate training to carry out their sales tasks and functions competently.

6. Training of our employees and Authorised Representative will include:

- principles of general insurance and any relevant consumer protection law;
- product knowledge; and
- the requirements of this Code.

7. We or our Authorised Representatives will keep records relating to such training for at least five years and on request shall make those records available for examination by FOS.

8. We will:

- measure the effectiveness of training by monitoring the performance of our Authorised Representatives and our employees; and
- require additional or remedial training to address any identified deficiencies.

9. We will handle complaints relating to our Authorised Representatives under our complaints handling procedures, when they are acting on our behalf.

---

<table>
<thead>
<tr>
<th>AUSTRALIAN FINANCIAL SERVICES LICENSEES ACTING ON OUR BEHALF</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.5 We may contract with other persons who are not our Authorised Representatives but</td>
</tr>
</tbody>
</table>
who are licensed by ASIC to sell insurance products. These may include insurance brokers, banks, or credit unions. If they do not comply with this Code when selling our products on our behalf you can:

A) ask us to address the matter; and
B) report your concerns to FOS.

<table>
<thead>
<tr>
<th>3</th>
<th>Insurance Claims</th>
<th>In Claims Service Levels</th>
<th>The Claims Service Levels are a term of a Retail Code Insurance.</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Within ten business days of receipt of your claim, we will decide to accept or deny your claim and notify you of our decision, if we have received all necessary information at the time your claim is lodged and no further assessment or investigation is required.</td>
<td>The Claims Service Levels include a reference to a Completed Claim and the timetable then begins.</td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>The following standards apply to all claims where further information, assessment or investigation is required.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 1. | Within ten business days of receiving your claim, we will:
  a) Notify you of the detailed information we require to make a decision on your claim;
  b) If necessary, appoint a loss assessor/loss adjuster; and
  c) Provide an initial estimate of the time required to make a decision on your claim. |
| 2. | If we decide to appoint a loss assessor/loss adjuster and/or investigator, we will notify you within five business days of appointing them. |
| 3. | We will keep you informed of the progress of your claim, at least every 20 business days. |
| 4. | We will respond to your routine requests for information within ten business days. |
| 5. | When we have all necessary information, |

There is a wide definition of Service Supplier but exceptions for Special Services: lawyers and private investigators.
information and have completed all investigation that was required to assess your claim, we will decide to accept or reject your claim and notify you of our decision within ten business days.

3.3 If these time frames are not practical due, for example, to the complex nature of your claim we will agree reasonable alternative time frames with you. If we cannot reach an agreement you can access our complaints handling procedures.

The Claims Service Levels also provide for an Agreed Timetable and it is enforceable.

3.4 The following standards apply to specified classes of policies.

1. Unless exceptional circumstances apply, where a claim is made under such a policy and further information, assessment or investigation is required:
   a) we will make a decision to accept or deny your claim within four months of receipt of your claim;
   b) if we do not make a decision, we will inform you in writing of your right to:
      i. access to our internal dispute resolution process, and
      ii. take any complaint in relation to the handling of your claim to an external dispute resolution scheme, if you so choose.

2. Where exceptional circumstances apply under 3.4.1 we will make a decision to accept or deny your claim within 12 months.

3. If you ask us whether such a policy provides cover for a loss you have suffered, we will:
   A) ask you whether you would like to lodge a claim,
   B) explain that if you do, the question of coverage will

Section 3.4.3 has been enhanced.
If the Code Participant instructs the service Supplier in time and uses its best endeavours to get the report in time, the Code Participant is not liable for a breach of the Claims Service Levels.
be fully assessed, and
C) not discourage you from
lodging a
Claim even if we are of the
view that it is unlikely to be
accepted.
4. Where we engage an external
expert to provide a report
which is necessary to assess
your claim, we will instruct
them to provide their final
report to us within 12 weeks.
If the external expert fails to
provide a final report within
this period, we will inform
you of this and keep you
informed of progress in
obtaining the report.

<table>
<thead>
<tr>
<th>3.5</th>
<th>The following standards apply to all claims.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>We will conduct claims handling in a fair, transparent and timely manner.</td>
</tr>
<tr>
<td>2.</td>
<td>We will only ask for and take into account relevant information when deciding on your claim.</td>
</tr>
<tr>
<td>3.</td>
<td>You will have access to information about you which we have relied on in assessing your claim and an opportunity to correct any mistakes or inaccuracies. In special circumstances or where a claim is being or has been investigated, we may decline to release information and reports but we will not do so unreasonably. In these circumstances, we will give you reasons and you will have the right to request a review of our decision through our complaints handling procedures. We will provide our reasons in writing upon request</td>
</tr>
<tr>
<td>4.</td>
<td>Where an error or mistake in dealing with your claim is identified, we will immediately initiate action to correct it.</td>
</tr>
<tr>
<td>5.</td>
<td>If we deny your claim, we will: a) provide written reasons for our decision to deny</td>
</tr>
</tbody>
</table>

No material change.
<table>
<thead>
<tr>
<th>3.5</th>
<th>The standards of section 3 of this Code do not apply if you or another person who may be entitled to benefits under your policy have commenced any proceedings in any court, tribunal or under any other dispute handling process (other than FOS) in respect of your claim.</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.6</td>
<td>The standards of section 3 of this Code do not apply if you or another person who may be entitled to benefits under your policy have commenced any proceedings in any court, tribunal or under any other dispute handling process (other than FOS) in respect of your claim.</td>
</tr>
<tr>
<td></td>
<td>In section 6 on Service Suppliers and Employees and in section 4 on Education and Training See comments on current section 2.4 above.</td>
</tr>
<tr>
<td></td>
<td>This is modified. See the definition of Disclosable Material. The current standard is otherwise not justified.</td>
</tr>
<tr>
<td>3.7</td>
<td>The following standards apply to the handling of claims by our employees and service providers.</td>
</tr>
<tr>
<td></td>
<td>1. Our employees and our service providers will conduct their services in an honest, efficient, fair and transparent manner.</td>
</tr>
<tr>
<td></td>
<td>6.1 6.2</td>
</tr>
<tr>
<td></td>
<td>The Internal Complaints Process applies to a complaint.</td>
</tr>
</tbody>
</table>
2. Our service providers will notify us of any complaint they receive against them when acting on our behalf.
3. Our service providers will inform you of the services they have been asked to provide and the identity of the Insurer for whom they are acting.
4. Our employees or our service providers will not perform functions that do not match their expertise.
5. Our employees and our service providers will have and maintain:
   a) a current licence if required under legislation; and
   b) membership of a relevant professional body or sufficient expertise.
6. Our employees will receive adequate training to carry out their claims handling tasks and functions competently and to deal with customers professionally.
7. Training of our employees will include:
   a) principles of general insurance and any relevant consumer protection law;
   b) what to do in the event of a claim;
   c) product knowledge;
   d) understanding the consumer situation, particularly in the aftermath of a catastrophe or disaster; and
   e) the requirements of this Code.
8. We will keep our employees’ training records for at least five years and on request shall make those records available for examination by FOS.
9. We will:
   a) measure the effectiveness of training by monitoring the performance of our...
employees; and
b) require additional or remedial training to address any identified deficiencies.

10. Our service providers will obtain our approval before subcontracting their services.
11. We will handle complaints relating to or received by our service providers under our complaints handling procedures, when they are acting on our behalf.

| FINANCIAL HARDSHIP (YOU) [see Financial Hardship Guideline] | 5.1 | We acknowledge that our communities and some of our customers experience financial hardship.

5.2 We commit that we will treat each customer who experiences financial hardship in accordance with the Code Service Principles.

5.3 We commit that we will conduct ourselves in dealing with your financial hardship in accordance with the Financial Hardship Guideline. The Financial Hardship Guideline applies to Retail Code Insurances only.

5.4 A Code Participant is bound by the Code in relation to the services and conduct of a Service Supplier to a Code Participant in relation to any matter under the Financial Hardship Guideline.

3.8 Where you demonstrate to us that you are in urgent financial need of the benefits you are entitled to under your policy as a result of the event causing the claim, we will:

a) fast-track the assessment and decision process of your claim; and/or
b) make an advance payment to assist in alleviating your immediate hardship within five business days of you demonstrating your urgent financial need.

3.9 We will notify any financial institution that you have told us has an interest in your insurance

No material change. In the Financial Hardship Guideline.
<table>
<thead>
<tr>
<th>3.10</th>
<th>If you are unhappy with our decision, we will inform you of our complaints handling procedures.</th>
<th>No material change. In the Financial Hardship Guideline.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FINANCIAL HARDSHIP (THIRD PARTIES RECOVERIES)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11</td>
<td>We and our service providers will comply with the ACCC &amp; ASIC Debt Collection Guideline: for Collectors and Creditors, which require us to act fairly and in a considerate manner.</td>
<td>No material change. In the Financial Hardship Guideline.</td>
</tr>
</tbody>
</table>
| 3.12 | If a person is experiencing difficulty repaying a debt due to illness, unemployment or other reasonable cause, we will work with that person, if he or she cooperates with us, and consider one of the following options:  
   a) extending the period of repayment and reducing the amount of each payment due accordingly;  
   b) postponing payments for an agreed period; or  
   c) extending the period of repayment and postponing payments for an agreed period. | This has been expanded in the Financial Hardship Guideline. |
| 3.13 | If we are unable to reach agreement with a person referred to in clause 3.12 about the repayment of their debt, we will provide information to them about:  
   a) our complaints handling procedures; and  
   b) the existence of the Australian Financial Counsellors and Credit Reform Association (www.afccra.org) for a referral to a not for profit, free financial counselling service. | No material change. In the Financial Hardship Guideline. |
| **REPAIR WORKMANSHIP AND MATERIALS** | In the Claims Service Levels | |
| 3.14 | Where we have selected and directly authorised a repairer, we will:  
  | a) accept responsibility for the quality of workmanship and materials;  
  | b) handle any complaint about the quality or timeliness of the work or conduct of the repairer as part of our complaints handling process. | No material change — in the Claims Service Levels. |
| 4 | **Responding to Catastrophes and Disasters** | See section 7 |
| 4.1 | This section applies to catastrophes and disasters resulting in a large number of claims. | Natural Disaster is defined. |
| 4.2 | We will respond to catastrophes and disasters in a fast, professional and practical way and in a compassionate manner. | 7.2 We commit to responding to Natural Disasters in accordance with the Code Service Principles. |
| 4.3 | If you have a property claim resulting from a catastrophe or disaster and we have finalised your claim within one month of the catastrophe or disaster, you can request a review of your claim if you think the assessment of your loss was not complete or accurate, even though you may have signed a release. We will give you six months from the finalisation of your claim to ask for a review of your claim. We will inform you of:  
  | a) this entitlement when we finalise your claim; and  
  | b) our complaints handling procedures. | Claims service Levels Period extended to seven months from date of release. |
| 4.4 | We will co-operate and work with the Insurance Council of Australia in its role of industry coordination and communications under the Insurance Council of Australia’s catastrophe co-ordination arrangements. | 7.4 The CGB role is included. |
| 5 | **Information and Education** | Section 4 |
| 5.1 | We will support industry | 4.1 We commit to working with the ICA |

---
| 5.2 | We will, either directly or through the Insurance Council of Australia, make readily available to our customers:  
|     | a) up-to-date information on general insurance;  
|     | b) information to assist home and motor insurance customers to determine the level of insurance cover they require;  
|     | c) information about the key factors that affect premiums; and  
|     | d) information about this Code and its operation. | This is phrased more generally in section 3. |
| 5.3 | The Insurance Council of Australia will promote this Code and make copies widely available. | Code Participants and the ICA should promote the Code, led by the CGB. |
| 5.4 | We will provide clear and accessible information in our product information and on our website including information about our claims process, the Code and how we deal with complaints (including your right to take your dispute to our external dispute resolution scheme). | This is phrased more generally in section 3. The claims processes are in the Claims Service Levels. |
| 6 | Complaints Handling Procedures | See relevant guideline |
| 6.1 | The following standards apply to all complaints handling.  
1. We will conduct complaints handling in a fair, transparent and timely manner.  
2. We will make available information about our complaints handling procedures.  
3. We will only ask for and take into account relevant information when deciding on your complaint.  
4. You will have access to information about you that we have relied on in assessing your complaint and an opportunity to correct any mistakes or inaccuracies. In | 10.2 We commit that we will treat each Customer who makes a complaint in accordance with the Code Service Principles. |
special circumstances or where a claim is being or has been investigated, we may decline to release information but we will not do so unreasonably. In these circumstances, we will give you reasons. We will provide our reasons in writing upon request.

5. Where an error or mistake in handling your complaint is identified, we will immediately initiate action to correct it.

<table>
<thead>
<tr>
<th>INTERNAL DISPUTE RESOLUTION — COMPLAINTS</th>
<th>See the Guideline.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>6.2</strong></td>
<td>We will respond to complaints within 15 business days provided we have all necessary information and have completed any investigation required.</td>
</tr>
<tr>
<td><strong>6.3</strong></td>
<td>In cases where further information, assessment or investigation is required we will agree reasonable alternative time frames. If we cannot agree, we will treat your complaint as a dispute and we will provide information on how you can have your complaint reviewed by a different employee who has appropriate experience, knowledge and authority.</td>
</tr>
<tr>
<td><strong>6.4</strong></td>
<td>We will keep you informed of the progress of our response to the complaint.</td>
</tr>
<tr>
<td><strong>6.5</strong></td>
<td>When we notify you of our response, we will provide information on how our response can be reviewed by a different employee who has appropriate experience, knowledge and authority.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INTERNAL DISPUTE RESOLUTION — DISPUTES</th>
<th>See the Guideline.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>6.6</strong></td>
<td>If you tell us you want our response reviewed, we will: a. treat it as a dispute; b. notify you of the name and contact details of the employee assigned to liaise</td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>with you in relation to the dispute; and c. respond to the dispute within 15 business days provided we receive all necessary information and have completed any investigation required.</td>
<td></td>
</tr>
<tr>
<td>6.7</td>
<td>In cases where further information, assessment or investigation is required we will agree reasonable alternative time frames. If we cannot reach agreement you can report your concerns to FOS.</td>
</tr>
<tr>
<td>6.8</td>
<td>We will keep you informed of the progress of our review of your dispute at least every ten business days.</td>
</tr>
<tr>
<td>6.9</td>
<td>We will respond to your dispute in writing giving: a) reasons for our decision; b) information about how to access available external dispute resolution schemes; and c) notify you of the time frame within which you must register your dispute with the external dispute resolution scheme.</td>
</tr>
<tr>
<td>EXTERNAL DISPUTE RESOLUTION</td>
<td>10.5–10.9</td>
</tr>
<tr>
<td>6.10</td>
<td>If we are not able to resolve your complaint to your satisfaction within 45 days (including both the complaint and internal dispute resolution process referred to in this section of the Code), we will inform you of the reasons for the delay and that you may take the complaint or dispute to our external dispute resolution scheme even if we are still considering it (and provided the complaint or dispute is within the scheme’s Terms of Reference). We will inform you that you have this right and details of our external dispute resolution scheme before the end of the 45-day period.</td>
</tr>
<tr>
<td>6.11</td>
<td>Insurers subscribe to the</td>
</tr>
</tbody>
</table>
### 6.12
FOS is available to customers and third parties who fall within the Terms of Reference of FOS.

10.5–10.9 No material change.

### 6.13
External dispute resolution determinations made by FOS are binding upon us in accordance with the Terms of Reference.

10.5–10.9 No material change.

### 6.14
Where FOS Terms of Reference do not extend to you or your dispute, we will advise you to seek independent legal advice or give you information about other external dispute resolution options (if any) that may be available to you.

10.5–10.9

### 7 Code Monitoring and Enforcement

A Code Monitoring and Enforcement guideline is recommended

#### REPORTING AN ALLEGED CODE BREACH

7.1 Alleged breaches of this Code can be reported to:
Financial Ombudsman Service Limited
GPO Box 3
Melbourne VIC 3001
1300 78 08 08 (National Toll Free)
Tel: (03) 9613 6300
Fax: (03) 9613 6390

The report should be to the CGB.

#### OUR RESPONSIBILITY

Referred to the Code Monitoring and Enforcement Guideline.

7.2 We will:
   a) have appropriate systems and processes in place to enable FOS and us to monitor compliance with this Code;
   b) prepare an annual report to FOS on our compliance with this Code; and
   c) have a governance process in place to report on our compliance with this Code to our Board of Directors or Executive Management.

Referred to the Code Monitoring and Enforcement Guideline.

7.3 If we identify a significant breach of this Code we will report it to FOS within ten business days.

11 Referred to the Code Monitoring and Enforcement Guideline.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.4</td>
<td>We will be in breach of this Code if our employees, our Authorised Representatives, or our service providers fail to comply with this Code when acting on our behalf.</td>
<td>11 Referred to the Code Monitoring and Enforcement Guideline.</td>
</tr>
<tr>
<td>7.5</td>
<td>We will co-operate with FOS in its: a) review of our compliance with this Code; and b) investigations of an alleged Code breach.</td>
<td>11 Referred to the Code Monitoring and Enforcement Guideline.</td>
</tr>
<tr>
<td>7.6</td>
<td>We will apply corrective measures within set time frames, as agreed with FOS, in response to a Code breach.</td>
<td>Corrective Measure is defined. Otherwise, referred to the Code Monitoring and Enforcement Guideline.</td>
</tr>
<tr>
<td><strong>FOS RESPONSIBILITY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.7</td>
<td>FOS will monitor and report on our Code compliance.</td>
<td>Referred to the Code Monitoring and Enforcement Guideline. Reporting arrangements should be considered by the CGB.</td>
</tr>
<tr>
<td>7.8</td>
<td>FOS will prepare annual public reports containing aggregate industry data and consolidated analysis on Code compliance.</td>
<td>Referred to the Code Monitoring and Enforcement Guideline.</td>
</tr>
<tr>
<td>7.9</td>
<td>FOS will regularly supply, subject to privacy law, the Code Compliance Committee aggregated breach data on a quarterly basis to enable the Code Compliance Committee to better monitor compliance with the Code and to identify serious or systemic issues with regard to the Code or its application.</td>
<td>Referred to the Code Monitoring and Enforcement Guideline.</td>
</tr>
<tr>
<td>7.10</td>
<td>FOS, at its own discretion, will determine how or if it proceeds with any action based on any report it receives from the Code Compliance Committee pursuant to clause 7.16.</td>
<td>Referred to the Code Monitoring and Enforcement Guideline.</td>
</tr>
<tr>
<td>7.11</td>
<td>FOS will: a) receive allegations about breaches of this Code; b) investigate all alleged breaches; c) provide the opportunity for us to respond to alleged</td>
<td>11 Corrective action is defined. Otherwise referred to the Code Monitoring and Enforcement Guideline.</td>
</tr>
<tr>
<td>Paragraph</td>
<td>Text</td>
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<tr>
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</tbody>
</table>
| 7.12 | FOS will report to the Code Compliance Committee on:  
- a) significant breach of this Code including our agreed corrective action;  
- b) on the outcomes of FOS Code compliance monitoring reviews; and  
- c) any incidents where we are unable to reach agreement with FOS regarding corrective action. |
| 7.13 | The Code Compliance Committee is an independent committee consisting of:  
- a) a consumer representative to be appointed by FOS Board;  
- b) an industry representative appointed by the Insurance Council of Australia; and  
- c) an independent Chair jointly appointed by FOS Board and the Insurance Council of Australia. |
| 7.14 | The Code Compliance Committee:  
- a) monitors Code compliance through reports received from FOS; and  
- b) makes determinations and imposes sanctions where FOS has reported a failure by us to correct a Code breach. |
<table>
<thead>
<tr>
<th>7.15</th>
<th>The Code Compliance Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>can conduct its own enquiries or request FOS to conduct further enquiries on its behalf.</strong></td>
<td><strong>Enforcement Guideline.</strong></td>
</tr>
<tr>
<td>7.16 <strong>The Code Compliance Committee will report, subject to privacy law, to FOS any findings or determinations it makes with respect to any data provided to it by FOS pursuant to clause 7.9.</strong></td>
<td><strong>Referred to the Code Monitoring and Enforcement Guideline.</strong></td>
</tr>
<tr>
<td>7.17 <strong>Where FOS has reported a failure by us to correct a Code breach, the Code Compliance Committee may dismiss FOS findings or request FOS to reconsider following further consultation with us.</strong></td>
<td><strong>Referred to the Code Monitoring and Enforcement Guideline.</strong></td>
</tr>
</tbody>
</table>
| 7.18 **If the Code Compliance Committee accepts FOS findings, it will:**  
  a) notify our Chief Executive Officer in writing of the detailed findings; and  
  b) provide an opportunity for us to respond within 15 business days. | **Referred to the Code Monitoring and Enforcement Guideline.** |
| 7.19 **The Code Compliance Committee will consider any response by us before making a final determination and imposing sanctions.** | **Referred to the Code Monitoring and Enforcement Guideline.** |
| 7.20 **The Code Compliance Committee will notify in writing our Chief Executive Officer of its decision and any sanctions to be imposed.** | **Referred to the Code Monitoring and Enforcement Guideline.** |
| 7.21 **When determining any sanctions to be imposed, the Code Compliance Committee will consider:**  
  a) the objectives of this Code;  
  b) the appropriateness of the sanction;  
  c) the significance of the breach; and  
  d) our role in the general insurance industry. | **Referred to the Code Monitoring and Enforcement Guideline.** |
| **SANCTIONS** |  |
| 7.22 **The Code Compliance Committee may impose one or more of the following sanctions:**  
  a) a requirement that particular | **Sanction is defined.** |
rectification steps be taken by us within a specified time frame;
b) a requirement that a compliance audit be undertaken;
c) corrective advertising; and/or
d) publication of our non-compliance.

| 7.23 | Code Compliance Committee decisions are binding on us. | No change. |
11 Access and diversity

11.1 The Major Reports touched on a range of issues of access and diversity for the community and customers in relation to general insurance. These included Australians:

(a) who live in geographically remote communities;
(b) who experience financial hardship;
(c) who lack financial literacy;
(d) who experience mental illness; and
(e) for whom English is not their first language.

11.2 The Independent Review Issues Paper identified financial hardship (issue 14) and financial literacy (paragraphs 10.61–10.63) as two issues for the Code. A dominant theme of the Issues Paper was the position of Australians who live in natural disaster prone areas. Training and education of Code Participants, employees and agents was identified as an issue (issue 5); training and education is a particularly important part of advancing the development of issues of access and diversity.

11.3 FOS QF Survey submitted:

A standardised approach to claims handling, such as the development of generic letters and call centre scripts can allow insurers the opportunity to flexibly and more efficiently respond to a natural disaster. The data from this review suggests that there can also be inherent risks with this strategy, including the creation of significant barriers to participation in claims handling processes by customers. Socially and economically disadvantaged customers are more likely to be excluded from claims handling processes, because of their lack of ability to properly advocate for their rights and understand process, procedure and information being communicated. Standardised processes can lead to further barriers to access and exclusion for people from a non-English speaking background, people living with a disability or mental illness and elderly customers.

11.4 The ILS submission drew attention to the difficulties that Non-English Speaking Background (NESB) customers and customers who experience mental illness can have in insurance matters.

11.5 The Australian Law Reform Commission (ALRC) is inquiring into insurance in relation to its brief on Age Barriers to Work in Commonwealth Laws. The ALRC Draft Report, Chapter 4 began:

This Chapter examines some of the key concerns with respect to mature age workers and insurance that emerged during the course of this Inquiry. These concerns include: the availability of, and information about, insurance products for mature age workers; age-based limitations and premiums for some insurance products; and the relevance, transparency and accessibility of the actuarial and statistical data upon which age-based insurance underwriting and pricing occurs.

11.6 The ALRC considered that the Insurance Reform Advisory Group (IRAG) is the most appropriate body to consider many of these matters in more detail. The ALRC also asked whether the General Insurance Code of Practice might usefully play a role in this area.

11.7 The ALRC Draft Report also examined the operation of the insurance exemption under the Age Discrimination Act 2004 (Cth) (ADA). The ALRC asked whether, if the exemption were

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329 FOS QF Survey, section 9, paras 12, 13, p 35.
331 ALRC, Grey Areas—Age Barriers to Work in Commonwealth Laws, para 4.2.
The ALRC also asked whether the powers of the Australian Human Rights Commission (AHRC) to request actuarial information from insurers are sufficient. The ALRC proposed that the AHRC and the insurance industry should develop guidance material about the application of any insurance exemption under the ADA or consolidated discrimination legislation.\textsuperscript{332}

11.8 The ALRC considered that the key barriers for mature age workers appeared to arise in relation to income protection insurance, travel insurance and workplace insurance. Travel insurance is the subject of the Code. Income protection insurance, as life insurance, could not be covered by the Code.\textsuperscript{333} Workplace insurance for the ALRC is not workers’ compensation insurance; it is excepted from the Code.\textsuperscript{334} Workplace insurance for the ALRC is personal accident insurance and public liability insurance.\textsuperscript{335} Personal accident insurance is often general insurance and it is then covered by the Code. Public liability insurance is covered by the Code unless excepted.

11.9 The ICA’s submission on the ALRC Issues Paper stated:

The General Insurance Code of Practice (Code) sets minimum standards of customer service for signatories and contains a specific obligation on insurers to refer cases where an insurer is unable to provide insurance to the National Insurance Brokers Association or, from 1 July, to the Insurance Council of Australia. This obligation assists consumers, including senior consumers, by providing an avenue for information about alternative insurance options.\textsuperscript{336}

11.10 The ALRC commented on the Code:

The ALRC is of the view that it is not appropriate for the General Insurance Code of Practice (the Code), or any other industry code, to mandate the removal or extension of age-based limitations on insurance policies. However, the ALRC proposes that ways in which the Code could be amended to encourage insurers to consider the needs and circumstances of mature age workers in insurance should be examined in the current review of the Code.\textsuperscript{337}

11.11 I agree with the ALRC that it is not appropriate for the Code, to mandate the removal or extension of age-based limitations on insurance policies.\textsuperscript{338} The central purpose of the Code is to state standards of conduct for its Participants. The prescription of minimum terms for cover or exclusions is an issue limited to the prescribed contracts under the ICA and it is not the Code’s place to extend the range or content of those prescribed contracts. I have also dealt with this matter in Issue 7.

11.12 The ALRC Discussion Paper proposed that:

In the course of the current review, the independent reviewer should consider the following areas of the Code and ways in which they may be amended to incorporate the needs and circumstances of mature age persons seeking insurance:

(i) Training of employees and authorised representatives;

(ii) Access to information relied upon in assessing claims;

(iii) Provision of up-to-date, clear and accessible information to customers;

(iv) Complaints handling procedures; and

\textsuperscript{332} ALRC, Grey Areas—Age Barriers to Work in Commonwealth Laws, para 4.3.
\textsuperscript{333} Code, section 1.5.
\textsuperscript{334} Code, section 1.4.
\textsuperscript{335} ALRC, Grey Areas—Age Barriers to Work in Commonwealth Laws, paras 4.25–4.33.
\textsuperscript{336} ALRC Submission dated 12 June 2012 to ALRC on the Issues Paper [name].
\textsuperscript{337} ALRC, Grey Areas—Age Barriers to Work in Commonwealth Laws, para 4.63.
\textsuperscript{338} I agree, with respect, with the ALRC’s reasons: ALRC, Grey Areas—Age Barriers to Work in Commonwealth Laws, paras 4.67–4.71.
and made a proposal in the following terms:

Proposal 4–3 From 2012, the General Insurance Code of Practice is being reviewed by an independent reviewer. In the course of the review, the ways in which the Code could be amended to encourage insurers to consider the needs and circumstances of mature age persons should be examined.

11.13 The ICA submission on the ALRC Discussion Paper Proposal 4–3 stated:

Industry response: The Insurance Council notes the ALRC has referred a number of issues to the Code Reviewer for consideration.

Subject to the findings of the independent Code review, and not to preclude any recommendation or decision of the Insurance Council Board, the Insurance Council does not consider the Code an appropriate place to address anti-discrimination issues in detail, having regard to the strong regulatory regime already in place in Australia to prevent unlawful discrimination. It may be appropriate to have an overarching principle in the Code committing Code participants to working to satisfy the general insurance needs of the whole community regardless of financial situation, age or disability. The Insurance Council will however carefully consider any comments made by the Independent Reviewer in this area.

11.14 In relation to this Proposal 4–3, the Suncorp submission \(^{340}\) stated:

Suncorp does not support this proposal.

The General Insurance Code of Practice (the Code) is a statement of principles designed to guarantee exceptional customer service standards and to protect the rights of policyholders and is supported by the objectives of the Code. Suncorp is of the view it is not appropriate, in any way, to limit these standards to a specific target group but considers it should apply to all consumers, without exception within the community.

11.15 The Code must be a code for all Australians and most of its standards apply to the widest range of community and customer backgrounds and experience. The question of the extent to which the Code should deal explicitly with issues of access and diversity (and in this context including mature age consumers) is important, complex and challenging.

11.16 In 2011, Financial Services Minister, the Hon. Bill Shorten, MP, tasked IRAG on greater access to insurance for people with mental illness. The outcome was an MOU and a press release outlining a program for developing the matter. Federal Parliament has also been developing a Bill to harmonise all the State anti-discrimination legislation. Beyondblue and the Australian Mental Health Council, in the context of their submissions to the Senate Committee Inquiry on the draft Bill, have publicly threatened legal action against the insurance industry, alleging discrimination, particularly in travel and income protection insurance against mentally ill people. The groups also seek changes to the draft Bill to increase the obligations on insurers to demonstrate that they have sufficient data to justify underwriting and claims decisions in this context. On 21 February 2013, the Senate Committee released its report on the draft Bill and noted it was not in a position to form extensive views on a range of issues including the exception for insurance. The Committee referred the Bill back to the Attorney-General’s Department (AGD) for consideration of the issues in its drafting of the final legislation. There is no set time frame for the AGD to consider the issues and it is unclear whether the Bill will be re-introduced before the federal election.

11.17 The Insurance Council of Australia (ICA) is the representative body of the general insurance industry in Australia. Its members represent more than 90 per cent of total premium income

\(^{339}\) ALRC, Grey Areas—Age Barriers to Work in Commonwealth Laws, para 4.75.
written by private sector general insurers. Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, commercial property, and directors and officers insurance). The objectives of the ICA include the promotion of community awareness of the role and benefits of insurance, and the communication to the industry about the needs and expectations of governments and the community. I asked the ICA for a briefing and summary of its and its members’ activities on access and diversity and I set out that summary in the following paragraphs:

(a) The ICA is involved in a number of initiatives to enable its member companies to engage with consumers and consumer representatives, and thereby better understand consumer requirements in relation to general insurance. The needs of specific sections of the Australian community have been highlighted in recent times with the unfortunate natural catastrophes of the last few years, and with growing awareness and understanding of the particular needs of certain people such as older Australians and Australians with a mental health issue. The main initiatives of the ICA that are supportive of consumer needs for general insurance are as follows:

(b) The ICA has been a member of the Federal Government’s Insurance Reform Advisory Group (IRAG) since its inception. This Group was convened by Minister Bill Shorten in 2011 as a forum for consumers to raise concerns about the availability and accessibility of insurance for all Australians.

(c) The ICA has established an Anti-Discrimination Working Group to facilitate the ICA’s engagement with IRAG and to co-ordinate the industry’s position concerning the availability of insurance for particular sections of the community.

(d) The ICA hosts quarterly meetings of its National Consumer Reference Group (NCRG), which is attended by a range of consumer advocates and non-government organisations such as COTA and Volunteers Australia. The ICA CEO, Rob Whelan is Chair of the NCRG and attends all meetings.

(e) The ICA offers a Consumer Referral Service call centre (CRS), and the ‘Find an Insurer’ website to assist consumers to find insurance providers for a particular product. The CRS call centre takes calls from a range of consumers trying to find insurance, including older Australians. For example, we have had several examples where older Australians have been assisted in finding an insurer for travel insurance. The ‘Find an Insurer’ website includes detailed lists of product categories and insurers that offer those products. The call centre has taken 20,000 calls since it commenced in July 2012, and the website has had approximately 250,000 product category views to date.

(f) The ICA is developing a website called ‘Understand Insurance’. This website will include rich and diverse general insurance financial literacy material. This website is still being developed and has not yet been publicly launched. However, the last NCRG meeting for 2012 was provided with a presentation on the proposed website, and this was well received by consumer advocates and organisations at the meeting. ASIC was also at this meeting, and they have since provided the ICA with very constructive feedback on the draft content. The ICA will continue to develop the content of the website over time to meet the diverse information needs of consumers.

(g) The ICA has recently established its Financial Inclusion Committee, which had its first meeting in January 2013. The focus of this Committee will be on microinsurance and financial literacy, and effective solutions to meet the insurance needs of low income Australians.
(h) The ICA is directly engaging with Good Shepherd Microfinance, which is examining potential solutions for microinsurance.

(i) The ICA engages with the Financial Ombudsman Service concerning systemic consumer issues arising for general insurance.

(j) The ICA has a very targeted strategy to support communities dealing with a natural catastrophe, including immediate on the ground co-ordination of consumer queries about insurance claims. This support is typically provided by placing ICA staff in local recovery centres, by enabling local electoral staff, clergy, district nurses, red cross and council staff, with appropriate materials and a robust escalation path for any insurance-related issues they perceive with the more vulnerable members of the community. To support this operation the ICA also activates a 24-hr Industry Catastrophe Hotline for community members to escalate issues and queries to the ICA. Significant issues received are then escalated to executive management from relevant insurance companies, appointed to the industry’s Insurance Taskforce (established for the catastrophe event).

11.18 The issues of access and diversity in the general insurance industry are important and complex. They are critical to the viability of our community. The complexity arises from the fact that specialist professional understanding is required to interpret data that will illuminate the issues: patience, goodwill and foresight are then required to develop appropriate solutions. There is significant work that has been done and continues to be done. There is a great deal of work yet to be done. The timing and resources for the 2012–2013 Independent Review are substantial but limited. The issue of financial hardship is already the subject of the Code in sections 3.8–3.13 and I have made some recommendations on it above. I have also made recommendations about financial literacy and natural disasters. The other issues of access and diversity merit the continuing work that the ICA, its members and other parts of our community are devoting to them. They are, regrettably for the reasons set out above, matters which I do not develop further in this report.
12 Reflections and suggestions

12.1 The consensus range from my consultations, forums and the submissions was that the Code should apply to all general insurers and insurance operations which conduct business in Australia. It is beyond ASIC’s powers and the ICA’s charter and membership to achieve this. APRA’s reach does not extend beyond a general insurer and so would have no jurisdiction over general insurance operations. The Code should remain voluntary and therefore is would be wrong in my view to make the adoption of the Code either a condition of authorization by APRA under the Insurance Act, 1973 or an AFSL condition of ASIC’s under the Corporations Act. It is important for the industry and the community that all general insurance operations should adopt the Code. I therefore suggest that the ICA, ASIC and the Code Governance Body work more closely together to bring all general insurers and insurance operations in Australia into the Code as Code Participants. This suggestion depends for its effectiveness on enhancing the Code governance framework, which I have recommended.

12.2 There are some daunting challenges in financial hardship and financial literacy as well as education and training. These matters need qualitative and continuous improvement. Qualitative improvement is difficult for management to measure and therefore difficult to implement and to assess whether the methods for improvement have been effective. Continuous improvement is easier to say than to do: it is expensive, resource intensive and fatiguing. I suggest that this matter should be the subject of consideration by stakeholders in the context of the recommended Code governance framework.

12.3 The Code and the NIBA code are closely related. I have suggested that they should continue to be aligned and reviewed together to avoid uncertainty or overlap.

12.4 There are a number of Code issues which closely involve FOS EDR. It would be necessary for FOS EDR to work with Code stakeholders in the recommended Code governance framework to consider and if thought fit, effect improvements in certain matters for customers and the industry. The matters are:

1. consistency of coverage of insurance products between the Code and FOS EDR;
2. consistency of process and availability of reasons, information and documents in the course of a customer matter, from Code to IDR and to EDR;
3. co-ordination of FOS EDR rulings with Code guidelines e.g. on the treatment of an excess.

There is the related issue of whether FOS EDR cap on home buildings’ claims should be increased.

12.5 There is a range of issues for the Code which are beyond recommendation now, for reasons set out earlier in my Report or in submissions. They continue to merit attention by stakeholders:

1. standards for retail product simplification;
2. in the absence of legislation, a ‘clear concise and effective’ disclosure standard;
3. standards for phone and internet sales;
4. a model for scaled advice, or better guidance for general advice for general insurance and phone sales in particular;
5. a KFS and health warning regime for all Retail Code Insurances; and
6. the extent to which the terms of Code Insurances on materials and repairs and the related Code standard, attracts laws (in addition to insurance laws) in relation to the quality of the material and repairs.\footnote{There is a thoughtful analysis in the submission by Campbell Anderson.}

12.6 The Major Reports, the consultations, forums and submissions maintained serious and persuasive criticisms of the notices insurers give for a product which derogates from the standard cover under the IC Act. However, the consultations, forums and submissions expressed serious reservations about the Code dealing with these matters. While the Code might not be the best place or mechanism for this issue, a solution would be in the interests of Code stakeholders.

12.7 The CCC submission supported the FOS QF Survey approach on the virtues of standardization in certain aspects of claims handling in natural disasters. I recognize the virtues of standardization. I consider that the current Code, with the changes I have recommended should be in operation for a period to assess whether standardization in these areas would have benefits commensurate with the costs.

12.8 There were three funding matters for consideration and action in other arenas:

1. a consumer advisory position at the Financial Services Ombudsman;\footnote{HOR Report, para 7.48.}
2. legal advice and assistance with insurance disputes following natural disasters; and
3. to the Insurance Law Service for the mobilisation of a temporary physical presence in areas of need following natural disasters.

These matters remain relevant to the matters under the Code but are beyond the Code principles and objectives.

12.9 There are also wider and more challenging issues that demand our attention: simple affordable products and greater access to insurance products for our disadvantaged citizens.

12.10 The ICA submitted\footnote{ICA letter. It is on the Code Review Website among the submissions.} that certain matters in the Independent Review 2012 Issues Paper were outside the Review’s Terms of Reference. This was echoed in a number of insurer submissions. I sought and was granted broad Terms of Reference. I have stated in consultations, forums and the Issues Paper that I interpreted them broadly.\footnote{Issues Paper, section 2.} I record here that I do not agree with or accept that submission. It happens that the majority of the issues so submitted fall beyond the central matters of the Review. I have dealt with some of those issues above. It is open to the ICA to accept or reject any part of my Independent Review, Report or Recommendations.
13 Appendices

Appendix A — Terms of Reference: Independent Review and Code Advisory Panel

Review of the General Insurance Code of Practice: Terms of Reference

- The objectives of the Code at clause 1.17 and the related provisions in clauses 1.18 and 1.19:
  - To promote better, more informed relations between insurers and their customers;
  - To improve consumer confidence in the general insurance industry;
  - To provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
  - To commit insurers and the professionals they rely upon to higher standards of customer service.
- The principles that were developed to guide the 2004 Review which gave rise to the framework of the current Code:
  - Building and maintaining community faith in the integrity of the insurance industry;
  - Committing to the principle of self-regulation and accountability under the Code.
  - Making a positive difference to Australian individuals, families and communities particularly during times of catastrophe and disaster;
  - Handling claims efficiently, honestly and fairly; and
  - Providing helpful community information and education about general insurance.
- The operation and effectiveness of Part 3 of the Code in relation to claims handling.
- The findings in relation to the Code arising from industry and other reviews, including the Natural Disaster Insurance Review; the Queensland Flood Commission of Inquiry; and the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into the operation of the insurance industry during disaster events.
- Changes in law and practice since the last Code Review in 2009.
- The commitment of the Insurance Council of Australia to develop Information Guidelines for the Code to assist insurers in understanding and complying with their obligations under the Code.

Terms of Reference: Code Advisory Panel

1. To provide advice to the Independent Reviewer on matters of both process and policy relating to the 2012 General Insurance Code of Practice Review.
2. To assist the Independent Reviewer in identifying upcoming issues relevant to the 2012 General Insurance Code of Practice Review.
3. To liaise, on request from the Independent Reviewer, with stakeholders about the process for the Review, and about issues that arise throughout the Review.
# Appendix B: Stakeholder Consultation Diary

The below table outlines key meetings which formed part of the stakeholder consultation that occurred during the Review.

<table>
<thead>
<tr>
<th>Stakeholder Group</th>
<th>Details</th>
<th>Meeting Date</th>
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<tbody>
<tr>
<td><strong>ICA National Consumer Reference Group</strong></td>
<td>Met to outline the Review, and to provide an introduction to the Independent Reviewer.</td>
<td>21 June</td>
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<tr>
<td><strong>Financial Ombudsman Service</strong></td>
<td>Dr June Smith, General Manager — Code Compliance &amp; Monitoring. To discuss FOS’s experience with compliance.</td>
<td>21 June</td>
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<tr>
<td><strong>ASIC</strong></td>
<td>Operational meeting with:</td>
<td>11 July</td>
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<td></td>
<td>• Greg Kirk, Senior Executive Leader — Deposit Takers, Credit and Insurers</td>
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<td></td>
<td>• Michael Saadat, Senior Manager — Deposit Takers, Credit &amp; Insurers</td>
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<td></td>
<td>• Emma Curtis, Senior Manager — Deposit Takers, Credit &amp; Insurers</td>
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<td></td>
<td>• Tim Gough, Senior Manager — Deposit Takers, Credit &amp; Insurers</td>
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<td>To discuss ASIC’s expectations as the ICA will be seeking approval under ASIC RG 183.</td>
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<td><strong>ASIC</strong></td>
<td>Peter Kell, Commissioner</td>
<td>13 July</td>
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<td><strong>Insurance Council of Australia</strong></td>
<td>Rob Whelan, CEO</td>
<td>13 July</td>
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<td><strong>Code Advisory Panel</strong></td>
<td>• Julie Maron, Legal Aid NSW</td>
<td>13 July</td>
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<td>• Annabelle Butler, Suncorp</td>
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<td><strong>Code Compliance Committee</strong></td>
<td>Early Consultation; included:</td>
<td>26 July</td>
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<td></td>
<td>• Michael Gill (Independent Chair)</td>
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<td>• John Anning (committee member) Insurance Council of Australia</td>
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<td>• Julie Maron (future committee member) Legal Aid NSW</td>
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<td>• Dr June Smith (Secretariat), Financial Ombudsman Service</td>
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<td>• Rose-Marie Gaela (Secretariat), Financial Ombudsman Service</td>
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<td><strong>Australian Institute of Chartered Loss Adjusters</strong></td>
<td>• Ian Lavin, President</td>
<td>1 August</td>
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<td>• Tony Libke, CEO</td>
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<td><strong>Code Review Working Group — Industry (Workshop)</strong></td>
<td>This group comprises 17 ICA member-insurer representatives.</td>
<td>9 August</td>
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<td><strong>Office of the Hon. Bill Shorten, MP</strong></td>
<td>• Claudio Damiani, A/G Advisor</td>
<td>28 August</td>
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<tr>
<td><strong>Consumer Advocate Code Working Group (Workshop)</strong></td>
<td>A two-hour workshop was held and included:</td>
<td>29 August</td>
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<td></td>
<td>• David Coorey, Legal Aid NSW</td>
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<td>• Julie Maron, Legal Aid NSW/CAP</td>
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<td>• Katherine Lane, Insurance Law Service</td>
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<td>• Denis Nelthorpe, Footscray Legal Service</td>
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<td></td>
<td>• John Berrill, Maurice Blackburn</td>
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<td>• Fiona Guthrie, Financial Counselling Australia</td>
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<td>• Gerard Brody, Consumer Action Law Centre</td>
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<td>• David Leermakers, Consumer Action Law Centre</td>
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<td></td>
<td>• Peter Gartlan, Financial and Consumer Rights Council</td>
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<td>• Bridget Burton, Caxton Legal Centre</td>
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<tr>
<td><strong>Financial Ombudsman Service</strong></td>
<td>• John Price, Insurance Ombudsman</td>
<td>31 August</td>
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<td><strong>NIBA</strong></td>
<td>• Dallas Booth, Chief Executive</td>
<td>31 August</td>
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<td>• Mark Radford, Radford Lawyers for NIBA</td>
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<td><strong>Industry and Consumer Forum on Issues for the Code Review (1)</strong></td>
<td>• Julie Maron, CAP/Legal Aid NSW/NSW</td>
<td>3 September</td>
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<td></td>
<td>• David Coorey, Legal Aid NSW</td>
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<td>• Kat Lane, Insurance Law Service</td>
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<td>• Denis Nelthorpe, Footscray Legal Service</td>
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</tbody>
</table>
• John Berrill, Maurice Blackburn (TBC)
• Claudio Damiani, A/G Advisor, Office of the Hon. Bill Shorten, MP
• Alban Pinz, Commonwealth Treasury
• Kanwaljit Kaur, Commonwealth Treasury
• Michelle Calder, Commonwealth Treasury
• Wayne Fogarty, Commonwealth Treasury
• Caroline Walker, Commonwealth Treasury
• Tim Gough, Senior Manager — Deposit Takers, Credit & Insurers, ASIC
• Emma Curtis, Senior Manager — Deposit Takers, Credit & Insurers, ASIC
• Rose-Marie Galea, Financial Ombudsman Service
• Mark Radford, Radford Lawyers, for NIBA
• Tony Libke, Australian Institute of Chartered Loss Adjusters
• Annabelle Butler, CAP/Suncorp
• Andrew Yeend, IAG
• Lyndal Arnott, QBE
• Joe Dique, Hollard Insurance
• Sue Vidler, assetinsure
• Vicki Mullen, Review Secretariat
• Amber Fitzpatrick, Review Secretariat
• John Anning, Insurance Council of Australia

Code Compliance Committee

• Michael Gill (Independent Chair)
• John Anning (committee member) Insurance Council of Australia
• Julie Maron (future committee member) Legal Aid NSW
• Dr June Smith (Secretariat), Financial Ombudsman Service

Radio Interview

• Ross Greenwood, 2GB

Industry and Consumer Forum on Issues for the Code Review (2)

• Julie Maron, CAP/Legal Aid NSW
• Denis Nelthorpe, Footscray Legal Service
• Sue Fraser, Uniting Care Kildonan
• Kat Lane, Insurance Law Service
• Gerard Brody, Consumer Action Law Centre
• James McIntyre, Financial Services Advisor, Office of the Hon. Bill Shorten, MP
• Wayne Fogarty, Commonwealth Treasury
• Tim Gough, Senior Manager — Deposit Takers, Credit & Insurers, ASIC
• Emma Curtis, Senior Manager — Deposit Takers, Credit & Insurers, ASIC
• Rose-Marie Galea, Financial Ombudsman Service
• Annabelle Butler, CAP/Suncorp
• Andrew Yeend, IAG
• Lyndal Arnott, QBE
• Joe Dique, Hollard Insurance
• Fiona Cameron, Insurance Council of Australia
• Vicki Mullen, Review Secretariat

Insurance Council of Australia ICA Board

• Annabelle Butler, CAP/Suncorp

Code Advisory Panel

• Julie Maron, CAP/Legal Aid NSW

Code Compliance Committee

• Michael Gill, Independent Chair, Code Compliance Committee

Industry and Consumer Forum on Issues for the Code Review (3)

• David Leermakers, Consumer Action Law Centre
• Hann Thea, Insurance Law Service
• Denis Nelthorpe, Footscray Legal Centre
• Stephen Duffield, Consumer Representative
<table>
<thead>
<tr>
<th>Event Type</th>
<th>Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance Council of Australia</td>
<td>Rob Whelan, CEO</td>
</tr>
<tr>
<td>Office of the Hon. Bill Shorten, MP</td>
<td>James McIntyre, Financial Services Advisor</td>
</tr>
</tbody>
</table>
| Public Consultation Sessions —     | • Jane Reynolds  
| Victoria (individual meetings)     | • Denis Nelthorpe, Footscray Legal Centre  
|                                    | • John Berrill, Maurice Blackburn                                                                            |
| Financial Ombudsman Service        | Dr June Smith, General Manager — Code Compliance & Monitoring, Financial Ombudsman Service                  |
| Teleconference on Hardship         | • Annabelle Butler, Suncorp  
|                                    | • David Leermakers, Consumer Action Law Centre  
|                                    | • Denis Nelthorpe, Footscray Legal Centre                                                                    |
| Governance Forum                   | • Tim Gough, Senior Manager, ASIC  
|                                    | • Dr June Smith, General Manager — Code Compliance & Monitoring, Financial Ombudsman Service                  |
|                                    | • Michael Gill, Independent Chair, Code Compliance Committee                                                |
|                                    | • James McIntyre, Financial Services Advisor, Office of the Hon. Bill Shorten, MP                           |
|                                    | • Wayne Fogarty, Commonwealth Treasury                                                                        |
| Radio Interview                    | ABC Riverina Radio                                                                                         |
| Code Advisory Panel                | David Leermakers, Consumer Action Law Centre                                                                 |
| Public Consultation Session —      | • Jane Crichton  
| Wagga Wagga, NSW (individual       | • Cr Rod Kendall, Mayor, City of Wagga Wagga and Phil Pinyon, General Manager, Wagga Wagga City Council  |
| meetings)                          |                                                                                                             |
| Insurance Council of Australia     | ICA Board                                                                                                   |
| Radio Interview                    | ABC Riverina Radio                                                                                         |
| Public Consultation Session —      | The Hon. Shayne Neumann, MP                                                                                  |
| Ipswich, QLD                        |                                                                                                             |
| Public Consultation Session —      | Sal Martino                                                                                                 |
| Perth, WA                           |                                                                                                             |
| Financial Ombudsman Service        | Shane Tregillis, Chief Ombudsman                                                                            |
| Stakeholder Forum on Governance     | • Wayne Fogarty, Commonwealth Treasury  
| and Select Report Recommendations   | • James McIntyre, Financial Services Advisor, Office of the Hon. Bill Shorten, MP                           |
|                                    | • Tim Gough, Senior Manager — Deposit Takers,                                                               |

2013

<table>
<thead>
<tr>
<th>Event Type</th>
<th>Platform/Participant</th>
</tr>
</thead>
</table>
| Radio Interview                    | ABC Riverina Radio  
| Code Advisory Panel                | David Leermakers, Consumer Action Law Centre  
| Public Consultation Session —      | • Jane Crichton  
| Wagga Wagga, NSW (individual       | • Cr Rod Kendall, Mayor, City of Wagga Wagga and Phil Pinyon, General Manager, Wagga Wagga City Council  |
| meetings)                          |                                                                                           |
| Insurance Council of Australia     | ICA Board                                                                                   |
| Radio Interview                    | ABC Riverina Radio                                                                         |
| Public Consultation Session —      | The Hon. Shayne Neumann, MP                                                                 |
| Ipswich, QLD                        |                                                                                           |
| Public Consultation Session —      | Sal Martino                                                                                 |
| Perth, WA                           |                                                                                           |
| Financial Ombudsman Service        | Shane Tregillis, Chief Ombudsman                                                            |
| Stakeholder Forum on Governance     | • Wayne Fogarty, Commonwealth Treasury  
<p>| and Select Report Recommendations   | • James McIntyre, Financial Services Advisor, Office of the Hon. Bill Shorten, MP           |
|                                    | • Tim Gough, Senior Manager — Deposit Takers,                                                |</p>
<table>
<thead>
<tr>
<th>Organization</th>
<th>Chair/Advisor</th>
<th>Date</th>
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<tbody>
<tr>
<td>Insurance Council of Australia</td>
<td>Rob Whelan, CEO</td>
<td>18 March</td>
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<tr>
<td>Financial Ombudsman Service</td>
<td>Dr June Smith, General Manager</td>
<td>18 March</td>
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<td>Code Compliance Committee</td>
<td>Michael Gill, Independent Chair</td>
<td>20 March</td>
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<tr>
<td>Financial Ombudsman Service</td>
<td>Dr June Smith, General Manager</td>
<td>21 March</td>
</tr>
<tr>
<td>Office of the Hon. Bill Shorten, MP</td>
<td>James McIntyre, Financial Services Advisor</td>
<td>22 March</td>
</tr>
<tr>
<td>Professor Robert Merkin</td>
<td>Professor Robert Merkin</td>
<td>March</td>
</tr>
<tr>
<td>Office of the Hon. Bill Shorten, MP</td>
<td>James McIntyre, Financial Services Advisor</td>
<td>10 April</td>
</tr>
<tr>
<td>Office of Senator Mathias Cormann</td>
<td>Robert Graziani, Advisor</td>
<td>11 April</td>
</tr>
</tbody>
</table>

- Emma Curtis, Senior Manager — Deposit Takers, Credit & Insurers, ASIC
- Rob Whelan, CEO, Insurance Council of Australia
- Annabelle Butler, CAP/Suncorp
- Julie Maron, CAP/Legal Aid NSW
- Shane Tregillis, Chief Ombudsman, Financial Ombudsman Service
- Rose-Marie Galea, Financial Ombudsman Service
Appendix C: List of written submissions to the Review

The list below reflects organisations that provided written submissions to the Independent Review. These submissions are available at the Code Review website www.codeofpracticereview.com.au. The Review also received a number of confidential submissions which are not listed.

- Australasian Institute of Chartered Loss Adjusters
- Auto and General Insurance Company Limited
- Code Compliance Committee, General Insurance Code of Practice
- Equity Adjusters (NSW) Pty Ltd
- Insurance Australia Group
- Insurance Council of Australia
- Joint Consumer Advocate Submission, provided by Insurance Law Service
- Motor Traders’ Association of NSW
- National Insurance Brokers Association
- RACQ Insurance Limited
- Suncorp Group Limited
- Western Region Legal Centres Victoria
### Appendix D: Selected Statistics

#### Table 1: Disputes lodged with Financial Ombudsman Service

<table>
<thead>
<tr>
<th>Disaster Event</th>
<th>Number of Insurance claims as at 24/6/2011</th>
<th>Number of disputes lodged as at 30/6/2011</th>
<th>Lodgements per 1000 claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>SW/SE Queensland flooding — Roma and Charleville</td>
<td>7,056</td>
<td>21</td>
<td>3.0</td>
</tr>
<tr>
<td>Victorian Hail Storm — Melbourne</td>
<td>135,000</td>
<td>93</td>
<td>0.7</td>
</tr>
<tr>
<td>WA Hail Storm — Perth</td>
<td>165,000</td>
<td>43</td>
<td>0.3</td>
</tr>
<tr>
<td>Queensland Flooding — Brisbane, rural Queensland, Toowoomba, Lockyer Valley</td>
<td>56,200</td>
<td>479</td>
<td>8.5</td>
</tr>
<tr>
<td>Victorian flooding — rural Victoria</td>
<td>7,500</td>
<td>111</td>
<td>14.8</td>
</tr>
<tr>
<td>Cyclone Yasi — Cassowary Coast, North Queensland</td>
<td>68,300</td>
<td>49</td>
<td>0.7</td>
</tr>
<tr>
<td>Victorian Storms — Melbourne and suburbs</td>
<td>48,000</td>
<td>56</td>
<td>1.2</td>
</tr>
<tr>
<td>WA bushfires — Perth and surrounds</td>
<td>410</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: See footnote.

The number of lodgements per 1,000 claims, as recorded in the right-hand column of this table, shows the clear difference between the frequency of disputes in floods (8.5 and 14.8 for the Queensland and Victorian floods, with much lower frequencies for the storms).

---

345 Financial Ombudsman Service Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into operation of insurance industry during disaster events, 29 August 2011, p 19.
Table 2: Summary of data concerning insurer responses to claims handling

<table>
<thead>
<tr>
<th>Code participants who reported that Section 3 was met(^{30})</th>
<th>Total Number of Claims arising from the 2010/2011 Queensland Floods</th>
<th>Total Number of Claims that did not meet the Section 3 standards</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Home</td>
<td>Motor</td>
</tr>
<tr>
<td>Code participants who reported that some standards of Section 3 were not met(^{31})</td>
<td>7,025</td>
<td>861</td>
</tr>
<tr>
<td>Total</td>
<td>28,279</td>
<td>2,856</td>
</tr>
<tr>
<td></td>
<td>35,304</td>
<td>3,717</td>
</tr>
<tr>
<td></td>
<td>39,021</td>
<td>3,871</td>
</tr>
</tbody>
</table>

## Table 3: Key areas of difficulty with section 3 claims handling standard

<table>
<thead>
<tr>
<th>Section 3 standard</th>
<th>Description of Code Standard</th>
<th>Number of Code participants who reported difficulties with Section 3 standards</th>
<th>Instances of inability to meet Section 3 standards</th>
<th>Primary factors contributing to difficulty in meeting Section 3 standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Within 10 business days of receipt of your claim, we will decide to accept or deny your claim and notify you of our decision, if we have received all necessary information at the time your claim is lodged and no further assessment or investigation is required.</td>
<td>4</td>
<td>1,447</td>
<td>Claim Volume Complexity of Events Staff Shortages</td>
</tr>
<tr>
<td>3.2.1 (a)</td>
<td>Within 10 business days of receiving your claim, we will notify you of the detailed information we require to make a decision on your claim.</td>
<td>4</td>
<td>2,148</td>
<td>Claim Volume Demand for External Consultants Staff Shortages</td>
</tr>
<tr>
<td>3.2.1 (b)</td>
<td>Within 10 business days of receiving your claim, we will appoint a loss assessor / adjuster if necessary.</td>
<td>2</td>
<td>23</td>
<td>Claim Volume Human Error</td>
</tr>
<tr>
<td>3.2.1 (c)</td>
<td>Within 10 business days of receiving your claim, we will provide an initial estimate of the time required to make a decision on your claim.</td>
<td>2</td>
<td>737</td>
<td>Claim Volume Demand for External Consultants Staff Shortages</td>
</tr>
<tr>
<td>3.2.2</td>
<td>If we decide to appoint a loss assessor/loss adjuster and/or investigator, we will notify you within 5 business days of appointing them.</td>
<td>2</td>
<td>82</td>
<td>Claim Volume Demand for External Consultants Communication Issues</td>
</tr>
<tr>
<td>3.2.3</td>
<td>We will keep you informed of the progress of your claim, at least every 20 business days.</td>
<td>5</td>
<td>1,906</td>
<td>Claim Volume Staff Shortages</td>
</tr>
<tr>
<td>3.2.4</td>
<td>We will respond to your routine requests for information within 10 business days.</td>
<td>4</td>
<td>74</td>
<td>Claim Volume</td>
</tr>
<tr>
<td>3.2.5</td>
<td>When we have all necessary information and have completed all investigation that was required to assess your claim, we will decide to accept or reject your claim and notify you of our decision within 10 business days.</td>
<td>4</td>
<td>382</td>
<td>Claim Volume Complexity of Events Demand for External Consultants Staff Shortages</td>
</tr>
<tr>
<td>3.4.5 (a)</td>
<td>If we deny your claim, we will provide written reasons for our decision to deny your claim.</td>
<td>3</td>
<td>47</td>
<td>Claim Volume Complexity of Events Demand for External Consultants</td>
</tr>
</tbody>
</table>

*An additional 8/6 instances were reported against other Code standards making a total of 7,822 instances.*

### Table 4: Select industry, claim, dispute, breach and sanction statistics

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Personal</td>
<td>Commercial</td>
<td>Total</td>
</tr>
<tr>
<td>Gross Written Premium</td>
<td>31.823b</td>
<td>33.216b</td>
<td>34.289b</td>
<td>37.413b</td>
</tr>
<tr>
<td>Gross earned premium</td>
<td>Not available before Sept 2010</td>
<td>Not available before Sept 2010</td>
<td>Not available before Sept 2010</td>
<td>34.288b</td>
</tr>
<tr>
<td>Investment income on assets backing insurance liabilities</td>
<td>Not available before Sept 2010</td>
<td>Not available before Sept 2010</td>
<td>Not available before Sept 2010</td>
<td>2.368b</td>
</tr>
<tr>
<td>Investment income on shareholder’s funds</td>
<td>4.319b (This is total investment income)</td>
<td>4.85b (This is total investment income)</td>
<td>2.29b</td>
<td>1.967b</td>
</tr>
<tr>
<td>Total Assets</td>
<td>95.185</td>
<td>99.192b</td>
<td>114.993b</td>
<td>118.131b</td>
</tr>
<tr>
<td>‘Gross Claim Payments’</td>
<td>22.836b</td>
<td>21.319b</td>
<td>24.025</td>
<td>29.217b</td>
</tr>
<tr>
<td>Combined Expense Ratio</td>
<td>94.9%</td>
<td>90.1%</td>
<td>95.4%</td>
<td>98%</td>
</tr>
</tbody>
</table>

346 The figures for the items in the Executive Summary appear different from the figures for the same items in Appendix B.
348 Steady from 2010.
349 Steady from 2010.
350 Steady from 2010.
351 Steady from 2010.
352 APRA Quarterly General Insurance Performance Report (Gross Claims incurred-closing outstanding claims +opening outstanding claims).
353 Ibid. Note: Prior to September 2010, ratio based on net written premium. From September 2010, ratio based on net earned premium.
<table>
<thead>
<tr>
<th>Claims and Disputes</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Claims</strong>&lt;sup&gt;354&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>3,623,255</td>
<td>3,872,618&lt;sup&gt;357&lt;/sup&gt;</td>
<td>563,890&lt;sup&gt;358&lt;/sup&gt;</td>
<td>3,810,513&lt;sup&gt;359&lt;/sup&gt;</td>
</tr>
<tr>
<td>Personal</td>
<td>3,020,382</td>
<td>3,087,282&lt;sup&gt;356&lt;/sup&gt;</td>
<td>3,308,728&lt;sup&gt;357&lt;/sup&gt;</td>
<td>3,251,179</td>
</tr>
<tr>
<td>Commercial</td>
<td>602,873</td>
<td>3,785,336&lt;sup&gt;356&lt;/sup&gt;</td>
<td>365,162&lt;sup&gt;358&lt;/sup&gt;</td>
<td>359,334</td>
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<tr>
<td><strong>Number of claims accepted</strong>&lt;sup&gt;361&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2009</td>
<td>3,550,422</td>
<td>3,804,894</td>
<td>3,744,217</td>
<td>Not yet available</td>
</tr>
<tr>
<td>2010</td>
<td>3,538,284</td>
<td>3,804,894</td>
<td>3,744,217</td>
<td>Not yet available</td>
</tr>
<tr>
<td>2011</td>
<td>3,810,513</td>
<td>3,810,513</td>
<td>3,810,513</td>
<td>Not yet available</td>
</tr>
<tr>
<td>2012</td>
<td>3,810,513</td>
<td>3,810,513</td>
<td>3,810,513</td>
<td>Not yet available</td>
</tr>
<tr>
<td><strong>Declined Claims</strong>&lt;sup&gt;362&lt;/sup&gt;</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>72,833</td>
<td>67,724&lt;sup&gt;361&lt;/sup&gt;</td>
<td>62,340&lt;sup&gt;363&lt;/sup&gt;</td>
<td>66,296</td>
</tr>
<tr>
<td>2010</td>
<td>62,340</td>
<td>62,340&lt;sup&gt;363&lt;/sup&gt;</td>
<td>62,340&lt;sup&gt;363&lt;/sup&gt;</td>
<td>66,296</td>
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<tr>
<td>2011</td>
<td>66,296</td>
<td>66,296&lt;sup&gt;363&lt;/sup&gt;</td>
<td>66,296&lt;sup&gt;363&lt;/sup&gt;</td>
<td>66,296</td>
</tr>
<tr>
<td><strong>Total IDR Disputes</strong>&lt;sup&gt;367&lt;/sup&gt;</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>2009</td>
<td>21,447</td>
<td>22,581&lt;sup&gt;364&lt;/sup&gt;</td>
<td>21,209&lt;sup&gt;365&lt;/sup&gt;</td>
<td>23,285&lt;sup&gt;371&lt;/sup&gt;</td>
</tr>
<tr>
<td>2010</td>
<td>21,209</td>
<td>21,209&lt;sup&gt;365&lt;/sup&gt;</td>
<td>21,209&lt;sup&gt;365&lt;/sup&gt;</td>
<td>23,285&lt;sup&gt;371&lt;/sup&gt;</td>
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<tr>
<td>2011</td>
<td>1,372&lt;sup&gt;370&lt;/sup&gt;</td>
<td>1,372&lt;sup&gt;370&lt;/sup&gt;</td>
<td>1,372&lt;sup&gt;370&lt;/sup&gt;</td>
<td>1,372&lt;sup&gt;370&lt;/sup&gt;</td>
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<tr>
<td><strong>Total IDR Resolved Disputes</strong>&lt;sup&gt;367&lt;/sup&gt;</td>
<td></td>
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<tr>
<td>2009</td>
<td>21,320</td>
<td>22,643</td>
<td>21,326</td>
<td>22,673</td>
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<tr>
<td>2010</td>
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<td>2011</td>
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<td>2012</td>
<td>21,326</td>
<td>21,326</td>
<td>21,326</td>
<td>21,326</td>
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</table>

<sup>354</sup> The figures for the items in the Executive Summary appear different from the figures for the same items in Appendix B.


<sup>356</sup> FOS General Insurance Code of Practice Annual Overview.

<sup>357</sup> Increase of 7% from 2009; FOS said: “Undoubtedly the most significant contributing factor to the overall increase … has been Australia’s extreme weather events (section 5.2.4).

<sup>358</sup> Increase of 9% from 2009.

<sup>359</sup> Decrease of 6% from 2009.

<sup>360</sup> Includes subsequently discontinued or withdrawn claims.

<sup>361</sup> Increase of 21% but the percentage of accepted claims remained at 99%; it is not clear how this result could follow.

<sup>362</sup> 22% increase on declines from 2010.

<sup>363</sup> 10% of declines.

<sup>364</sup> 90% of declines.

<sup>365</sup> APRA Quarterly General Insurance Performance.

<sup>366</sup> FOS General Insurance Code of Practice Annual Overview.

<sup>367</sup> Decrease of 7% from 2009.

<sup>368</sup> Decrease of 9% from 2009.

<sup>369</sup> 93% of disputes.

<sup>370</sup> 7% of disputes.

<sup>371</sup> Overall steady from 2010 but commercial disputes increase by 28%.
<table>
<thead>
<tr>
<th></th>
<th>In Favour of Code Participants</th>
<th>In Favour of Customers</th>
<th>EDR/FOS number of disputes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>13,932</td>
<td>13,128</td>
<td>804</td>
</tr>
<tr>
<td></td>
<td>67% of disputes</td>
<td>68% of disputes</td>
<td>73% of disputes</td>
</tr>
<tr>
<td></td>
<td>33% of disputes</td>
<td></td>
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</table>

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372 FOS General Insurance Code of Practice Annual Overview.
<table>
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<tr>
<th>Breaches &amp; Sanctions</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Personal</td>
<td>Commercial</td>
<td>Total</td>
</tr>
<tr>
<td>FOS Identified Code Breaches</td>
<td>539</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Code Participant Self-Reporting of Significant Breaches</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Code Participant Self-Reporting of Other Breaches</td>
<td>1,879</td>
<td></td>
<td></td>
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<tr>
<td>Section 2 – Buying Insurance</td>
<td>886</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 3 – Insurance Claims</td>
<td>727</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 6 – Claims Handling Procedures</td>
<td>263</td>
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<tr>
<td>Code breaches reported to CCC</td>
<td>108</td>
<td></td>
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<tr>
<td>Code breaches found by CCC against Code Participant</td>
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<td></td>
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<tr>
<td>Code breach sanction by CCC</td>
<td>0</td>
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</tbody>
</table>

*373 The figures for the items in the Executive Summary appear different from the figures for the same items in Appendix B.
375 Increase of 5% from 2009.
376 Described as ‘non-compliance outcomes’.
377 These are described as ‘compliance breaches’ in section 4.2.1; down 42% from 2009.
378 Code Compliance Committee Annual Report.
379 Ibid.
380 Ibid.*
Appendix E: Code governance summary

1.1 The ICA is the owner of the Code and it is a party to the Deed of Adoption by which Code Participants agree to be bound by the Code. An insurer or industry participant might or might not become a Code Participant — it is a voluntary decision and process. A Code Participant becomes a party to the Deed of Adoption and is subject to the Code governance arrangements.

1.2 The governance for the Code then consists of the inter-relationships of the roles of ASIC, FOS Code and the CCC in dealing with:

1. IDR complaints procedures and EDR procedures under the Code;  
2. the monitoring, audit, review and reporting of Code breaches and non-compliance; and  
3. the allegation, investigation, resolution and sanction of Code breaches and non-compliance.

Code Participant

1.3 A Code Participant must have systems and processes in place to enable it:

1. and FOS Code to monitor its compliance with the Code;  
2. to report on compliance to its management and Board; and  
3. to report to FOS Code on compliance.


1.5 FOS Code monitors Code compliance by:

1. reviewing a Code Participant’s annual return to FOS Code;  
2. preparing, asking the Code Participant to complete and reviewing the Code Participant’s self-assessment questionnaire and certification — two years in every three; and  
3. desk-top audits — one year in three.

1.6 A Code Participant must co-operate with FOS Code in its investigations of a Code breach and must apply corrective measures, agreed with FOS Code, in the agreed time frames, to a Code breach. It is not clear that a Code Participant must co-operate with the CCC if it conducts an enquiry into a Code breach or alleged breach.

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381 The handling and resolution of EDR disputes is dealt with by FOS in its dispute resolution service under ASIC RG 139 and ASIC RG 165 and the FOS Terms of Reference.  
382 Not all FOS members are Code Participants. Not all Code Participants are FOS members.  
383 Code, section 7.2(a).  
384 Code, section 7.2(c).  
385 Code, section 7.2(b).  
386 Code, sections 7.2(b) and 7.3.  
387 Code, section 7.5(a).  
389 Code section 7.5(b).  
390 Code section 7.6.  
391 Compare Code 7.15 with section7.5 and see Deed of Adoption, clause 4.5.
1.7 ASIC is involved in two main ways:

1. Firstly, ASIC is the statutory body responsible for the IC Act, and is responsible for enforcing a breach of that Act. Secondly, ASIC approves standards and requirements for IDR and EDR. It is important to note that FOS’ obligation to report serious misconduct or a systemic breach to ASIC is an obligation under the FOS Terms of Reference in its EDR role and therefore not relevant to its role under the Code. I note here that ASIC RG 183.75(e) would require the Code administration body to report Code serious misconduct and systemic issues to ASIC.

2. ASIC is not otherwise involved in Code enforcement or sanctions for Code non-compliance or breach.

1.8 If the ICA submits the Code for ASIC approval and if that approval is granted, then ASIC has a third and informal role, not a part of its statutory powers, in the conduct of the Code. The status of a report of Code serious misconduct and systemic issues to ASIC is not clear here.

FOS Code

1.9 FOS Code monitors and reports on participating companies’ compliance with the Code. FOS Code’s role includes: reviewing compliance with the Code; investigating and determining allegations of a Code breach made by any person; and reporting on its analysis of Code compliance to the CCC and publicly. I refer to FOS in this role as FOS Code.

1.10 FOS is also an accredited external alternative dispute resolution service under ASIC EDR requirements. FOS deals with a dispute within its Terms of Reference referred by a consumer. These aspects of FOS’s role are not relevant to the FOS role in relation to the Code. I refer to FOS in this role as FOS EDR. The Code itself does not distinguish between FOS Code and FOS EDR. FOS EDR can report alleged breaches to FOS Code.

1.11 FOS Code monitors Code compliance by Code Participants. It seems to share this role with the CCC.

1.12 FOS Code investigates all Code non-compliance or breaches, based partly on reports back to it from the CCC. FOS Code investigates an allegation of a Code breach and determines whether a breach has occurred. FOS Code has its own discretion to determine how of if it proceeds with any action based on any report it receives from the CCC. However, because the FOS Code discretion to take no action is in relation to a CCC report and on that basis, FOS Code might not investigate all alleged Code breaches. It seems that the CCC can also conduct inquiries and this might cover the investigation of Code non-compliance.

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392 IC Act sections 11AAA–11E.
393 ASIC RG 139 and ASIC RG 165.
394 FOS Constitution, Terms of Reference, clause 11; see FOS Annual Code Reviews.
396 See ASIC RG 183.75(c) and para 3.2 above.
397 FOS website.
398 Code section 7.7; FOS Code website and FOS QF Survey, p 3.
399 ASIC RG 139 and 165.
400 Compare Code, sections 6.10–6.14 with Code, section 7, particularly sections 7.7–12.
401 Deed of Adoption, clause 4.3.
402 Code, sections 7.2, 7.5, 7.7–7.9, 7.12(b) and 7.14(a); Deed of Adoption, clause 5.
403 Compare 7.12(b) and 7.14(a) — the second indicates that the CCC does the monitoring but 7.12 assumes FOS does.
404 Code, sections 7.5(b) and 7.11(a) and (b).
405 Code, sections 7.10 and 7.16.
406 Code, sections 7.5(b), 7.10 and 7.11(a) and (b).
407 Code, section 7.11(c)–(d).
408 Code, section 7.10.
compliance or breaches. The CCC and FOS Code say that this power is normally exercised by asking FOS Code to conduct further enquiries.

1.13 FOS Code mediates corrective action for the breach with the Code Participant and consults with the Code Participant about the timing of corrective action. FOS Code has power to agree corrective measures and set time frames, for a Code breach, with the Code Participant. The Code Participant must apply corrective measures in set time frames, as agreed with FOS Code. FOS Code monitors the Code Participant’s corrective action and determines whether corrective action has been implemented and is sufficient.

1.14 FOS Code reports on Code compliance but it is not always clear to whom. There seems to be four types of reports.

1.15 Firstly, FOS Code reports on Code compliance. FOS Code also reports on outcomes of Code compliance monitoring reviews to the CCC. Secondly, FOS Code would seem to prepare reports on investigations of alleged Code breaches. It seems implicit that these reports are supplied to the subject Code Participant only.

1.16 Thirdly, FOS Code reports on breach type matters and activities. FOS Code must report:

1. any significant breach of the Code to the CCC;
2. any failure to agree corrective action (presumably or a time frame) with the Code Participant to the CCC;
3. any failure by the Code Participant to correct the breach, to the CCC within ten business days of the end of the time frame;
4. Code ‘serious or systemic issues’ to the CCC.

1.17 Fourthly, FOS Code produces industry reports:

1. aggregated industry data and consolidated analysis, publicly; and
2. aggregated Code breach data, including ‘serious or systemic issues’, to the CCC.

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409 Code, section 7.15.
410 Code section 7.11(e).
411 Code, section 7.11(e)–(f).
412 Code, sections 7.6 and 7.11(e)–(f).
413 Code section 7.7, 7.11(e)–(f).
414 Code, section 7.7.
415 Code, section 7.7.
416 Code sections 7.12(b) and 7.14(a).
417 Code, sections 7.5(b), 7.11(a)–(c).
418 Code, section 7.12(a).
419 Code, section 7.12(c).
420 Code, section 7.12(a) — this seems to have no time limit.
421 Code, sections 7.11(g) and 7.12.
422 Code, section 7.9.
423 Code, sections 7.7 and 7.8.
424 Code sections 7.7 and 7.9.
The CCC is:

- Monitor compliance by Code Participants with the Code’s obligations, through reports received from the Financial Ombudsman Service (FOS), and
- Make determinations and impose sanctions where FOS has reported a failure by Code Participants to correct a Code breach.

The Deed of Adoption suggests that the CCC is the independent body under the Code. FOS has indicated that it sees its role as the administration body for the purposes of RG 183.70. The CCC monitors Code compliance through FOS reports, and, possibly, its own enquiries. The CCC has the power to identify serious or systemic issues in relation to the Code or its application.

The CCC may make determinations and impose sanctions where FOS Code has reported a failure by a Code Participant to correct a Code breach and, possibly, its own enquiries.

The CCC can apply sanctions for Code breaches after due process and considering FOS Code’s report and the Code Participant’s response and the sanctions can include:

1. rectification steps;
2. compliance audit;
3. corrective advertising; and
4. publication of the Code Participant’s non-compliance.

The CCC sanctions are binding on the Code Participant.

The CCC reports its findings on FOS Code aggregated breach data reports to FOS Code. The CCC produces an annual report for the ICA and FOS Code. The CCC may supply a report to FOS EDR if FOS EDR so requests in the context of FOS EDR considering a breach or systemic matters under the FOS EDR Terms of Reference in relation to a Code Participant. The CCC supplies ‘general information in relation to any systemic issue’ to FOS under the CCC Charter.

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425 CCC Submission — see ASIC RG 183, paras 183.73–183.78; a list of responsibilities is in ASIC RG 183, para 183.75.
426 Code Deed of Adoption, Recital D.
428 Code, section 7.15.
429 Code, section 7.9.
430 Code, section 7.14(b).
431 Code, section 7.15.
432 Code, sections 7.22 and 7.23.
433 Code sections 7.11, 7.12, 7.14(b) and 7.17–7.21.
434 Code, sections 1.13, 7.14(b) and 7.17–7.23.
435 Code sections 7.23 and 7.2–7.6.
436 Code, sections 7.9 and 7.16.
437 Deed of Adoption, clauses 6.3 and 6.4.
438 Deed of Adoption, clause 6.6.
439 CCC Charter: Deed of Adoption, clause 4.2, Schedule, para 4.2.
Appendix F: New Code, guidelines and service levels

NEW CODE

1 PRINCIPLES AND OBJECTIVES

1.1 We acknowledge that our Customers and our relationships with them are the foundations of our businesses.

1.2 Our Customers acknowledge that we must prosper for the benefit of our owners and stakeholders. A Code Participant that is a general insurer is also subject to prudential regulation.

1.3 Our relationship with our Customers includes the insurance contract and the law and regulation that is relevant to the insurance contract. Our conduct in relation to our Customers is based on the utmost good faith. We commit to conducting ourselves with due regard to our Customer’s interests.\textsuperscript{440}

1.4 The objectives of this Code are to:

(a) ensure our community and our Customers are well informed about this Code, insurance, insurance products and about our businesses;

(b) ensure general insurance industry continuous improvement through education and training;

(c) ensure that our Customers’ experience in buying insurance and in having claims assessed meets their reasonable expectations including in natural disasters;

(d) provide fair and effective mechanisms for the resolution of complaints and disputes between Code Participants and Customers;

(e) commit Code Participants and their Service Suppliers to high standards of customer service; and

(f) enhance community and Customer trust and confidence in the general insurance industry and the esteem of each person involved.

1.5 We commit that our conduct in all phases of our relationship with our Customers and the community will be honest, fair, reasonable, professional, transparent, prompt and efficient.\textsuperscript{441} We commit to high standards of service in our conduct under the Code.

1.6 We care for our Customers in hard times, or those who suffer hardship, with compassion.

1.7 There is a dictionary at the end of the Code. A word or phrase that is in italics is defined in the Dictionary. A word or phrase that is used only in a Standard or Guideline is defined in that Standard or Guideline only.

2 APPLICATION

2.1 The Code applies to a Code Participant and to Code Insurances.

2.2 The ICA commits to working with the CGB, ASIC and stakeholders to encourage all general insurers and general insurance operations, which carry on business in Australia, to adopt the Code.

\textsuperscript{440} AMP v CGU, High Court.

\textsuperscript{441} ASIC RG 183.48 refers to ‘fair, honest and professional’.
2.3 The Code applies to a Code Participant in relation to the conduct of a Service Supplier.

2.4 The Code applies to Code Insurances. It applies differently to Retail Code Insurances compared with Wholesale Code Insurances.

2.5 The following sections apply to Retail Code Insurances only. They do not apply to Wholesale Code Insurances:

(a) financial hardship — section 5
(b) service suppliers and employees — section 6
(c) natural disasters — section 7
(d) buying insurance — section 8
(e) claims – section 9
(f) complaints and disputes — section 10
(g) monitoring, enforcement and sanctions — section 11

The other sections apply to all Code Insurances.

2.6 The Code is approved by ASIC under the Corporations Act 2001.\(^\text{442}\) The Code is consistent with ASIC Law.\(^\text{443}\)

3 PROMOTING THE CODE AND THE INDUSTRY — ASSISTING CUSTOMERS

3.1 We commit to working with the ICA and the CGB to promote and champion this Code.

3.2 We commit to including information about the Code on our websites, in our relevant communications with you and in our relevant product information and documents.

3.3 We commit to working with the ICA and the CGB to give you information and services to assist you to choose insurance products.

3.4 We commit to working with the ICA and the CGB to initiate and support programs to promote insurance, financial literacy and the insurance industry to our communities.

4 EDUCATION AND TRAINING

4.1 We commit to working with the ICA and the CGB to promote and champion the education and training of our employees and Service Suppliers.

4.2 We commit to:

(a) giving the right and good education and training to our employees for their work and their services for you
(b) ensuring our Service Suppliers have the right and good education and training for their work and their services for you
(c) giving or ensuring education and training to correct any shortcomings in our employees and Service Suppliers’ work or services
(d) keeping education and training records for a minimum of five years and making them available to the CGB on request.

\(^{442}\) Section 1011A and ASIC RG 183.
\(^{443}\) ASIC RG 183.27(a).
5 FINANCIAL HARDSHIP

5.1 We acknowledge that our communities and some of our Customers experience financial hardship.

5.2 We commit that we will treat each Customer who experiences financial hardship in accordance with the Code Service Principles.

5.3 We commit that we will conduct ourselves in dealing with your financial hardship in accordance with the Financial Hardship Guideline. The Financial Hardship Guideline applies to Retail Code Insurances only.

5.4 A Code Participant is bound by the Code in relation to the services and conduct of a Service Supplier to a Code Participant in relation to any matter under the Financial Hardship Guideline.

6 SERVICE SUPPLIERS AND EMPLOYEES

6.1 This standard applies to buying insurance and claims for Retail Code Insurances.

6.2 We commit that our employees and Service Suppliers, except for Special Services, will treat each Customer in relation to a matter under this Code in accordance with the Code Service Principles.

6.3 We commit to appointing only Service Suppliers who are qualified by education, training and experience for a service in relation to a matter under this Code. Our contracts with our Service Suppliers must reflect the Code Service Principles and the Code standards relevant to the services by the Service Supplier. A Service Supplier must obtain our approval before subcontracting their services.

6.4 Our Service Suppliers, except for Special Services, must inform you about the identity of the Code Participant for whom they act and about the work they do or the service they supply. We commit to monitoring and measuring the performance of the functions and services by our employees and Service Suppliers.

6.5 Our Service Suppliers must notify us about any complaint by you about a matter under this Code when acting on our behalf. Our Internal Complaints Process applies to a complaint about a Service Supplier under this Code.

7 NATURAL DISASTERS

7.1 We acknowledge and understand that Natural Disasters cause not only great personal, financial and property loss but also acute levels of distress and concern in our communities. We commit that our response to Natural Disasters will recognise our role in helping to compensate our Customers for these losses as well as the importance of alleviating the distress and concern.

7.2 We commit to responding to Natural Disasters in accordance with the Code Service Principles.

7.3 We and our Service Suppliers, commit that we will conduct ourselves in dealing with you in a Natural Disaster in accordance with the Natural Disaster Customer Response Guideline. The Natural Disaster Customer Response Guideline applies to Retail Code Insurances only.

7.4 We commit to co-operating and working with the ICA and the CGB on industry coordination and communications under the ICA’s Natural Disaster coordination arrangements.
8 **BUYING INSURANCE**

8.1 The sales process for buying a *Retail Code Insurance* is regulated by law including the Corporations Act. We commit to ensuring that our Service Suppliers’ and our conduct towards you when buying a *Retail Code Insurance* is according to the law as a minimum standard.

8.2 We commit that we, and our Service Suppliers, will treat each Customer who is buying *Retail Code Insurance* in accordance with the Code Service Principles.

8.3 We commit to ensuring that our sales material, our discussions and written communications with you are in plain language.

8.4 We will ask for and rely on only relevant and material information and documents to assess your application for *Retail Code Insurance*. We will give you a fair opportunity to correct any mistakes we see in your application for a *Retail Code Insurance*.

8.5 We will give you, on request, our reasons in accordance with the Code Service Principles if we decline your application for a *Retail Code Insurance*. We commit to supplying you with the information and documents we relied on for our decision if you request and if the information and documents are Disclosable Material.

8.6 We commit, in relation to the cancellation of an instalment *Retail Code Insurance*:

   (a) to giving one notice of the intention to cancel the instalment *Retail Code Insurance* to the Customer 28 days before cancellation and to giving another notice of the intention to cancel the instalment *Retail Code Insurance* to the Customer 14 days before cancellation.

   (b) to notifying the Customer of the cancellation within 14 days after the effective date of the cancellation.

8.7 You may be entitled to cancel your *Retail Code Insurance* and obtain a refund. We will inform you about your rights to cancellation and a refund.

8.8 We commit to ensuring that all our communications with you are conducted according to the law as a minimum standard and the Code Service Principles.

9 **CLAIMS**

9.1 We sell a core promise to pay valid claims. We expect our Customers to make claims.

9.2 We expect that our Customers’ claims will be made promptly, truthfully, accurately and without exaggeration.

9.3 We, and our Service Suppliers, commit that we will treat each Customer and claim assessment under a *Retail Code Insurance* in accordance with the Code Service Principles.

9.4 We must adopt the Claims Service Levels for our *Retail Code Insurances* as a minimum standard for our claims assessment and services.

9.5 We will consider adopting terms from the Claims Service Levels for our *Wholesale Code Insurances* as a minimum standard for our claims assessment and services.

10 **COMPLAINTS AND DISPUTES**

*Internal Complaints Process*

10.1 We acknowledge that you may want to make a complaint to us about your experience with us in relation to a *Retail Code Insurance*. 
10.2 We commit that we will treat each Customer who makes a complaint in accordance with the Code Service Principles.

10.3 We commit that we will conduct ourselves in dealing with a Customer complaint in accordance with the Internal Complaint Process Guideline. The Internal Complaint Process Guideline applies to Retail Code Insurances only.

10.4 A Code Participant is bound by the Code in relation to the services and conduct of a Service Supplier to a Code Participant in relation to any matter under the Internal Complaint Process Guideline.

EDR Process

10.5 If you are not satisfied with the resolution of your complaint after our Internal Complaint Process, we commit to informing you about our EDR processes and your rights to EDR.

10.6 We subscribe to the independent external dispute resolution scheme administered by FOS EDR.

10.7 FOS EDR is available to Customers who fall within the FOS Terms of Reference.

10.8 External dispute resolution determinations made by FOS are binding upon us in accordance with the FOS Terms of Reference.

10.9 Where FOS Terms of Reference do not extend to you or your dispute, we commit to advising you to seek independent legal advice or giving you information about any other external dispute resolution options that may be available to you.

11 MONITORING, ENFORCEMENT AND SANCTIONS

11.1 The CGB monitors and enforces Code Participant compliance with the Code.

11.2 A Code Participant breaches the Code if its Service Supplier, except for Special Services, breaches the Code when supplying services for the Code Participant.

11.3 A Code Participant must report a breach of the Code to the CGB.

11.4 The CGB has power to make enquiries about a Code Participant’s compliance with the Code. FOS Code and FOS EDR also report possible Code breaches to the CGB. Any serious or systemic issue is reported to ASIC.

11.5 You are entitled to complain to the CGB that a Code Participant has breached the Code. If the CGB finds that a Code Participant has breached the Code, the CGB has power to require Corrective Action by the Code Participant. If the Code Participant does not comply with the Corrective Action, the CGB has power to impose a Code Sanction. A Corrective Action and a Sanction are binding on a Code Participant.

11.6 The CGB and FOS Code must comply with the Code Monitoring and Enforcement Guideline which is binding on them and each Code Participant under the contract by which a Code Participant adopts the Code.

12 CODE GOVERNANCE

12.1 The CGB is the governing body for this Code. It is independent. Its address is [ ].

12.2 The CGB’s constitution, functions and powers are set out in the CGB Charter [refer to website for charter].

12.3 The CGB has a contract with FOS Code under which FOS Code supplies services to the CGB [refer to website for contract].
12.4 The CGB should commission an independent review of this Code at least every five years.

13 GUIDELINES AND SERVICE LEVELS

13.1 The following Guidelines and Service Levels are a part of this Code:
   (a) Financial Hardship Guideline
   (b) Claims Service Levels
   (c) Internal Complaint Process Guideline
   (d) Natural Disaster Declaration Guideline
   (e) Natural Disaster Customer Response Guideline [to be developed]
   (f) Code Monitoring and Enforcement Guideline [to be developed]

13.2 The CGB should review these Guidelines and Services Levels periodically and at least annually.

13.3 A Guideline or Service Level may be varied, superseded or rescinded by the CGB, with a transition period and for application to Retail Code Insurances entered into or renewed after the end of the transitional period.

14 DICTIONARY

AFSL means an Australian Financial Services Licence under the Corporations Act.

ASIC means the Australian Securities and Investments Commission.

ASIC Law means the Corporations Act or other relevant Commonwealth law for which ASIC is responsible within the meaning of ASIC RG 183.28.

CGB means the Code Governance Body.

CGB Charter means the CGB’s charter or constitution.

Code means this Code.

Claims Service Levels means the Claims Service Levels in this Code.

Code Insurance means a general insurance contract, with one or more Code Participants, to which the Insurance Contracts Act 1984 applies except:
   (a) workers’ compensation;
   (b) marine insurance;
   (c) medical indemnity insurance;
   (d) compulsory third party insurance including where there is linked driver protection cover;
   (e) Reinsurance.

A Code Insurance does not include:
   (a) life insurance policies — as defined under the Life Insurance Act 1995;
   (b) health insurance — insurance by a private health insurer within the meaning of the Private Health Insurance Act 2007, as excluded from the IC Act.


Code Participant, we, us or our means the entity which has adopted this Code and excludes a NIBA Insurance Broker.

Code Service Principles means the principles and objectives in the Code, section 1.
Corrective Action means an action agreed between the CGB and the Code Participant that the Code Participant must, within a specified time:

(a) correct or remedy; or
(b) compensate a Customer for,

the Code Participant’s breach of the Code.

Customer, you or your means a person or entity who:

(a) applies for a Code Insurance;
(b) has a Code Insurance;
(c) is an insured under the IC Act;
(d) is a Third Party Beneficiary under a Code Insurance;
(e) is an agent of that person or entity.

Disclosable Material means information or documents that:

(a) a Code Participant is entitled by law to disclose to a Customer, and not legally prohibited or restricted by privacy, confidentiality, legal professional privilege or other matters, from disclosing to a Customer;
(b) are created before a Customer commences legal proceedings, other than through FOS, against a Code Participant;
(c) are not created by or arising from a Special Service.

Distributor means a Service Supplier who:

(a) has an AFSL in relation to advice or dealing in a Retail Code Insurance;
(b) who does not have an AFSL in relation to advice or dealing in a Retail Code Insurance but who introduces Customers to us to purchase Retail Code Insurances.


FOS Code means the Financial Ombudsman Service in its capacity as the supplier of services in relation to Code administration.

FOS EDR means the Financial Ombudsman Service in its capacity as an EDR scheme for Customers and Code Participants.

FOS Terms of Reference means the terms of reference for FOS EDR as amended.


ICA means the Insurance Council of Australia.

Internal Complaint Process means the process set out in the Internal Complaint Process Guideline.


Loss Adjuster means a supplier of services to assess the damage or loss, determine whether the claim is covered under the Code Insurance, and who may assist in obtaining repair/replacement quotes and help settle the claim.

Natural Disaster means a natural event like fire, flood, earthquake, cyclone, severe storm and hail, each resulting in a large number of claims.

Natural Disaster Declaration Guideline means the Natural Disaster Declaration Guideline in this Code.

Natural Disaster Customer Response Guideline means the Natural Disaster Customer Response Guideline in this Code.
NIBA Insurance Broker means a Code Member under the NIBA Code in relation to Covered Services for a Client as those terms are defined in the NIBA Code.

Retail Code Insurance means a financial product which is a general insurance product and is provided to the person as a retail client, within the meaning of the Corporations Act.

Sanction means an order by the CGB that the Code Participant must, within a specified time:
(a) take a Corrective Action at the direction of the CGB;
(b) undertake a Code compliance audit scoped by the CGB and pay the costs of it;
(c) place corrective advertising specified by the CGB; and
the CGB is entitled to publicise the Code Participant’s breach, any Sanction and any fact about the matter.

Service Supplier means:
(a) a supplier who is not an employee of the Code Participant;
(b) of services, including Special Services;
(c) in relation to a matter under this Code to a Code Participant; and
(d) any sub-contractor of such a supplier approved by a Code Participant;
(e) including a Distributor and a Loss Adjuster;
(f) the services include: claim assessment or management; debt recovery; investigation and verification of claim circumstances.

Significant Breach is a breach that is determined by the CGB to be significant by reference to:
(a) similar previous breaches;
(b) the adequacy of the Code Participant’s arrangements to ensure compliance with this Code;
(c) the extent of any Customer detriment; and
(d) the duration of the breach.

Special Services means services:
(a) by a Service Supplier who is a legal practitioner or private investigator; or
(b) in relation to a claim which we suspect involves fraud.

Third Party Beneficiary has the same meaning as in the Insurance Contracts Act 1984.

Wholesale Code Insurance means a Code Insurance which not a Retail Code Insurance.
FINANCIAL HARDSHIP GUIDELINE

1 INTRODUCTION
1.1 This Guideline applies to Retail Code Insurance only.
1.2 A Code Participant is bound by the Code in relation to the services and conduct of a Service Supplier to a Code Participant in relation to any matter under this Guideline.
1.3 A word or phrase which is defined in the Code has the same meaning in this Guideline. Other words and phrases are defined in Clause 6.

2 ASSISTANCE — COUNSELLING AND ADVICE
2.1 We commit to supplying a Customer or Third Party, who informs us that the person experiences financial hardship, information about:
   (a) the existence of [Financial Counselling Australia (www.financialcounsellingaustralia.org.au) and the phone number for referral to a financial counsellor (Australia-wide) being 1800 007 007 for a referral to a not for profit, free financial counselling service]; and
   (b) the existence of the National Association for Community Legal Centres and the State Legal Aid agencies for legal advice.

3 FINANCIAL HARDSHIP MITIGATION
3.1 We commit to adopting the following measures to avoid or mitigate financial hardship on our Customers:
   (a) while acknowledging the obligations under the IC Act, sections 59 and 62, in relation to the cancellation of a Retail Code Insurance and an instalment Retail Code Insurance, to give one notice of the intention to cancel the Retail Code Insurance to the Customer 28 days before cancellation and to give another notice of the intention to cancel the Retail Code Insurance to the Customer 14 days before cancellation.
   (b) to inform any such Customer, on cancellation and again on the date a renewal notice would have been sent under the IC Act, section 38 if the Retail Code Insurance had not been cancelled, that the Customer may seek a renewal of the Retail Code Insurance when the Customer’s financial circumstances improve.
   (c) to notify the Customer of the cancellation within 14 days after the effective date of the cancellation.
3.2 We commit to continuing to work, in accordance with the Code Service Principles, to avoid or mitigate financial hardship on Customers, on arrangements to establish, maintain and publicise the facility for paying premiums fortnightly and through Centrepay.

4 FINANCIAL HARDSHIP ASSESSMENT AND NOTIFICATION
4.1 A Customer or Third Party who experiences financial hardship is entitled to ask us to assess whether the person should have Financial Hardship Status.
4.2 We commit to assessing whether or not a Customer or Third Party should have Financial Hardship Status in accordance with the Code Service Principles and by reference to:
   (a) for Centrelink clients, the person’s Centrelink statement;
   (b) for others, the attached form [to be developed] when completed by the person.
4.3 We may include the following factors in our assessment of whether a Customer or Third Party should have Financial Hardship Status:
(a) severe illness;
(b) unemployment;
(c) disability including disability caused by mental illness; and
(d) homelessness.

4.4 During the period we are assessing whether the Customer should have Financial Hardship Status, we commit that we will not exercise or attempt to exercise any remedies under the IC Act, section 39, 59 or 62. This period begins on the Customer’s first request to us under clause 4.1 and ends when:

(a) FOS, or where the matter is urgent, the CGB determines that the person does not have Financial Hardship Status; or
(b) the time for the person to refer the matter to FOS or the CGB has expired.

4.5 We commit to notifying the Customer or Third Party promptly whether or not the Customer or Third Party, respectively, has Financial Hardship Status. If we notify the Customer that the Customer does have Financial Hardship Status, we commit to notifying that status to any financial institution that the Customer has informed us has an interest in the Retail Code Insurance.

4.6 If we notify the Customer that the Customer or Third Party, respectively, does not have Financial Hardship Status, we commit to:

(a) including in the notice information about our Internal Complaints Process and the EDR processes consistent with the Code, section x; and
(b) treating any complaint about that decision and notification in accordance with our Internal Complaints Process.

5 CONSEQUENCES OF FINANCIAL HARDSHIP STATUS

Customers

5.1 We accept that Financial Hardship Status is not a material matter for disclosure by the Customer under the IC Act.

5.2 A Customer who has Financial Hardship Status is entitled to ask us for a release, discharge or waiver of a debt or obligation under a Retail Code Insurance. Financial Hardship Status does not entitle the Customer to a release, discharge or waiver of any debt or obligation of the Customer under the Retail Code Insurance nor deem there to be such a release, discharge or waiver. If we agree to release, discharge or waive a debt or obligation under this Guideline, we commit to notifying:

(a) any financial institution that the Customer has informed us has an interest in the Retail Code Insurance; or
(b) any third party whose interest is noted on the Retail Code Insurance;

that we have agreed to release, discharge or waive a debt or obligation under this Guideline. If a Customer has paid an amount to us, after the request in clause 4.1 and before having Financial Hardship Status, we must repay that amount.

5.3 If a debt is not released, discharged or waived under clause 5.2, we commit to trying to enter into an arrangement with a Customer who has Financial Hardship Status to:

(a) extend the due date for the payment of the debt;
(b) pay the debt in affordable instalments;
(c) pay the debt in a reduced lump sum amount;
(d) have a combination of (b) & (c);
(e) where (b) is among the options chosen, postpone an instalment payment for an agreed period.
(f) we commit to confirming any such agreement with that person in writing.

5.4 Where Financial Hardship Status applies to a Customer who has made a claim but the claim has not been assessed, we commit to making an advance payment within five Business Days of the later of the claim being made or the date of Financial Hardship Status.

5.5 If we cancel a Retail Code Insurance, if the Customer has Financial Hardship Status and the Customer’s circumstances have improved, we should consider:
(a) reminding the Customer again of the benefit of insuring;
(b) offering insurance to the Customer, as if it were a renewal, if the Customer requests us to make the offer.

5.6 We commit to waiving any fees, costs or expenses we might charge for the supply of documents or information to a Customer who has Financial Hardship Status.

Third Parties

5.7 We commit to ensuring that a communication to a Third Party must identify us and specify the nature of our claim against the Third Party.

5.8 Clauses 5.2 and 5.3 apply to a Third Party who has Financial Hardship Status.

Excess

5.9 We commit to not requiring the payment of any excess on a first party Retail Code Insurance loss as a condition of assessing, accepting or paying a claim unless:
(a) the Retail Code Insurance expressly provides that right; and
(b) the benefit under the Retail Code Insurance is a service (e.g. Car repair); and
(c) we have offered, but the Customer has rejected, the option of receiving the benefit as a payment of money after deduction of the excess.

5.10 We commit to treating an excess as a debt under clauses 5.2 and 5.3 if:
(a) clause 5.9 applies; or
(b) the Customer under a third party liability insurance contract has Financial Hardship Status.

Debt Recovery

5.11 We commit, when taking action against a person who has Financial Hardship Status, to:
(a) acting in accordance with the Code Service Principles; and
(b) complying with the ACCC & ASIC Debt Collection Guideline.

5.12 We commit that we will accept a confirmation of debt from a Customer or Third Party as proof of debt without commencing or pursuing bankruptcy proceedings against that person.
6 DICTIONARY

Financial Hardship Status means the Customer status which results from being notified of it by the Code Participant under clause 4.5 of this Guideline or granted by a FOS or CGB determination.

Service Supplier under this Guideline includes a debt collector, a solicitor and an assignee of a debt from a Code Participant.

Third Party means a person:

(a) whom a Code Participant considers has caused a Customer’s loss or liability; and

(b) against whom a Code Participant makes a demand or claim or takes any action to enforce a right of the Code Participant against the person.
ICR — INTERNAL COMPLAINTS PROCESS GUIDELINE

1 INTRODUCTION

1.1 This Guideline applies to Retail Code Insurance only.

1.2 A Code Participant is bound by the Code in relation to the services and conduct of a Service Supplier to a Code Participant in relation to any matter under this Guideline.

1.3 A word or phrase which is defined in the Code has the same meaning in this Guideline. Other words and phrases are defined in Clause 6.

2 GENERAL

2.1 A Customer is entitled to make a complaint to us about any aspect of the Customer’s relationship with us.

2.2 We commit to informing our Customers on our websites and in our relevant written communications with our Customers about our Customers’ rights to make a complaint and about our processes for dealing with a Customer complaint.

2.3 A Customer is entitled to make a complaint by telephone, email or in writing.

2.4 We commit to inviting the Customer to send us information or documents about the complaint.

2.5 We commit to asking for and considering only relevant information in dealing with a Customer complaint.

2.6 We commit to acknowledging the receipt of a complaint by the same way the Customer made the complaint to us.

2.7 We commit to considering and reviewing the Customer complaint in accordance with the Code Service Principles.

2.8 We commit to offering the Tier Two Review. We may additionally offer a Tier One Review.

2.9 The Guideline on Tier One and Tier Two Review does not apply to a complaint if we resolve the Customer’s complaint to the Customer’s complete satisfaction by the end of the fifth Business Day after the complaint is received (Complaint Date) and the Customer has not requested a response in writing. This exemption does not apply to a complaint about a claim we deny or challenge the amount or about hardship.

2.10 We commit that the time from the time of the Complaint Date to the resolution of the complaint must not exceed 45 days.

2.11 A Customer is not entitled to make a complaint under this Guideline about a matter which was the subject of a prior complaint under this Guideline.

3 TIER ONE REVIEW

3.1 We commit to referring the complaint firstly to the person:

(a) who made the decision; or

(b) whose conduct is the subject of the complaint,

to reconsider the decision or to review the conduct.

3.2 We commit to responding to the complaint within ten Business Days of the Complaint Date the Customer makes the complaint, whether or not the Customer sends us information or documents about the complaint. Our response will include our reasons for our response.
3.3 If our response resolves the complaint or leads to resolving the complaint without any further steps, we commit to confirming the resolution of the complaint in writing to the Customer at the end of the ten Business Day period.

3.4 If our response does not resolve the complaint or does not lead to resolving the complaint without any further steps, we commit to informing the Customer about our internal complaint resolution process (Tier Two Review).

4 TIER TWO REVIEW

4.1 If our response does not resolve the complaint or does not lead to resolving the complaint without any further steps, the Customer is entitled to ask us by telephone, email or writing, to refer the decision or conduct to our (Tier Two Review) internal complaint resolution process.

4.2 We commit to inviting the Customer to send us information or documents about the complaint.

4.3 We commit to referring the complaint to our internal complaint resolution process which complies with the following minimum criteria:

(a) Our staff who are involved in the internal complaint resolution process have the experience, knowledge and authority to do the work and are, to the extent it is practical, functionally independent of any person:
   (i) who made the decision; or
   (ii) whose conduct is the subject of the complaint, or who was involved in the Tier One Review.

(b) Our internal complaint resolution process reconsider the original decision or reviews the original conduct.
   (i) we commit to keeping the Customer informed about the progress of our response.
   (ii) we commit to responding to the complaint within 45 Business Days of the Complaint Date the Customer asks us to refer the decision or conduct to our internal complaint resolution process, whether or not the Customer sends us information or documents about the complaint. Our response will include our reasons for our response and it will identify the information and documents we relied on for our response.

(c) If we consider that our response will not resolve the complaint to the Customer’s satisfaction, our response will offer to supply the Disclosable Material we relied on for our response to the Customer.

(d) We commit to supplying the Disclosable Material we relied on for our response to the Customer within five Business Days of the request.

(e) If we do not resolve the complaint to the Customer’s satisfaction, or if we have not resolved the complaint within 45 Business Days of the Complaint Date, we commit to informing the Customer about:
(i) the reasons for any delay;

(ii) the Customer’s rights to refer the complaint to our external dispute resolution (EDR) process; and

(iii) that EDR process, including the time by which the Customer must refer the complaint to the EDR process.

5 FINANCIAL OMBUDSMAN SERVICE

5.1 FOS should reject any application to it for a determination unless and until the Customer has taken the steps in this Guideline. If the Customer has taken the steps in this Guideline, FOS should not refer the matter back to the Code Participant before commencing its processes.

6 DICTIONARY

Complaint Date is defined in clause 2.9.

Tier One Review is set out in clause 3.

Tier Two Review is set out in clause 4.
CLAIMS SERVICE LEVELS

1 INTRODUCTION
1.1 These Claims Service Levels apply to Retail Code Insurance only.
1.2 A Code Participant is bound by the Code in relation to the services and conduct of a Service Supplier to a Code Participant in relation to any matter under these Claims Service Levels.
1.3 A word or phrase which is defined in the Code has the same meaning in these Claims Service Levels. Other words and phrases are defined in Clause 9.

2 GENERAL
2.1 We commit to assessing a Customer claim in accordance with the Code Service Principles. The Code Service Principles continue to apply if there is a Declared Natural Disaster.
2.2 We commit to assessing a Customer claim based on the relevant facts, in accordance with the Retail Code Insurance contract terms and the law.
2.3 We must take action to correct a mistake in assessing a claim immediately after we become aware of the mistake.
2.4 We must keep the Customer informed about our progress in assessing a claim at least every 20 Business Days.
2.5 We must respond to any routine request from the Customer about a claim within ten Business Days.

3 MAKING A CLAIM
3.1 A Customer is entitled to ask us if the Customer’s Retail Code Insurance covers the claim. We must answer in accordance with the Code Service Principles. We must invite the Customer to make a claim and not discourage the Customer from doing so. We must inform the Customer that the claim, including the question of whether the Retail Code Insurance covers the claim, will be assessed. We must inform the Customer that usually it is not possible to decide whether or not an insurance contract covers a claim before assessing the claim.
3.2 We must notify the Customer about what information and documents we need the Customer to lodge with a completed claim form or what other steps the Customer should take to complete the claim (Completed Claim) within ten Business Days of receiving the claim. We commit to working with the Customer to help the Customer to make a Completed Claim.
3.3 We must respond within ten Business Days of receiving a Completed Claim to tell the Customer about:
   (a) our progress in assessing the claim;
   (b) what further information and documents we need, except in relation to Special Services;
   (c) our steps and timetable for making a decision about whether or not to accept the claim.
   If our timetable is different from the times set out in this Code, we must explain why and we must offer a fair and reasonable timetable to the Customer. The timetable we offer must never be longer than 12 months from the receipt of the Completed Claim.
3.4 We must give the Customer any agreed timetable in writing within five Business Days of agreeing it with the Customer (Agreed Timetable).
ASSSESSMENT AND INVESTIGATION

4.1 Once we have a Completed Claim, if we do not need any investigation or any report from any Service Supplier, we must make our decision about whether or not to accept the claim, within ten Business Days of the receipt of the Completed Claim.

4.2 Once we have a Completed Claim, if we do need any investigation or any report from any Service Supplier, we commit to appointing a Service Supplier, within ten Business Days of receipt of the Completed Claim. We must notify the Customer within five Business Days of the appointment about: the name of the organisation and person, the purpose of the appointment and the expected date for delivery of the Service Supplier’s report. This does not apply to Special Services.

4.3 We must ask for any Service Supplier report to be supplied to us by the Service Supplier within in 12 weeks of receipt of the Completed Claim.

DECISION AND ACCEPTANCE

5.1 We must make a decision about whether or not to accept the claim:

(a) in accordance with the Agreed Timetable; or

(b) within four months of the receipt of the Completed Claim, unless there is a Declared Natural Disaster.

5.2 If there is a Declared Natural Disaster, we must make a decision about whether or not to accept the claim within 12 months of the receipt of the Completed Claim.

5.3 We must make our decision, about whether or not to accept the claim, and notify the Customer of it within ten Business Days of completing our investigation of the claim.

5.4 If we have not made a decision about whether or not to accept the claim within four months of receiving the Completed Claim, we accept that we should be deemed to have denied the claim.

REASONS, INFORMATION, REVIEW AND COMPLAINTS

6.1 If we decide to avoid or cancel the Customer’s Retail Code Insurance or to reduce or deny our liability under it for the claim, we must give the Customer our reasons in writing. We must also tell you about your rights to complain about any aspect of our handling the claim, to have the decision reviewed or to dispute our decision. If we do not meet the timetable in these Claims Service Levels or an Agreed Timetable or if we cannot agree a timetable with you, or we deny a claim in whole or part, we must:

(a) give our reasons for the delay, inability to agree or denial.

(b) offer to supply to you copies of Disclosable Material we relied on in assessing the claim.

(c) inform you about our Internal Complaints Process and your right to complain.

(d) inform you about our EDR processes and scheme and your right to lodge a dispute with our EDR scheme.

(e) if you ask for Disclosable Material, we must supply it to you within ten Business Days of your request.

6.2 If you have a property claim resulting from a Declared Natural Disaster and we have finalised your claim within one month after the end of the Declared Natural Disaster, you can request a review of your claim if you think the assessment of your loss was not complete or accurate,
even though you may have signed a release. We must give you seven months from the date of the release to ask for a review of your claim. We must inform you about:

(a) this entitlement when we finalise your claim; and
(b) our internal complaints processes.

7 REPAIRS
Where we have directly selected and authorised a repairer, we accept responsibility for the work and materials.

8 LIABILITY FOR BREACH
8.1 We are not in breach of, or non-compliance with, this Code or Claims Service Levels if:
   (a) our conduct complied with these Claims Service Levels; or
   (b) our conduct did not comply with these Claims Service Levels, but either:
       (c) our conduct complied with an Agreed Timetable or you accepted the conduct; or
       (d) our conduct and the timetable were reasonable in all the circumstances.
   (e) where the cause of the breach or non-compliance was a delay in the supply of a report from a Service Supplier, we instructed the Service Supplier in accordance with this Claims Service Levels, and used our best endeavours to obtain the report in time.

9 DICTIONARY
Agreed Timetable is defined in clause 3.4.
Completed Claim is defined in clause 3.2.
Declared Natural Disaster means that the ICA, acting in accordance with the Natural Disaster Declaration Guideline, declared a Natural Disaster
NATURAL DISASTER DECLARATION GUIDELINE

1.1 The purpose of this guideline is to provide clarity in relation to the Code which contains an exemption from the four month time frame to determine a claim, where the claim arises from a Natural Disaster as declared by the Board of the Insurance Council of Australia. This guideline is approved by the ICA Board.

1.2 The Board of the Insurance Council of Australia may declare a Natural Disaster only where, having regard to all the relevant circumstances, the Board is satisfied the ability of Code Participants to assess claims has been materially affected.

1.3 Relevant circumstances may include:

(a) the number and frequency of recent declarations;
(b) the impact or likely impact of a declaration on consumers and insurers;
(c) the actual or potential financial impact of a declaration on consumers and insurers;
(d) the extent to which insurers can or have taken reasonable steps to minimise the impact of the Natural Disaster on business operations;
(e) the ability of members to assess claims may be materially affected in the following circumstances:
   (i) where infrastructure necessary to determine the claim has been damaged or destroyed;
   (ii) where insurers are unable to gain access to an affected area;
   (iii) Where a significant increase in the number of claims is being experienced or is anticipated;
   (iv) where it is unsafe for staff required to process claims to attend work premises (i.e. Damaged buildings or pandemic);
   (v) any other circumstances considered to significantly affect the insurers’ claims handling capability as determined by the Board.

1.4 The ICA Board may consider the cumulative effect of multiple catastrophes or disasters when determining whether to declare a Natural Disaster. A declaration may apply to all Code Participant insurers or a specified insurer(s). When making a declaration, the Board of the Insurance Council of Australia will provide reasons for its decision in line with the criteria outlined above.
### Appendix G: Major Report Recommendations

This Appendix lists, in the first column, each issue which is discussed in Section 9 of the Report and for each issue, then lists the relevant recommendations of the Major Reports; the NDIR Report and the QFCI Report made a number of recommendations in relation to matters which are outside the Review’s Terms of Reference. The second column sets out my response or where relevant the Government response.

<table>
<thead>
<tr>
<th>Issue and Recommendations</th>
<th>Independent Code Review Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Code Publicity, Awareness and Engagement</td>
<td>There are no relevant recommendations on this issue.</td>
</tr>
<tr>
<td><strong>2</strong> Code Content, Presentation and Style</td>
<td>There are no relevant recommendations on this issue.</td>
</tr>
<tr>
<td><strong>3</strong> Code Coverage</td>
<td></td>
</tr>
<tr>
<td>3.1 NDIR Recommendation 38</td>
<td>I agree with the direction of this recommendation and I have recommended a different approach on implementation.</td>
</tr>
<tr>
<td><strong>4</strong> Principles, Objectives and Legal Status</td>
<td></td>
</tr>
<tr>
<td>4.1 HOR Recommendation 8</td>
<td>I agree with the direction of this recommendation and I have recommended a different approach on implementation.</td>
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444 NDIR Recommendation 38.

445 HOR Report, para 7.41.

446 HOR Report, para 7.41.
<table>
<thead>
<tr>
<th>4.2</th>
<th>FOS QF Survey Recommendation A</th>
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<tbody>
<tr>
<td>The specific obligations within the Code should always be interpreted in a manner which is consistent with the spirit of the Code and its objectives.</td>
<td></td>
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<tr>
<td>I agree with this recommendation and I have made a similar recommendation.</td>
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<tr>
<th>4.3</th>
<th>FOS QF Survey Recommendation B</th>
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<tr>
<td>The Code [should be used] to its fullest advantage prior to invoking a provision that Code obligations cannot be met [including] the ability to adjust time frames within the claims handling process in agreement with the customer under section 3.3 of the Code.</td>
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<tr>
<td>I agree with the direction of this recommendation and I have recommended a different approach on implementation.</td>
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<tr>
<th>5</th>
<th>Training and Education</th>
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<tr>
<td>There are no relevant recommendations on this issue.</td>
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<tr>
<th>6</th>
<th>Buying Insurance</th>
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<tbody>
<tr>
<td>6.1</td>
<td>QFCI Recommendation 12.2</td>
</tr>
<tr>
<td>Insurers should review their existing systems and processes and implement any improvements necessary to ensure that accurate and complete records of conversations with policyholders are made.</td>
<td></td>
</tr>
<tr>
<td>I agree with the direction of this recommendation and I have recommended a different approach on implementation.</td>
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<tr>
<th>6.2</th>
<th>NDIR Recommendation 33</th>
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<tr>
<td>That subsection 35(2) of the Insurance Contracts Act 1984 (Cth) be amended so that policyholders are not deemed to be clearly informed of a deviation from ‘standard cover’ by simply being provided a copy of the insurance policy or product disclosure statement.</td>
<td></td>
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<tr>
<td>This recommendation was implemented in the Insurance Contracts Bill 2012 for flood insurance.</td>
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<th>6.3</th>
<th>HOR Recommendation 2</th>
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<tr>
<td>The Committee recommends that the Australian Government amend the Insurance Contracts Act 1984 (Cth) so that from 1 July 2012 any derogation from Standard Cover is required to be communicated to policyholders as a departure from ideal standards:</td>
<td></td>
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<tr>
<td>1. in clearly understood terms and separately from the policy or the Product Disclosure Statement; and</td>
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<tr>
<td>2. with specific reference to the fact that the policy derogates from Standard Cover; and with specific reference to the manner in which the policy derogates from Standard Cover.</td>
<td></td>
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<tr>
<td>This recommendation was implemented in the Insurance Contracts Bill 2012 for flood insurance.</td>
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447 FOS QF Survey, section 9, paras 1–3.
448 FOS QF Survey, section 9, paras 1–4.
449 QFCI Recommendation 12.2.
450 NDIR Recommendation 33.
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<tr>
<th>6.4</th>
<th>NDIR Recommendation 34</th>
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| That, in endorsing the Government proposal for a Key Facts Statement, the Key Facts Statement list replacement cover and all natural disaster events, identified as ‘standard cover’ in the Insurance Contracts Regulations 1985. That insurers issue a Key Facts Statement to policy holders with all new policies written and all policy renewals on an annual basis.  
452  |
| This recommendation was substantially implemented in the insurance Contracts Bill 2012 for flood insurance.  
453  |

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<tr>
<th>6.5</th>
<th>NDIR Recommendation 35</th>
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</table>
| That a ‘health warning’ be provided by insurers to the purchasers of home and contents policies that do not include full flood cover or full replacement cover. The health warning should be provided:  
(a) in the key facts statement;  
(b) verbally at the time of telephone purchase; and  
(c) In writing on internet quotation software for all online purchases.  
453  |
| This recommendation was substantially implemented in the Insurance Contracts Bill 2012 for flood insurance.  
454  |

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<tr>
<th>6.6</th>
<th>NDIR Recommendation 31</th>
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</table>
| That lending institutions remind mortgagors annually of their obligations to hold home insurance and of the risks of under-insurance in order to minimise non-insurance and under insurance of homes.  
454  |
| The Government asked the lending industry to examine this recommendation and advise the Government of its response by the end of February 2012. This recommendation did not attract any material interest or support in my Review.  
455  |

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451 HOR Report, para 7.15.  
452 NDIR Recommendation 34.  
453 NDIR Recommendation 35.  
454 NDIR Recommendation 31.
### 7 Policy Terms and Coverage

#### 7.1 HOR Recommendation 1

The Committee recommends that the Australian Government amend the Insurance Contracts Act 1984 (Cth) to make it obligatory that insurers offer to consumers the option of a general insurance policy that conforms to Standard Cover, as prescribed in the Insurance Contracts Regulations 1985 (Cth), from 1 July 2012, so that all insurers carry a product that provides full replacement in the event of total loss and cover for damages resulting from flood.\(^\text{455}\)

The Government stated that is considering this recommendation with the NDIR stakeholders. The Government also stated it understood that reinsurers are reducing support for full replacement cover. The Government said it encourages customers to consider whether full replacement cover products better meet their needs than sum insured products. This recommendation was partly implemented in the Insurance Contracts Bill 2012 for flood insurance.

#### 7.2 HOR Recommendation 3

The Committee recommends that the Australian Parliament pass the Insurance Contracts Amendment Bill 2011 and ensure its enactment by 1 July 2012. The Committee further recommends that the standard definition of ‘flood’ be included in the definition of Standard Cover in the Insurance Contracts Regulations 1985.\(^\text{456}\)

This recommendation was substantially implemented in the Insurance Contracts Bill 2012 for flood insurance.

#### 7.3 HOR Recommendation 4

The Committee recommends that the Australian Government introduce legislative changes required to remove the exemption for general insurers to unfair contract terms laws, and ensure its enactment by the end of 2012.\(^\text{457}\)

The Code contains fairness standards. Any legislation is a matter for the Federal Government.

#### 7.4 NDIR Recommendation 36

That the Commonwealth Government introduce a standard definition of ‘flood’ in the form proposed in the ‘Reforming flood insurance: Clearing the waters’ consultation paper.\(^\text{458}\)

This recommendation was substantially implemented in the Insurance Contracts Bill 2012 for flood insurance.

#### 7.5 NDIR Recommendation 37

That, in order to give general insurance policyholders the same legal remedies as other consumers, unfair contract terms laws be applied to general insurance.\(^\text{459}\)

The Code contains fairness standards. Any legislation is a matter for the Federal Government.

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\(^{455}\) HOR Report, para 7.14.

\(^{456}\) HOR Report, para 7.18.

\(^{457}\) HOR Report, para 7.22.

\(^{458}\) NDIR Recommendation 36.

\(^{459}\) NDIR Recommendation 37.
<table>
<thead>
<tr>
<th>7.6</th>
<th>NDIR Recommendation 19</th>
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<tbody>
<tr>
<td>That for home contents insurance policies, policyholders pay for that portion of the risk retained by the insurer and pay nothing for the remainder of the risk up to $100,000. For contents with a value greater than $100,000 policyholders then pay the full cost of the portion of risk exceeding $100,000. The Government said it would consider this recommendation as part of its broader consideration of the introduction of flood insurance premium discounts following a consultation process in 2012. This recommendation did not attract any material interest or support in my Review.</td>
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<th>7.7</th>
<th>NDIR Recommendation 31</th>
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<tr>
<td>That lending institutions remind mortgagors annually of their obligations to hold home insurance and of the risks of under-insurance in order to minimise non-insurance and under insurance of homes. This recommendation did not attract any material interest or support in my Review.</td>
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<tr>
<th>7.8</th>
<th>NDIR Recommendation 32</th>
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<tr>
<td>That all home building insurance policies providing sum insured cover be modified by the end of 2014 so as to include replacement value cover in the event of total loss of the home. That during the transition period insurers consider how the design features of home building replacement value policies should respond following a natural disaster, including the conditions under which cash settlements are to be offered and finalised. This recommendation did not attract any material interest or support in my Review.</td>
<td></td>
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<tr>
<th>7.9</th>
<th>HOR Topics for further investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>A third significant issue raised with the Committee was the inability to secure multi-peril crop insurance or insurance for livestock and certain farming assets and infrastructure. The Committee considers that the Department of Agriculture, Fisheries and Forestry should hold discussions with primary producers to investigate this further and report to the Minister for Agriculture, Fisheries and Forestry. This recommendation did not attract any material interest or support in my Review.</td>
<td></td>
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</tbody>
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460 NDIR Recommendation 19.
461 NDIR Recommendation 31.
462 NDIR Recommendation 32.
463 HOR Report, para 7.52.
### Premium — Payment and Cancellation

#### 8.1 HOR Topics for further investigation

The Committee heard evidence about several issues that were outside the scope of the terms of reference. However, the evidence and the nature of the issues are compelling enough that the Committee considers they warrant investigation.⁴⁶⁴

These issues include:

(a) the sizeable increases in insurance premiums in the wake of multiple natural disasters that have diminished the insurance industry’s profits; and

(b) the emotional impact of recovering from the life-changing physical and financial effects of disaster events.⁴⁶⁵

#### 8.2 HOR Recommendation 13

The Committee recommends that the Minister for Financial Services and Superannuation immediately establish a joint industry-Government action group to address evidence of the rising costs and market failure of insurance premiums across Australia.⁴⁶⁶

The Minister has established the joint industry and Government action group, IRAG, which is tasked with this matter in specific areas. This recommendation did not attract any material interest or support in my Review.

### Claims

#### 9.1 NDIR Recommendation 39

That the Insurance Council of Australia amend the Code of Practice to impose a four month time limit (subject to exceptional circumstances) to make a determination as to liability and the nature of the loss or damage with respect to a claim.

That, should a claimant not receive a determination within the four month period, the claim be automatically escalated to an internal dispute resolution complaint and the insurer notify the Code Compliance Committee of the breach of the Code.⁴⁶⁷

The first part of this recommendation was substantially implemented in the 2012 Code. I agree with the direction of the second part of this recommendation and I have recommended a different approach.

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⁴⁶⁴ HOR Report, para 7.50.
⁴⁶⁵ HOR Report, para 7.51.
⁴⁶⁶ HOR Report, para 7.65.
⁴⁶⁷ NDIR Recommendation 39.
### 9.2 NDIR Recommendation 40

That the Insurance Council of Australia repeal clauses 4.3 and 4.4 of the General Insurance Code of Practice, so that claims arising from natural disasters are subject to the same minimum standards as other claims — including the four month time limit for a determination on liability and the nature of the loss/damage with respect to the claim.  

This recommendation was substantially implemented in the 2012 Code. I agree with the balance of this recommendation and I have made a similar recommendation.

### 9.3 NDIR Recommendation 41

That the Insurance Council of Australia amend clause 4.5 of the General Insurance Code of Practice to extend the time within which claimants in natural disasters have the right to make further claims or lodge reviews after the finalisation of an initial claim to seven months from the date of the relevant natural disaster, regardless of when the initial claim was finalised.

I agree with this recommendation and I have made a similar recommendation.

### 9.4 QFCI Recommendation 12.2

Insurers should review their existing systems and processes and implement any improvements necessary to ensure that accurate and complete records of conversations with policyholders are made.

I agree with the direction of this recommendation and I have recommended a different approach on implementation.

### 9.5 QFCI Recommendation 12.1

When a policyholder makes a claim, the insurer should ascertain the policyholder’s preferred method of contact and ensure that it is used (with other modes of communication if necessary) to keep the policyholder informed about the progress of the claim. However, important decisions regarding the claim — for example, determinations about the outcome of the claim and settlement sums — should always be confirmed in writing.

I agree with the direction of this recommendation and I have recommended a different approach on implementation.

### 9.6 HOR Recommendation 7

The Committee recommends that the Australian Government empower the Australian Securities and Investments Commission to regulate claims handling and settlement of financial service providers. This can be achieved by the Treasurer introducing legislation by 1 July 2012 to give effect to the measures contained in Schedule 1, Part 1 of the lapsed Insurance Contracts Amendment Bill 2010, so that breaches of the duty of utmost good faith in relation to claims handling constitute a breach of the Insurance Contracts Act.

I agree with the direction of this recommendation and I have recommended a different approach on implementation.

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468 NDIR Recommendation 40, paras 3.44–3.49.
469 NDIR Recommendation 41.
470 QFCI Recommendation 12.2.
471 QFCI Recommendation 12.1.
This would enable the Australian Securities and Investments Commission to:

(a) monitor and regulate claims handling and settlement processes;
(b) impose sanctions on insurance companies, under Australian Financial Services Licence remedies, on behalf of consumers; and
(c) negate the current exemption of claims handling and settlement from the definition of financial services for the purpose of the Corporations Act 2001.

In the event that legislation is not introduced to empower ASIC to deal with breaches of utmost good faith on behalf of consumers, as per Recommendation 7, the Committee recommends compulsory standards for general insurance claims-handling practices.

9.7 HOR Recommendation 5

The Committee recommends that the Australian Government work with the Insurance Council of Australia to make the following amendments to the General Insurance Code of Practice by 1 July 2012:

(a) remove the clauses that set aside the Code standards in times of disasters;
(b) require insurers to refrain from advising policyholders against making a claim under their insurance policy, and incorporate a ‘right to claim’ so that policyholders who contact their insurer about their eligibility to make a claim are offered the opportunity to lodge a claim and have it assessed fully;
(c) ensure that a full explanation of the claims-handling process, including the right to escalate decisions to internal dispute and external dispute resolution systems, is given when policyholders lodge a claim;
(d) ensure that an acknowledgement of the claims lodgment, contact details of the claims officer, and expected time frames for the claims-handling process are provided to policyholders in writing;
(e) require that copies of external expert reports used in the determination of a claim to be provided to claimants within ten days of request; and
(f) introduce the following minimum standards for claims handling in times of exceptional circumstances such as declared disasters:
   (i) a time frame for informing claimants of the progress of the claim;
   (ii) a time frame for advising claimants if an external expert has been appointed;
   (iii) assurance that external experts are fully qualified to undertake assessments;
   (iv) an undertaking to provide claimants with information about the qualifications, employer, and role of external experts that are appointed to assist with their claim;
   (v) a maximum time frame of 12 weeks for external experts to provide reports;
   (vi) a maximum time frame for accepting or denying a claim;

Parts of this recommendation were implemented in the 2012 Code.

For point (c), the Government’s decision was consistent with the industry decision in that it was thought to be unnecessary.

Point (d) was substantially left for insurers to deal with at their own discretion.

Some aspects of point (f) were left to this Review.

I agree with the balance of this recommendation and I have made a similar recommendation – see the Claims Service Levels.

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472 HOR Report, para 7.38.
(vii) a time frame for responding to requests for information;  
(viii) an undertaking to communicate all decisions about insurance claims to the claimant in writing with clear and explicit reasons relating to their particular claim; and  
(ix) a time frame for informing claimants of the progress of their complaint or dispute.\(^{473}\)

### 9.8 HOR Recommendation 9

The Committee recommends that the Australian Securities and Investments Commission amend ASIC Regulatory Guideline 165 to:

- (a) require general insurers to provide clear and comprehensive information about both Internal Dispute Resolution and External Dispute Resolution to clients at time of claim lodgement;  
- (b) require general insurers to provide information to clients at the time of claim lodgement on the right to seek from Financial Ombudsman Service an independent external expert report (such as a hydrology report);  
- (c) prohibit general insurers from commenting to policyholders on the merits of a dispute;  
- (d) prescribe an Internal Dispute Resolution model which avoids multi-tiered components; and  
- (e) automatically escalate a claim that has not been settled within four months to an internal dispute should the General Insurance Code of Practice amendment to this end not be implemented.

I agree with the direction of this recommendation and I have recommended a different approach on implementation. On the details for IDR see the Internal Complaint Process Guideline and the Claims Service Levels.

### 9.9 QFCI Recommendation 12.3

Letters notifying policyholders that their claims have been denied should, at a minimum, state the information upon which the insurer has relied in making the decision. These letters should also advise policyholders that copies of the information will be made available upon request (in accordance with clause 3.4.3 of the General Insurance Code of Practice) and indicate how policyholders can make a request.\(^{474}\)

This recommendation was substantially implemented in the 2012 Code.  
I agree with the balance of this recommendation and I have made a similar recommendation.

### 9.10 QFCI Recommendation 12.4

The Insurance Council of Australia should consider an amendment to Part 3 of the Code which requires insurers to notify policyholders of the information on which they relied in assessing claims.\(^{475}\)

The ICA’s position is that the existing Code already provided for written reasons to be given where a claim is denied. No value was seen in requiring insurers to explain the information on which the decision was based if the claim was accepted. I have recommended Claims Service Levels which deal with this issue.

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\(^{473}\) HOR Report, para 7.30.  
\(^{474}\) QFCI Recommendation 12.3.  
\(^{475}\) QFCI Recommendation 12.4.
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<tr>
<th>9.11</th>
<th>QFCI Recommendation 12.5</th>
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<tr>
<td>The Insurance Council of Australia should amend clause 3.4.3 of the General Insurance Code of Practice so that it requires insurers to inform policyholders of their right to request a review of an insurer’s decision to refuse to provide access to information on which it relied in assessing claims.</td>
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<td><em>This recommendation was substantially implemented in the 2012 Code.</em></td>
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<td><em>I agree with the balance of this recommendation and I have made a similar recommendation.</em></td>
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<th>9.12</th>
<th>FOS QF Survey Recommendation C</th>
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<td>Communication and Decision Making were two primary themes identified by all review participants as impacting on the claims handling experience during the events. A customer’s ability to access information from their insurer about the claims handling process; about reasons for decisions made; about material relied on in making decisions; and about the progress of their claim, are all key elements in demonstrating that transparency and fairness are evident in the claims handling process.</td>
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<td><em>I agree with this recommendation and I have made a similar recommendation.</em></td>
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<th>9.13</th>
<th>FOS QF Survey Recommendation D</th>
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<td>The customer’s ability to request information [from an insurer under sections 3.5.3 and 3.5.5] may be enhanced by the insertion of an active obligation on the Code member to identify or list the information relied upon in reaching the decision to deny a claim.</td>
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<td><em>I agree with this recommendation and I have made a similar recommendation.</em></td>
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<th>9.14</th>
<th>FOS QF Survey Recommendation E</th>
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<td>We encourage the Independent Code Reviewer to consider the need for guidance on what constitutes good industry practice in [complying with the obligation to provide reasons for a decision to deny a claim in writing].</td>
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<td><em>I agree with this recommendation and I have made a similar recommendation.</em></td>
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<th>9.15</th>
<th>FOS QF Survey Recommendation F</th>
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<td>We suggest consideration be given to the provision of guidance about how ['special circumstances' in section 3.5.3 of the revised Code allows insurers to rely on legal professional privilege to prevent a customer having access to information relied on in decision making [and] material which is prejudicial to the insurer does not have to be disclosed] might apply and what might constitute the reasonable withholding of information.</td>
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<tr>
<td><em>I agree with the direction of this recommendation and I have recommended a different approach.</em></td>
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<th>9.16</th>
<th>FOS QF Survey Recommendation G</th>
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<td><em>I agree with the direction of this recommendation and I</em></td>
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476 QFCI Recommendation 12.5.
477 FOS QF Survey, section 9, para 7.
478 FOS QF Survey, section 9, para 8.
479 FOS QF Survey, section 9, para 9.
480 FOS QF Survey, section 9, para 10.
The development of guidelines concerning the interpretation and application of the Code may ensure that a more consistent approach to the Code’s operation and application across industry is achieved. For example, we recommend that the Independent Code Reviewer consider the development of guidance related to the type of information that should be provided to policy holders by Code Participants when a claim is lodged; the explanation of the claims handling process provided to customers and the disclosure of customer rights and responsibilities during the claims handling process.

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<th>9.17 FOS QF Survey Recommendation H</th>
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<td>A standardised approach to claims handling, such as the development of generic letters and call centre scripts can allow insurers the opportunity to flexibly and more efficiently respond to a natural disaster. The data from this review suggests that there can also be inherent risks with this strategy, including the creation of significant barriers to participation in claims handling processes by customers ... Standardised processes can lead to further barriers to access and exclusion for people from a non-English speaking background, people living with a disability or mental illness and elderly customers.</td>
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<th>9.18 FOS QF Survey Recommendation I</th>
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<td>We suggest codification of the record keeping [on customer files] accountabilities of Code Participants in relation to claims handling during a disaster at a minimum. The ability to ensure compliance and reporting against ethical, behavioural and conduct obligations [as well as on the timeliness of actions taken in processing claims] within the Code, such as those related to fairness, transparency, and the balancing of interests, is of equal importance and may need more prominence during time of catastrophe.</td>
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<th>9.19 FOS QF Survey Recommendation J</th>
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<td>We encourage Code Participants to incorporate the ethical aspects of Code compliance in all their claims handling training modules, including references to notions of fairness and transparency.</td>
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| | have recommended a different approach on implementation. |
| | I agree with the direction of this recommendation and I have recommended a different approach on implementation. |
| | I agree with this recommendation and I have made a similar recommendation. |

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481 FOS QF Survey, section 9, para 11.
482 FOS QF Survey, section 9, paras 12 and 13.
483 FOS QF Survey, section 9, paras 14 and 15.
484 FOS QF Survey, section 9, para 16.
9.20  **FOS QF Survey Recommendation K**

The May 2010 Code required Code Participants to establish their own internal processes for responding to catastrophes and disasters, commonly described as an events response or natural disaster plan (events response plan). While this standard was contained in section 4.4 of the May 2010 Code, it was removed from the July 2012 Code. In our view, consideration should be given to reinserting a requirement that Code Participants develop and establish an events response plan. These plans enable Code Participants to quickly coordinate their response to, and manage, events that impact consumers, such as natural disasters, as well as events that impact Code participants’ business resources and infrastructure.  

I agree with this recommendation and I have made a similar recommendation.

9.21  **FOS QF Survey Recommendation L**

Consideration should also be given to including a Code requirement that Code Participants coordinate their response to natural disasters with state governments and local councils, as well as organisations such as FOS, as early as possible. This could be achieved by insertion in events response plans.

I agree with this recommendation and I have made a similar recommendation.

10  **Claims, Complaints and IDR**

10.1  **NDIR Recommendation 42**

That the Insurance Council of Australia amend the General Insurance Code of Practice to require that:

(a) internal dispute resolution processes be independent of the claims handling department; and
(b) the internal dispute resolution officers have the authority to overturn the original decisions and to accept claims;
(c) internal dispute resolution complaints be finalised within an aggregate of 45 days and if this time limit is not met, the insurer to advise the claimant of his or her right to lodge an external dispute resolution complaint with the Financial Ombudsman Service (if applicable) and to seek independent legal advice;
(d) time limits on internal dispute resolution complaints commence immediately after a policyholder notifies the insurer of a complaint, whether verbally or in writing; and
(e) a general fairness test be applied to claims and complaints handling.

The ICA’s position is that there were already existing obligations under ASIC RG 165 which the industry decided were adequate in addressing this recommendation. I agree with the balance of this recommendation and I have made a similar recommendation: a Code guideline on IDR.

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485  FOS QF Survey, section 9, para 17.
486  FOS QF Survey, section 9, para 17.
487  NDIR Recommendation 42.
The Committee recommends that the Australian Securities and Investments Commission amend ASIC Regulatory Guideline 139 by 1 July 2012 to require the Financial Ombudsman Service to report regularly to the Australian Securities and Investments Commission and also to make public:

(a) the names of insurance companies that have breached the Code or are involved in systemic issues, and the types of breach; and
(b) the annual number of internal dispute resolution and external dispute resolution cases for each insurance company.

Further, the Committee recommends that, following declared disaster events, the Financial Ombudsman Service should be required to provide a report to the Australian Securities and Investments Commission on breaches and dispute resolutions specific to the disaster area.

I have recommended a Code guideline on IDR. I have recommended that the CGB decide on reporting arrangements under the Code.
11.2 HOR Recommendation 11

The Committee recommends that the Australian Government allocate additional and continuing funding in the 2012–2013 budget to the Insurance Law Service to establish a consumer advisory position at the Financial Services Ombudsman. The position should be co-funded by the Insurance Law Service and the insurance industry.\(^{490}\)

The Government responded to this, stating it will work with States and Territories to ensure appropriate legal assistance is available for natural disasters.

12 Code Monitoring and Investigation

There are no relevant recommendations on this issue.

13 Code Enforcement and Sanctions

13.1 HOR Recommendation 7

The Committee recommends that the Australian Government empower the Australian Securities and Investments Commission to regulate claims handling and settlement of financial service providers. This can be achieved by the Treasurer introducing legislation by 1 July 2012 to give effect to the measures contained in Schedule 1, Part 1 of the lapsed Insurance Contracts Amendment Bill 2010, so that breaches of the duty of utmost good faith in relation to claims handling constitute a breach of the Insurance Contracts Act.

This would enable the Australian Securities and Investments Commission to:

- (a) monitor and regulate claims handling and settlement processes;
- (b) impose sanctions on insurance companies, under Australian Financial Services Licence remedies, on behalf of consumers; and
- (c) negate the current exemption of claims handling and settlement from the definition of financial services for the purpose of the Corporations Act 2001.

In the event that legislation is not introduced to empower ASIC to deal with breaches of utmost good faith on behalf of consumers, as per Recommendation 7, the Committee recommends compulsory standards for general insurance claims-handling practices.\(^{491}\)

I agree with the direction of this recommendation and I have recommended a different approach on implementation.

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\(^{490}\) HOR Report, para 7.48.

\(^{491}\) HOR Report, para 7.38.
13.2  HOR Recommendation 6
The Committee recommends that the Australian Securities and Investments Commission amend ASIC Regulatory Guideline 139 by 1 July 2012 to require the Financial Ombudsman Service to report regularly to the Australian Securities and Investments Commission and also to make public:

(a) the names of insurance companies that have breached the Code or are involved in systemic issues, and the types of breach; and
(b) the annual number of internal dispute resolution and external dispute resolution cases for each insurance company.

Further, the Committee recommends that, following declared disaster events, the Financial Ombudsman Service should be required to provide a report to the Australian Securities and Investments Commission on breaches and dispute resolutions specific to the disaster area.\(^\text{492}\)

14  Financial Hardship

14.1  NDIR Recommendation 29
That the Commonwealth engage with the insurance industry and the States and Territories in planning for the future co-ordination of charitable and government payments to individuals to assist with recovery after future natural disasters.\(^\text{493}\)

14.2  NDIR Recommendation 30
That access to insurance be enhanced through the development of alternative payment options, in particular:

(a) by the Commonwealth Government arranging for Centrelink customers to be able to pay insurance premiums fortnightly through Centrepay; and
(b) by State, Territory and/or local governments and community housing organisations arranging insurance premiums for contents to be able to be incorporated into rent for social and community housing tenants.\(^\text{494}\)

\(^{492}\) HOR Report, para 7.34.
\(^{493}\) NDIR Recommendation 29.
\(^{494}\) NDIR Recommendation 30.

The Government asked the Review to consider these matters, including an assessment of naming breaching insurers and reporting IDR and EDR cases for each insurer.

I have recommended a Code guideline on IDR. I have recommended that the CGB decide on reporting arrangements under the Code.

The Government stated it acknowledges the importance of insurance and charitable and government payments in assisting communities to recover from natural disasters.

The Government stated that it would consult with State and Territory governments in the first instance to review and identify better practice coordination and governance mechanisms for charitable and government payments.

Centrepay was specifically designed for deductions to be made from a customer's fortnightly payment.

Centrelink commenced offering the payment of home and contents and motor vehicle insurance premiums through its Centrepay payment facilities earlier this year. Insurance companies wanting to offer Centrepay as a payment option can contact Centrelink to request the required Business Application and Contract documents.
However, the insurance industry has identified a number of obstacles which limit insurance companies from accepting fortnightly payments through Centrepay. Additionally, there are a number of other issues which arise from fortnightly Centrepay insurance premium payments. Consequently, Centrelink and the Insurance Council of Australia agreed to work together to consider these issues and provide a report to the Government with recommendations by 28 February 2012.

Rent setting for social housing is the responsibility of State and Territory housing authorities and similarly for community housing providers. Therefore, it would be up to the individual community housing provider or State and Territory housing authority to enable insurance premiums to be incorporated as part of rental payments.

The Commonwealth Government said it would alert State and Territory Governments to this recommendation.

Subject to the above matters I agree with this recommendation and I have made a similar recommendation. See the Financial Hardship Guideline.

### 14.3 HOR Recommendation 6

The Committee recommends that the Australian Securities and Investments Commission amend Regulatory Guideline 139 by 1 July 2012 to require the Financial Ombudsman Service to report regularly to the Australian Securities and Investments Commission and also to make public:

(a) the names of insurance companies that have breached the Code or are involved in systemic issues, and the types of breach; and

(b) the annual number of internal dispute resolution and external dispute resolution cases for each insurance company.

I have recommended a Code guideline on IDR. I have recommended that the CGB decide on reporting arrangements under the Code.
Further, the Committee recommends that, following declared disaster events, the Financial Ombudsman Service should be required to provide a report to the Australian Securities and Investments Commission on breaches and dispute resolutions specific to the disaster area.\(^{495}\)

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<tr>
<th>15</th>
<th>Natural Disasters</th>
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<td>See the recommendations in paragraphs 10.20 and 10.21.</td>
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<tr>
<th>16</th>
<th>Code Governance</th>
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<tr>
<td>16.1</td>
<td>NDIR Recommendation 43</td>
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<td>That the Insurance Council of Australia amend the General Insurance Code of Practice such that the General Insurance Code Compliance Committee:</td>
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<td>(a) be appointed in the same manner as FOS Panels, with the independent chair and the consumer and industry representatives to be appointed in the same manner as the ombudsman and panel members are appointed under the FOS rules;</td>
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<td>(b) have the authority and resources to record all breaches of the Code reported to it, to investigate breaches of the Code where appropriate and to conduct regular audits of insurance companies for compliance with the Code;</td>
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<td>(c) report serious or systemic breaches of the Code directly to ASIC; and</td>
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<td>(d) publicly release annual reports as to code compliance and breaches, with insurers to be identified in the reports.(^{496})</td>
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<th>17</th>
<th>Other Issues</th>
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<td>17.1</td>
<td>Charters and Opt-Out</td>
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<td></td>
<td>There are no relevant recommendations.</td>
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| 17.2 | Code and Industry Development. Continuous Improvement |
|      | There are no relevant recommendations. |

\(^{495}\) HOR Report, para 7.34.  
\(^{496}\) NDIR Recommendation 43.


17.3 Code Review

NDIR Recommendation 44

That ASIC conduct a review of the General Insurance Code of Practice three years after the amendments recommended to the Code in this Review are implemented, in order to assess the effectiveness of the Code with a view to determining whether an ASIC Regulatory Guide for claims handling should then be introduced.

17.4 Legal Aid

(a) HOR Recommendation 10

The Committee recommends that the Australian Government and relevant State and territory governments jointly allocate additional and continuing funding in the 2012–2013 budget to the Insurance Law Service for the mobilisation of a temporary physical presence in areas of need following natural disasters. The service should be available to all persons in an affected disaster area and not subject to means-testing.

(b) HOR Recommendation 12

The Committee recommends that the Australian Government investigate ways to reduce the cost of calling 1300 numbers from mobile telephones in areas of natural disasters.

(c) NDIR Recommendation 45

That the Commonwealth and State governments provide funding for legal advice and assistance with insurance disputes following natural disasters.

I have recommended an enhanced Code governance framework.

The Government stated it would work with States and Territories to ensure appropriate legal assistance is available for natural disasters.

The Government stated that it is investigating this issue with the insurance industry. The Australian Communications and Media Authority released a consultation paper on the subject.

The Australian Government stated that it recognises the importance of coordination in ensuring an efficient and effective response.

It stated that it would work with States and Territories to ensure that appropriate legal assistance service are available following natural disasters.

497 NDIR Recommendation 44.
498 HOR Report, para 7.47.
499 NDIR Recommendation 45.
14 Bibliography


