

23 November 2021

Ms Veronique Ingram PSM
Chair
General Insurance Code Governance Committee
By email: [REDACTED]

CC: [REDACTED]

Dear Ms Ingram

Operational Guidance – paragraph 176 of the General Insurance Code of Practice

Legal Aid NSW welcomes the opportunity to provide feedback on the Code Governance Committee's (**Committee**) proposed Operational Guidance documents on *Reporting Serious Misconduct to ASIC and Reporting Significant Breaches to ASIC* in relation to paragraph 176 of the General Insurance Code of Practice (**2020 Code**).

Legal Aid NSW supports the sanction powers of the 2020 Code and the avenues to report significant breaches and serious misconduct to the Australian Securities and Investments Commission (**ASIC**). We welcome the proposed Operational Guidance documents, which outline how the Committee will report significant breaches and serious misconduct to ASIC. In our view, these documents will assist all stakeholders to understand the expectations of paragraph 176 of the 2020 Code and the Committee's commitment to probity and enforcement.

In response to the proposed Operational Guidance documents, Legal Aid NSW provides the following comments and suggestions:

1. Simplification of the Operational Guidance documents

Legal Aid NSW suggests simplifying the Operational Guidance documents by removing the section 'About the CGC'.¹ We do not consider background information about the Committee necessary given the purpose of the documents is to provide

¹ *Operational Guidance – Reporting Significant Breaches to ASIC*, paras 3-7; *Operational Guidance – Reporting Serious Misconduct to ASIC*, paras 3-7.

guidance on the requirements of paragraph 176 of the 2020 Code and the procedure for reporting significant breaches and serious misconduct to ASIC.

We also suggest amalgamating the two Operational Guidance documents into one document. This will benefit the stakeholders who are seeking to report a significant breach or serious misconduct and allow distinctions to be made between the two. We suggest this could be achieved by including a side-by-side table comparison.

2. The use of examples and case studies

Legal Aid NSW appreciates that the Operational Guidance documents are intended to be living documents and that the Committee proposes to publish further case studies of serious misconduct based on its reports to ASIC.¹ Legal Aid NSW supports the use of examples and case studies within the Operational Guidance documents. This is an effective way to provide guidance to stakeholders on how and when the operating procedures will be implemented by the Committee.

We note that whilst the Operational Guidance document on *Reporting Serious Misconduct to ASIC* includes examples and case studies, the Operational Guidance document on *Reporting Significant Breaches to ASIC* does not. We recommend extending examples and case studies to both documents to maximise the guidance provided to stakeholders.

3. Reporting to ASIC on an identified basis

Legal Aid NSW strongly supports the Committee's proposal to report Code Subscribers to ASIC on an identified basis, whilst ensuring that consumer details are de-identified and remain 'confidential information'.² This process will ensure transparency and is an effective mechanism to deter Code Subscribers from committing serious misconduct or significant breaches of the 2020 Code. It will also help consumers in their decision-making around which Code Subscribers they purchase insurance from. In our view, identifying Code Subscribers which have breached the 2020 Code aligns with the Committee's purpose of monitoring and enforcing the Code.

4. Timeframes

We note that the 2020 Code and the Code Governance Committee Charter do not stipulate timeframes for the Committee to notify Code Subscribers of reports received, the Code Subscribers to respond to the Committee, or the Committee to report to ASIC. Legal Aid NSW suggests that incorporating timeframes into the Operational Guidance documents will help to set expectations and establish confidence in the enforcement of the 2020 Code.

² *Operational Guidance – Reporting Serious Misconduct to ASIC*, para 24.

³ *Operational Guidance – Reporting Significant Breaches to ASIC*, para 18; *Operational Guidance – Reporting Serious Misconduct to ASIC*, paras 26, 32.

5. Notifying the Code Subscriber

Legal Aid NSW notes that the Operational Guidance documents provide for a Code Subscriber to be notified that the Committee will be reporting a significant breach or serious misconduct, and to be given time to respond before the report is made to ASIC.³ While we agree that a Code Subscriber should be notified that a report will be made to ASIC, we submit that notification should occur at the same time (rather than before) a report is made to ASIC, as awaiting a response from the Code Subscriber may unnecessarily delay reporting to ASIC.

Furthermore, we consider that ASIC should be made aware of all reports of significant breaches and serious misconduct, including those that are resolved by the Committee. This will allow ASIC to collect data and track trends to identify systemic issues and make changes to regulations where necessary. We suggest that the Operational Guidance documents set out how the data of resolved reports are to be recorded.

Thank you for the opportunity to provide feedback on the proposed documents. If you have any questions or would like to discuss this submission further, please contact [REDACTED], [REDACTED], [REDACTED] on [REDACTED] or at [REDACTED].

Yours sincerely

Monique Hitter
Acting Chief Executive Officer

⁴ *Operational Guidance – Reporting Significant Breaches to ASIC*, paras 19; *Operational Guidance – Reporting Serious Misconduct to ASIC*, para 33.