

# Review of the General Insurance Code of Practice

Legal Aid NSW submission to  
the Insurance Council  
Australia

*April 2017*

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## About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are socially and economically disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and grants of aid to private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 35 community legal centres and 28 Women's Domestic Violence Court Advocacy Services.

The Legal Aid NSW Civil Law Division focuses on legal problems that impact most on disadvantaged communities, such as credit, debt, housing, employment, social security and access to essential social services. The Civil Law practice provides legal advice, minor assistance, duty and casework services to people through the Central Sydney

office and 13 regional offices. Currently we have over 150 civil lawyers who provide advice across all areas of civil law and specialists divisions that assist with insurance issues affecting particularly disadvantaged clients.

We welcome the review of the General Insurance Code of Practice and thank you for the opportunity to provide our comments. Should you require any further information, please contact:

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## Introduction

Legal Aid NSW welcomes the review of the General Insurance Code of Practice (**the Code**).

The following submission addresses the operation and effectiveness of those sections of the Code under review, that is, sections 4-8, 10 and 13. Legal Aid NSW considers that a number of sections could be strengthened and improved. However, these improvements are not sufficient without the development of enforcement frameworks. Where we have noted in some cases that existing protections are adequate, we nevertheless express concern about lack of compliance with these sections of the Code.

We also propose the expansion of the Code in several respects, most importantly, in response to the Commonwealth Treasury's Proposals Paper on *Design and Distribution Obligations and the Product Intervention Power* (December 2016).

## Section 4 of the Code: Buying insurance

### Plain language

Clause 4.5 of the Code requires insurers to take 'reasonable steps' to communicate with consumers in plain language. Despite this provision, our casework experience shows that Product Disclosure Statements (**PDS**) often do not use plain language. They can be ineffective in communicating the terms of an insurance policy, especially to vulnerable consumers.

In its recent submission to the Commonwealth Treasury's Proposals Paper *on Design and Distribution Obligations and the Product Intervention Power*<sup>1</sup> Legal Aid NSW provided a table showing common misunderstanding of both general and some life insurance products. This table is reproduced below and shows examples from our casework of the disparity between consumers' comprehension of the features of a product and their actual level of cover.

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<sup>1</sup> Available at: [www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0006/26961/Legal-Aid-NSW-submission-on-DDO-and-PIP-March-2017.pdf](http://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0006/26961/Legal-Aid-NSW-submission-on-DDO-and-PIP-March-2017.pdf)

Product	Consumer understanding	Actual level of cover
Salary Continuance - Consumer Credit Insurance	Consumer told that he would be covered in the event he became ill and could not work.	As a casual worker, consumer was excluded from any cover.
General Insurance - Building	Consumers believed that if they lost their home, the cash settlement would be for the sum insured.	Cash settlement was calculated using a complicated depreciation formula.
General Insurance - Building	Consumer believed that they were covered for the amount that it would cost them to rebuild their home.	Cover was for the amount that the insurer could rebuild the home for.
Add-on Insurance - Used Cars	Consumer believed that they were covered in the event that anything happened to the car in the year following purchase.	Extremely limited cover provided.

In a 2012 paper released by the Australian Law Reform Commission, a survey of mature aged respondents found that two thirds (63%) had difficulty in understanding how age restrictions operated after reading through information provided by insurers in Product Disclosure Statements, brochures and websites.<sup>2</sup>

Legal Aid NSW notes that the commitment in Clause 4.5 to take 'reasonable steps' to ensure communications are in plain language is not as strongly expressed as the similar clause in the *Life Insurance Code of Practice*, which provides 'we will incorporate plain language into our sales and policy information, and consumer-test the plain language information.'<sup>3</sup> [emphasis added]

Legal Aid NSW therefore supports a stronger commitment in the Code to plain language. Further, appropriate surveys and research should be undertaken to ascertain consumers' level of comprehension of insurance products.

## Supplementing Product Disclosure Statements

Legal Aid NSW acknowledges work done by the Insurance Council of Australia which demonstrates that PDSs are not effective in explaining policies to consumers.

Legal Aid NSW considers that the terms of policies should be contained in a single document. We therefore do not support the removal of PDSs at present. However, significantly more work is needed to ensure that PDSs are written in plain English.

<sup>2</sup> <http://www.alrc.gov.au/publications/grey-areas-age-barriers-work-commonwealth-laws-ip-> p.98

<sup>3</sup> Life Insurance Code of Practice Clause 3.1

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For example, it is unclear why potentially confusing words like ‘premium’ are used to refer to the amount that a consumer must pay for an insurance product.

Further, a number of additional steps should be mandated to properly explain insurance products to consumers. Additional material could include the following.

### **Factsheets**

The Code should include an obligation on insurers to provide consumers with factsheets about their products. These factsheets should include key information about the policy, communicated in plain language. In particular, the factsheets should summarise what events a consumer is covered for and highlight any exceptional clauses and their impact.

### **Worked examples**

Factsheets could also include ‘worked examples’ of specific clauses to demonstrate how they work in practice. For example, in a home and contents policy under which an insurer is able to elect whether to repair, replace or cash settle a claim, a worked example would highlight the amount the consumer would receive if their claim is cash settled:

*‘Where we decide to cash settle your claim, we will pay you \$X amount for your claim.’*

Such examples will show consumers how important clauses operate, improving their understanding of their entitlements under a policy.

### **Infographics**

To expand the requirement for insurers to communicate in plain language under Clause 4.5, the Code should encourage members to use ‘infographics’ in their communication with consumers. Infographics take complex information and make it more comprehensible by using pictures and other design elements to communicate.

### **Recommendations concerning Section 4 of the Code**

- **Legal Aid NSW recommends that the phrase “take reasonable steps to” be removed from Clause 4.5**
- **Insurers should be required to adopt best practice communication strategies, which may include provision of factsheets, worked examples and infographics to supplement Product Disclosure Statements.**
- **Product Disclosure Statements should be user tested to ensure a minimum level of comprehension by consumers.**

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## Refusal of insurance

Clause 4.8 of the Code sets out obligations on insurers if they decline to provide insurance. Legal Aid NSW makes a number of recommendations to improve the operation of this clause.

First, Clause 4.8(b) requires insurers to give reasons for declining insurance. Legal Aid NSW recommends that for clarity and transparency, these reasons should be provided in writing.

Second, Clause 4.8(b) obliges insurers to supply a consumer with information relied on by the insurer in assessing the application, but only if the consumer requests this. Many consumers would not know they have a right to request this information. We therefore suggest insurers be required to inform consumers of their right to request the information.

Third, where the refusal to provide insurance is on the basis of the person's disability, the insurer should be obliged to provide:

- details of any actuarial or statistical data relied on by the insurer in reaching their decision, or
- if no actuarial or statistical data is available or cannot reasonably be obtained, reasons why the decision to refuse insurance on the grounds of the applicant's disability is reasonable and the relevant factors the insurer has relied upon in reaching this conclusion.<sup>4</sup>

Finally, we recommend the Code require insurers to refer consumers for legal advice where coverage is refused, in addition to the current complaints process.

### **Recommendations concerning Clause 4.8 of the Code:**

- **Where a decision is made to refuse insurance:**
  - **insurers should provide written reasons for the decision to the consumer**
  - **insurers should inform consumers of their right to request copies of material relied on in relation to the decision**
  - **if requested by a consumer, insurers should provide copies of material relied on in relation to the decision**

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<sup>4</sup> See *Disability Discrimination Act 1992* (Cth) section 46

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- **The insurers should advise the consumer that they can seek legal advice.**

## Discrimination

Legal Aid NSW has advised clients who have been refused insurance because of existing health conditions. The Public Interest Advocacy Centre similarly reports that its clients have been denied insurance because of brief or mild episodes of mental illness. They also report cases where there has been no diagnosis of mental illness but the applicant has been denied insurance because they attended a counsellor.<sup>5</sup>

Legal Aid NSW is concerned that blanket refusals to provide insurance to consumers with existing mental health and other health conditions continue to occur without reference to actuarial or statistical data, or other relevant information. In some cases, this may breach anti-discrimination laws. The following case study demonstrates this issue.

### ***Case Study – Gina***

Gina is currently in remission from a rare form of cancer. Gina recently applied for travel insurance with a large insurer. She was asked in a phone assessment whether she had ever been diagnosed with a terminal illness. She said yes and was advised that this “automatically” excluded her from travel insurance.

Gina was not given reasons for the decision, and was not told that she was entitled to request the information that was used in assessing her application. Gina was not referred to the National Insurance Brokers Association Australia for information about alternative insurance options; nor was she provided details of the insurer’s complaints process.

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<sup>5</sup> Public Interest Advocacy Centre website <https://www.piac.asn.au/project-highlight/mental-health-and-insurance/> accessed 18 April 2017

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The Australian Law Reform Commission recently noted that aside from complaint processes under anti-discrimination legislation or formal judicial review, there is no independent oversight of whether insurers are basing decisions to refuse insurance on reasonable actuarial or statistical data.<sup>6</sup> The Financial Services Council *Life Insurance Code of Practice* also contains an unequivocal commitment to compliance with the requirements of anti-discrimination law, and importantly, a commitment to monitor underwriters to ensure their decisions are evidence-based and comply with legislation and regulation. The *Life Insurance Code of Practice* provides:

*Our decisions on applications for insurance will comply with the requirements of anti-discrimination law. Our decisions will be evidence-based, involving relevant sources of information where this is available, and having regard to any other relevant factors where no data is available and cannot reasonably be obtained. We will regularly review our underwriting decision-making processes to ensure we are not relying on out-of-date or irrelevant sources of information.*<sup>7</sup>

Legal Aid NSW proposes that a similar commitment be included in the Code. To be effective, this commitment should include a framework to monitor compliance with anti-discrimination laws. Again, the *Life Insurance Code of Practice* provides a useful precedent, referring to quality assurance measures for reviewing sales such as call monitoring, mystery shopping and post-sale call surveys.

#### **Further recommendations concerning Section 4 of the Code**

- **If a decision to refuse insurance is made on the basis of disability, the insurer should provide the consumer with any actuarial or statistical data relied on in relation to the decision. If actuarial or statistical data is not reasonably available, the insurer should provide reasons why the decision is reasonable and details of relevant factors relied on in reaching this conclusion.**
- **Section 4 of the Code should prescribe a commitment to compliance with anti-discrimination laws and a framework for monitoring compliance.**

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<sup>6</sup> Australian Law Reform Commission (2012) *Access all ages—older workers and Commonwealth laws* [6.28]

<sup>7</sup> Sections 5.17- 5.19

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## Section 5: Standards for employees and authorised representatives

### Employees and authorised representatives

Legal Aid NSW submits that this section of the Code should be expanded to include a commitment to training of employees and authorised representatives in identification of and understanding the needs of vulnerable consumers. This training should occur alongside training about financial hardship provisions in section 8 of the Code. At a minimum, mandatory training should cover the following topics:

- Mental health
- Impact of trauma
- Relevant anti-discrimination protections in each jurisdiction
- Domestic and family violence and its impact
- Appropriate ways of dealing with customers who do not speak English, such as ensuring appropriate interpreters are always used and that the interpreter speaks the customer's dialect.

### Natural disasters and mental health

While the Code contains a commitment to professional and competent service, Legal Aid NSW's casework experience suggests the conduct of authorised representatives of insurers often falls short of the Code's prescribed standards. Consumers who have suffered trauma, and in some cases have ongoing mental health issues, report unacceptable treatment from service providers. This is particularly the case in the context of natural disasters, as demonstrated by the following case studies.

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### ***Case Study – Assessor Greg***

Following a number of severe storms in a regional NSW community, Greg was engaged by an insurer to act as an assessor. Greg attended the properties of three families who had been assisted by Legal Aid NSW during disaster relief work in the community.

Greg carried out rudimentary inspections on each of the affected homes and offered cash settlements at heavily discounted rates to clients who had experienced total losses (in one case, the settlement amount was less than 75 per cent of the sum insured). Greg told the consumers that if they did not accept his offer, they would have to itemise everything they had lost in the storms. Greg also remarked to one homeowner whose house had been inundated with 1.5 metres of black water that it “wasn’t that bad”.

### ***Case Study – Jasmine***

Jasmine is an elderly lady whose home was severely affected by the Hunter Dungog storms in 2015. There was a significant delay in commencing building restoration work. During the restoration work the builders did not give Jasmine regular progress updates. On one occasion they locked her two dogs on the premises and changed the locks so that Jasmine was unable to attend them to provide food and water.

### ***Case Study – Elizabeth***

Elizabeth is a single mother with two disabled children. Elizabeth’s house was damaged in the 2015 Hunter Dungog storms. Assessors attended her property and advised her that they would be reviewing the amount of damage caused to the contents and reporting back to the insurance company.

The assessors spent 2 weeks going through the contents of Elizabeth’s home. After one week of assessing the property the assessors told Elizabeth they had been engaged by the insurer as both assessors and restorers. The assessors did not wear identifying clothing or produce any documentation to verify their role. When Elizabeth requested this from them she was treated as aggressive and hostile.

The conduct of the insurer’s authorised representatives, given Elizabeth’s vulnerability, fell short of the standards contained in Section 5 of the Code.

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In light of these highlighted examples, Legal Aid NSW submits that mandatory training should address the topic of trauma experienced in the context of natural disasters, and be accompanied by appropriate processes to ensure compliance and monitor ongoing compliance with Section 5 of the Code.

## Fraud investigations

Legal Aid NSW is concerned that in some cases, fraud investigations are carried out inappropriately. For example, we are aware of instances where consumers have been subject to bullying, intimidation and unethical interview techniques such as refusing to allow breaks or to allow support people and/or interpreters to be present. Investigators may also be insensitive to factors such as trauma, mental illness or other factors such as a background as a refugee which may impact on the person's ability to recall dates and times, and may mean that being interviewed by an authority figure is stressful and intimidating.

Legal Aid NSW supports a strengthening of the Code to include specific references to fraud investigation practices. It is beyond the scope of this submission to detail further proposals regarding investigation practices. However, we would welcome the opportunity to provide further input on this issue if a guideline or detailed section in the Code were introduced to address this issue.

## Domestic and family violence

Legal Aid NSW considers that the insurance industry plays an important role in responding to the challenges of domestic and family violence and in reducing its impact on victims. The Economic Abuse Reference Group has usefully identified a number of significant issues in this context.<sup>8</sup>

Legal Aid NSW supports the inclusion of additional guidelines in the Code on working with consumers who are affected by domestic and family violence. We welcome recent initiatives of the financial sector in this area such as the Australian Bankers' Association's *Industry guideline on financial abuse and family and domestic violence policies*.<sup>9</sup>

While it is beyond the scope of this submission to comment in detail on the content of a domestic and family violence guideline for the insurance sector, Legal Aid NSW strongly supports further work in this area and would welcome the opportunity to provide input if this important work is undertaken.

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<sup>8</sup> Economic Abuse Reference Group "Insurance and Family Violence" (unpublished paper presented at the ICA community consultation meeting, March 2017. Copy available on request).

<sup>9</sup> Australian Bankers' Association, *Industry guideline: Financial abuse and family and domestic violence policies*. Available at: <http://www.bankers.asn.au/Consumers/Financial-abuse-prevention/domestic-violence> accessed 18 April 2017.

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## Recommendations concerning Section 5 of the Code

- **The Code should include a commitment to training for employees and authorised representatives regarding identification and understanding of the needs of vulnerable consumers**
- **The Code should include specific reference to ethical and sensitive investigation practices**
- **The Code should include guidance for employees and authorised representatives about domestic and family violence and its impact**

## Section 6: Standards for our service suppliers

Legal Aid NSW considers that this section makes reasonable provision for the conduct of service suppliers. However, our experience demonstrates that this section of the Code is not always complied with, including where service suppliers are not aware of the Code.

Legal Aid NSW is also concerned that in some cases builders, on behalf of insurers, are incentivised to minimise the cost of a claim when carrying out building work. This is demonstrated by the following case of Alex and Ben:

### ***Case Study – Alex and Ben***

Alex and Ben and their two daughters' home was extensively damaged by the Hunter storms of 2015. An independent engineer quoted over \$500,000 to repair the property. Builders engaged by the insurer quoted \$37,000. Legal Aid NSW assisted Alex and Ben in lodging a complaint to the Financial Ombudsman Service. The Ombudsman ordered the insurer to pay the higher amount quoted. It was evident that the insurer's builder had severely underquoted based on what it considered would be excluded under the insurance policy, rather than on a properly independent basis.

The Code currently requires service suppliers to provide only a verbal summary of the service they have been authorised to provide. For example, compliance with the Code is achieved by a builder saying, "I'm here to fix your bathroom". We consider that consumers are entitled to a written summary of work to be carried out, and detail regarding the scope of what that work entails. This section should also be expanded to require services providers to detail their qualifications to consumers.

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## Recommendations concerning Section 6 of the Code

- **Service suppliers should be required to provide consumers with:**
  - **a written summary of the scope of work to be carried out, and**
  - **details of their qualifications**
- **Processes should be adopted to ensure service suppliers receive training about the Code and their obligations under it**
- **Insurers should be required to ensure systems and processes are in place to ensure service suppliers comply with the Code**

## Section 7: Claims

### Total loss claims protocol

Legal Aid NSW is concerned that where a consumer has suffered a total loss in relation to a contents claim, insurers continue (in some cases) to require customers to provide a detailed list of the home's contents and evidence of their value.

This requirement can cause additional stress, anxiety and ongoing trauma.

Legal Aid NSW has observed these effects in the context of natural disasters, and in other situations. For example, if a family home is completely destroyed by fire, it is inappropriate and unnecessary to require a list of contents and evidence of their value.

To rectify this, Legal Aid NSW strongly supports the inclusion of Total Loss Claims protocol in the Code. Legal Aid NSW has previously engaged in discussions with a number of insurers regarding a protocol and would welcome the opportunity to submit further on the content of such a protocol in the Code.

### Recommendation concerning Section 7 of the Code

- **The Code should include a Total Loss Claims protocol, ensuring that consumers do not have to provide detailed lists of personal items in cases where there is total loss.**

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## Claims assessment – impact on other party to the claim

Currently the Code makes no clear reference to the obligation of an insurer to deal with third parties to claims in a fair, transparent way.

Legal Aid NSW solicitors have seen instances where our client is the respondent in a claim for motor vehicle damage and:

- the amount claimed appears to be beyond the scope of the damage done, and
- issues of liability are still contested, but are asserted as resolved in favour of the insured.

In these situations, it appears that insurers (in some cases through their debt collectors) use their strength in the market place to extract a commercial position in a manner inconsistent with their obligation to act in utmost good faith in insurance claims.

A similar lack of fairness and transparency may arise in a different context, as demonstrated by Craig's case below.

### *Case Study – Craig*

Craig was involved in an accident in August 2016 and was at fault.

Craig received a demand for payment from the other party's insurer for approximately \$5,000. The letter used phrases such as, "the costs incurred by our insured..." and, "the loss incurred by our insured". Craig understood that this was the total amount claimed.

The amount claimed represented a significant amount of money for Craig and he borrowed money to make the payment. Approximately six months later Craig received a demand for a further \$4,000 for hire car costs. Craig could not afford this further payment.

### **Recommendation concerning Section 7 of the Code**

- **Section 7.2 should be extended to require insurers to treat individuals from whom they are seeking recovery in an honest, fair, transparent and timely manner.**

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## Section 8: Financial hardship

Legal Aid NSW submits that the operation of this section should be improved in several respects.

First, we are concerned that the Code places an unfair onus on the consumer to identify that they are in financial hardship. In our experience, consumers who are in financial hardship may also be victims of domestic and family violence, may be struggling with mental illness or may come from refugee backgrounds. Unless prompted or asked directly, such consumers will rarely appreciate the potential benefits in identifying their financial hardship in the circumstances.

Second, Legal Aid NSW is concerned that many employees of insurers do not appear to be trained in, or aware of, financial hardship. In our experience, some insurers may be effectively outsourcing questions about financial hardship to the External Dispute Resolution schemes. Legal Aid NSW solicitors who have requested that their clients be referred to a financial hardship team or specialist, have sometimes been told that there is no financial hardship team, or that their request has been sent to recoveries teams.

The case study of Annette below demonstrates these issues. We note that a common cause of cars not being insured is the financial hardship experienced by their owners.

### ***Case Study – Annette***

Annette was involved in a car accident. She was not at fault. Annette was struggling financially, and was uninsured. The other driver was insured with a large insurer.

The insurer wrote to Annette demanding \$9,000. Annette came to Legal Aid NSW in distress. We wrote on her behalf to the insurer outlining why Annette was not responsible for the accident. The insurer did not respond to this letter and persisted with the demand for \$9,000. As the limit for uninsured third parties at the Financial Ombudsman Service is \$5,000 we wrote to the insurer again explaining Annette's financial situation. We addressed the request to the hardship team at the insurer but were told that they did not have a hardship team, and that the matter was in the hands of the recoveries team.

The insurer ultimately decided not to pursue the debt. It is unlikely that Annette could have achieved this outcome on her own and without the considerable work of the Legal Aid NSW solicitor.

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## Recommendation concerning Section 8 of the Code

- **The Code should require insurers to inform individuals from whom they are seeking recovery about the availability of financial hardship assistance.**

## Section 10: Complaints and disputes

Legal Aid NSW is concerned that some insurers may not be engaging in Internal Dispute Resolution (**IDR**) in good faith, which effectively outsources IDR to external dispute resolution (**EDR**) schemes. Legal Aid NSW notes that, between 2014-15 and 2015-16, general insurance disputes at the Financial Ombudsman Service rose by 19 per cent.<sup>10</sup>

Legal Aid NSW is also concerned that claimants are not always notified of their right to access both IDR and EDR schemes. In some cases, it appears that disputes are not conducted within a fair, transparent and timely manner as required by the Code.

Further, while there are specific timeframes set out in the Code, Legal Aid NSW is concerned that these timeframes are not regularly adhered to. There is limited redress for consumers if timeframes are not met.

Legal Aid NSW therefore supports

- mandatory notification to consumers of their right to seek IDR and EDR within two months of claims being lodged if the insurer has not made a decision on the claims, and
- mandatory referral to IDR where a claim has not been determined within four months of lodgement.

## Recommendation concerning Section 10 of the Code

- **The Code should require insurers to notify consumers of their right to seek IDR and EDR if a claim has not been decided within two months of lodgement**
- **The Code should mandate referral to IDR if a claim has not been determined within four months of lodgement.**

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<sup>10</sup> Financial Ombudsman Service Australia 'New process speeds up dispute timeframes – Annual Review' <https://www.fos.org.au/news/media/new-process-speeds-up-dispute-timeframes-annual-review/> accessed 18 April 2017

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## Section 13: Monitoring, enforcement and sanctions

Legal Aid NSW considers the absence of a prescribed commitment from organisations who have adopted the Code to maintain appropriate systems and processes to monitor compliance with the Code, is a significant deficit.

Appropriate systems and processes could include training for all staff and service suppliers about the Code, and sanctions for breaches of the Code. Monitoring processes could include quality assurance measures such as call monitoring, mystery shopping and post-call customer surveys.

Legal Aid NSW also considers there is a role for industry to inform consumers about the Code. In our experience, many consumers are not aware of its existence. We submit that there should be targeted advertising to consumers about the existence of the Code, focussing on how the Code aims to set industry standards. Similarly, insurers could include links to the Code on their company websites. This may improve the relationship between insurers and consumers, and would also demonstrate the industry's commitment to both consumers and the Code.

Despite our limited involvement to date with the Code Governance Committee (**CGC**) we see benefit in engaging with that agency to increase awareness about the role of the CGC both within and beyond Legal Aid NSW.

The CGC should play an important role in the operation and effectiveness of the Code for consumers. However, in our experience, its mandate does not appear to be well publicised and few consumers are aware of the CGC's existence. There is also scope for improving awareness of the role of CGC amongst consumer advocates, particularly with regard to highlighting the importance of reporting breaches of the Code.

The CGC plays a significant role in reinforcing the importance of the Code and monitoring compliance. This potentially benefits consumers by ensuring consequences for industry if the Code is breached, and encouraging insurers to meet their obligations. Community engagement with the Code could be improved via the CGC website, for example, through publication of case studies of consumer complaints to the CGC and their outcomes.

More guidance should also be provided about the relationship between EDR schemes and the CGC, in particular about referrals and information sharing about Code breaches as between EDR and the CGC. For instance, it is not clear whether there is benefit in lodging simultaneous complaints with the CGC and EDR or commencing litigation.

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## Recommendations concerning Section 13 of the Code

- **The Code should require insurers to commit to ensuring they have appropriate systems to ensure compliance with the Code, including ongoing compliance monitoring**
- **Insurers should take steps to raise awareness of the Code, and the role of the CGC**
- **The CGC should raise awareness of its role and function amongst consumers, and consumer advocates**
- **The referral and information-sharing relationship between the CGC and the EDR should be clarified.**

## Policy design and disclosure

Legal Aid NSW also submits that the Code should be expanded to include obligations regarding product design and disclosure.

Poorly designed insurance products offering little real value to consumers continue to be available, and in some cases are actively marketed to vulnerable consumers. An obvious example is “Add-On Insurance”, often sold through car dealerships. It is not uncommon for Legal Aid NSW to see individuals or families who are in financial hardship where a second hand car is the most expensive item that they own. In many cases, our clients have been sold additional add-on insurance products which are financed through the car loan. In our experience, consumers are often either unaware they have bought the add-on insurance product, or have been led to believe that the add-on insurance was a prerequisite to the car loan. This is of particular concern where the insurance product can significantly exacerbate or cause financial hardship. These issues have been well documented in several reports of the Australian Securities and Investment Commission,<sup>11</sup> and a report by the Consumer Action Legal Centre.<sup>12</sup>

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<sup>11</sup>*The sale of life insurance through car dealers: taking consumers for a ride* (ASIC Report 471) (February 2016) available at: <http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-471-the-sale-of-life-insurance-through-car-dealers-taking-consumers-for-a-ride/>; *Buying add on insurance in car yards: Why it can be hard to say no* (ASIC Report 470) (February 2016), available at: <http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-470-buying-add-on-insurance-in-car-yards-why-it-can-be-hard-to-say-no/>; *A market that is failing consumers: The sale of add on insurance through car dealers* (ASIC Report 492) (September 2016), available at: <http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-492-a-market-that-is-failing-consumers-the-sale-of-add-on-insurance-through-car-dealers>

<sup>12</sup> *Junk Merchants: How Australians are being sold rubbish insurance, and what we can do about it* Consumer Action Law Centre (December 2015), available at: <http://consumeraction.org.au/Junk%20Merchants%20-%20Consumer%20Action%20Law%20Centre%20December%202015.pdf>

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Legal Aid NSW reiterates its recent support for the federal Treasury's proposals that issuers of financial products be required to:

1. identify appropriate target and non-target markets for their products
2. select distribution channels that are likely to result in products being marketed to the identified target market, and
3. review arrangements with reasonable frequency to ensure arrangements continue to be appropriate.<sup>13</sup>

The Treasury has also proposed that distributors of financial products must:

1. put in place reasonable controls to ensure products are distributed in accordance with the issuer's expectations, and
2. comply with reasonable requests for information from the issuer related to the product review.<sup>14</sup>

We note that the Commonwealth Government has indicated an intention to implement Design and Distribution Obligations and Product Intervention Powers and the Financial Services Council's *Life Insurance Code of Practice* now contains a section on design and disclosure.

We urge the Insurance Council of Australia to consider the *Life Insurance Code of Practice* as part of this review, particularly its useful provisions regarding policy design and disclosure, anti-discrimination law, and frameworks for ensuring code compliance.

## **Recommendation**

- **The Code should be expanded to include obligations regarding product design and disclosure.**

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<sup>13</sup> Legal Aid NSW Submission to Treasury on Design and Distribution Obligations and Product Intervention Power (October 2016): available here: [http://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0006/25566/Legal-Aid-NSW-Submission-to-review-of-the-financial-system-external-dispute-resolution-framework.pdf](http://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0006/25566/Legal-Aid-NSW-Submission-to-review-of-the-financial-system-external-dispute-resolution-framework.pdf)

<sup>14</sup> Proposals Paper p5