

7 February 2022

Ms Veronique Ingram PSM
Chair
General Insurance Code Governance Committee
info@codecompliance.org.au

Dear Ms Ingram

Proposed Guidance Note on using subsection 7.21 of the 2014 Code and paragraph 84 of the 2020 Code

Thank you for the Code Governance Committee's (**Committee**) invitation to provide feedback on the proposed Guidance Note on using subsection 7.21 of the 2014 General Insurance Code of Practice (**2014 Code**) and paragraph 84 of the 2020 General Insurance Code of Practice (**2020 Code**).

Legal Aid NSW supports the Committee's proposed Guidance Note to clarify for stakeholders the use of these parts of the Codes. We provide feedback on the proposed Guidance Note below.

1. Include reference to obligations under the *Corporations Act 2001* when engaging in claims handling and settling services as 'financial services'

From 1 January 2022 the definition of 'financial services' under the *Corporations Act 2001* (**Corporations Act**) includes claims handling and settlement services. This imposes an overarching obligation to act honestly, efficiently and fairly, on insurers and any intermediaries providing claims handling and settlement services. Examples of intermediaries include insurance brokers, financial advisors, and claimant intermediaries. Previously claims handling and settlement services were excluded from the definition of financial services. The new regime applies to any insurance claim made on or after 1 January 2021.

Legal Aid NSW urges the Committee to make explicit reference in the Guidance Note to the new obligations imposed on insurers and intermediaries that are providing claims handling and settlement services. Obligations under the Codes now sit within a broader regulatory framework in the *Corporations Act*, and the Guidance Note should reflect this.

We acknowledge that the obligation to ensure financial services are provided honestly, efficiently and fairly is arguably reflected in the Committee's overarching points of expectations (in paragraph 13), however we consider that including specific reference to the new overarching legislative regime would strengthen these expectations.

2. Expand on what is meant by 'proactive' and 'best endeavours'

Paragraphs 6, 15(c) and 17(b) of the proposed Guidance Note refer to the Committee's expectation that Code subscribers would be reasonable and 'proactive' in their use of subsection 7.21 of the 2014 Code and paragraph 84 of the 2020 Code. It is unclear what is meant by 'proactive' in this context. It would assist if more details, including examples, were provided on what would be considered 'proactive'.

Both the 2014 and 2020 Codes refer to Code subscribers using their 'best endeavours' to obtain external expert reports in time (paragraphs 18 and 19 of the Guidance Note). While this is the wording used in both Codes, the Guidance Note is an opportunity for the Committee to expand on what may be considered 'best endeavours' to meet the requirements of the Codes.

Clarification of these expectations can be particularly useful following disasters or catastrophes. We note that the use of external experts is needed, but we are concerned about scenarios where two or more external experts are sent to assess the same claim. For example, we recently saw an external expert report that took considerable time to complete but, when submitted, contained numerous errors, including incorrect details of the subject property, photos and commentary of undamaged locations of the property, and very little focus on the location of the damage that was the subject of the claim. This led to a dispute being raised and a further assessor being sent out, which further delayed the resolution of the claim and added to the distress experienced by the insured.

Examples of what would be considered 'proactive' steps or 'best endeavours' by the Code subscriber would be helpful in these scenarios. There should be clarity on whether the 12-week timeframe applies for each new external expert report or whether a shorter timeframe would be expected in scenarios such as that set out above.

Legal Aid NSW supports an expectation of a shorter timeframe for additional external reports. We suggest that the Guidance Note explicitly state that the process should be proactively managed, with the aim that reports be obtained in a shorter timeframe than 12 weeks in most cases.

3. Include examples and case studies

The Guidance Note would benefit from examples and case studies to help stakeholders further understand the expectations of the Committee and what would be considered a breach of the requirements under both Codes.

We appreciate that paragraph 10 of the Guidance Note refers to the COVID-19 pandemic as an example of what would be considered a rare but significant event that could affect normal claims handling arrangements. Setting out further examples and/or case studies would be useful to give guidance on what else might be considered 'rare but significant events', and their impact on claims handling and service settling.

Legal Aid NSW supports the inclusion of paragraph 11 of the Guidance Note, which makes it clear that the Committee still expects Code subscribers to meet their Code obligations despite challenges that may arise, and the further acknowledgement that those are the times when consumers may need assistance the most.

As the Guidance Note is intended to be a living document, we suggest that these case studies and examples be updated as the Committee makes decisions in matters dealing with these parts of the Codes.

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

Yours sincerely

Monique Hitter
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