



21 June 2024

Code Review Panel
PO BOX R1832
Royal Exchange NSW 1225

via email: Secretariat@codeofpracticereview.com.au

Dear Sir/Madam,

Review of the 2020 General Insurance Code of Practice (Code)

The Australian Small Business and Family Enterprise Ombudsman (the ASBFEO) welcomes the opportunity to comment on the Independent Review of the 2020 General Insurance Code of Practice. The Code sets a range of standards that general insurers must meet when providing services to their customers, including small businesses.

Access to adequate insurance cover at commercially viable terms is a significant challenge for many of Australia's small businesses. Many small businesses now consider insurance costs to be a greater concern over taxes, energy costs, wages and general business expenses.¹ Unlike households that, for various reasons, might choose to be uninsured or underinsured and have options about the level and nature of the risk protection policies they subscribe to, a small business must have insurance covering areas such as public liability. If a small business is not insured, it cannot engage in trade and commerce.

Noting the present challenges affecting small businesses, we provide the following recommendations for consideration by the Code Review Panel.

Recommendation 1: The Code must retain and provide for meaningful and unambiguous protections that are communicated in an accessible and understandable way to households and small business customers.

As a binding and publicly available document, the Code informs consumers and small businesses of their rights in their relationships with general insurers, and has the potential to lift standards of behaviour and accountability in the general insurance industry. In this way, the Code promotes trust and confidence in the industry, which is critical for it to operate efficiently and deliver value to both insurers and policyholders.

It is vital that reforms to the Code build on this trust and confidence and do not undermine the protections the Code provides to consumers and small businesses. Rather than adopting a 'principles-based approach' or focusing on reducing perceived duplication, reforms must ensure that protections under the Code are meaningful and unambiguous, and are communicated in an accessible and understandable way to households and small business customers.

The ASBFEO therefore does not support calls for the Code to move toward a principles-based approach.² Clear, meaningful standards are an important signal to customers that they are protected by tangible safeguards with credible avenues for dispute resolution and enforcement

¹ Business NSW, *NSW Business Conditions: A cautious start to 2024*, Business NSW, NSW Government, March 2024, p. 15; Queensland Small Business Commissioner (QSBC), *From the Commissioner – February 2024* [media release], QSBC, Queensland Government, February 2024.

² For example, Insurance Council of Australia (ICA), *Independent review initial consultation paper*, ICA, 7 June 2024, p. 2.



regardless of what market offering they choose. This brings widespread benefits to both insurers and their customers as it can significantly reduce barriers for purchasing insurance. By contrast, a principles-based approach that lacks specificity and introduces discretion can allow insurers to exploit their bargaining power and resource advantages over their customers, undermine certainty and discourage customers from purchasing insurance.

Similarly, the ASBFEO does not support suggestions for reforms to the Code to focus on removing perceived duplication of insurer obligations. The ASBFEO shares the same views as the General Insurance Code Governance Committee (CGC) in the following excerpt from the CGC's submission.

While removing regulatory and legislative duplication between the Code and the law may seem appealing, it would make it more difficult for customers to navigate, understand and exercise their rights.

Codes of practice have an important role to play in not just extending protections above and beyond the law but also in clarifying or elaborating on existing laws. This makes it easier for customers, customer advocates and insurance staff to understand the conduct expected of insurers.

The removal of certain Code commitments from other industry codes, on the basis of duplication with the law, has decreased transparency and accessibility for customers and financial firms on key customer protections.

While other industry associations such as the Australian Banking Association and the Financial Services Council (previous owner of the Life Insurance Code) committed to develop a regulatory guide for customers, we are yet to see this approach achieve its objective of ensuring customers rights, protections and applicable timeframes are explained in a customer-friendly and accessible way.

Consequently, we advise caution in removing Code provisions based on perceived simplification or avoiding duplication of the law.

Should duplication between the Code and the law exist, it does not necessarily mean a duplication of efforts for insurers, the CGC, and relevant regulatory bodies. We are often better placed to act in certain areas than a regulatory entity like ASIC.³

The ASBFEO considers that the Code fulfils a unique role for consolidating and communicating relevant information about consumer protections in an understandable way. This is important to helping households and small business customers to be informed of their rights without needing to research the complexities of insurance industry regulation across multiple regulator, legal and industry body websites.

Until there is an adequate replacement to fulfil this role, the ASBFEO strongly cautions against focusing on the superficial appeal of reducing duplication to lower perceived regulatory burden. The extent of duplication in the Code is not significant and, in many cases, much of the costs of complying with the burden may have already been incurred on a one-off basis, meaning that there is little immediate benefit to streamlining the Code today. By contrast, any such changes may

³ General Insurance Code Governance Committee (CGC), *Independent Review of the 2020 General Insurance Code of Practice*, CGC, 7 June 2024, pp. 21-22.



require the substantial and enduring cost of undermining the Code's ability to reduce information asymmetry in the industry.

Recommendation 2: The protections given to retail insurance consumers under the Code should also apply to small businesses.

The Code in its current form provides limited protections to small business. While the entire Code applies to retail insurance as defined under the Code, this definition does not extend to insurance products that small businesses often use. Instead, as the Australian Financial Complaints Authority (AFCA) notes in its submission, many types of small business insurance products are treated as wholesale insurance under the Code, meaning that small businesses are largely unprotected by Parts 5, 6, 7, 8, 9 and 11 of the Code.⁴

The ASBFEO considers that this divergence in the level of protection given to households and small businesses to be unsatisfactory and arbitrary, given the close similarities and crossovers in the challenges faced by both groups. As with households, most small businesses do not have the in-house expertise to understand complex insurance products, and given other cost pressures, may not have the resources to seek professional assistance regarding their insurance needs.⁵ Furthermore, nearly half of outstanding small business debts are secured by residential property, meaning that not only are the challenges that households and small business face similar, the welfare of the two groups is closely tied together.⁶

Accordingly, the ASBFEO recommends that the entire Code should apply to small business insurance products. This would mean that small businesses are protected by the same service standards, consumer protections, support for vulnerable consumers and complaints handling processes as are given to Retail Insurance consumers under the Code.

The ASBFEO supports AFCA's suggestion that the definition of a small business under the Code is aligned with the definition in the AFCA Rules (that is, an organisation with fewer than 100 employees).⁷ This would reduce inconsistency and confusion in the current Code and dispute-resolution arrangements.

Recommendation 3: The Insurance Council of Australia should consider having small-business representation on its Governance Committee.

The ASBFEO considers that there is a need for small business perspectives to influence the continuing development of the Code. This is illustrated by the supervision of the current Code providing very limited protections to small businesses despite, as explained above, the similar challenges they face compared to retail-insurance consumers.

⁴ Australian Financial Complaints Authority (AFCA), *Submission in response to initial consultation paper*, AFCA, June 2024, p. 12; ICA, *General Insurance Code of Practice*, ICA, 5 October 2021, p. 11.

⁵ This is illustrated by small businesses' lack of staffing resources, with nearly 90% of small businesses either self-employing or employing up to 4 employees. See Australian Small Business and Family Enterprise Ombudsman (ASBFEO), *Small Business Matters*, ASBFEO, Australian Government, June 2023, p. 3.

⁶ ASBFEO, *Ombudsman helping small business resolve disputes* [media release], ASBFEO, Australian Government, 31 January 2024.

⁷ AFCA, *Submission in response to initial consultation paper*, AFCA, June 2024, p. 12. Recall that the Australian Small Business and Family Enterprise Act 2015 defines small business as one that in the current financial year: a. Has fewer than 100 employees at that time; b. either: i. its revenue for the previous financial year is \$5,000,000 or less; or ii. if there was no time in the previous financial year when the business was carried on--its revenue for the current year is \$5,000,000 or less.



Small-business representation on the ICA Governance Committee should be designed to enable small business concerns from different industries to be heard. This is important because small businesses are diverse and have distinct interests. However, there are also overarching concerns affecting a great number of small businesses, such as a general lack of recognition of risk-mitigation strategies put in place by small businesses, as discussed below.

Regardless of the nature of the concern, having small business representation on the ICA Governance Committee would help ensure the Code is responsive to the needs and concerns of small businesses. This extension of representation could also include AFCA, which would help ensure that the continuing development of the Code is also informed by evidence of the types and nature of disputes that are impacting insurance consumers, including small businesses.

Recommendation 4: Address gaps in the Code’s treatment of risk-mitigation strategies pursued by small businesses.

The ASBFEO’s Small Business Natural Disaster Preparedness and Resilience Inquiry Report found that:

- many small businesses cannot secure appropriate insurance at an affordable price
- some small businesses are operating uninsured, or significantly underinsured, with excesses that would preclude any claim being made
- many insurers are uninterested in the steps individual small and family businesses take to mitigate disaster risk, or are dismissive of them.⁸

Insurers frequently emphasise risk management and mitigation; yet policyholders who implement risk-reduction measures often see no financial benefit for doing so, resulting in confusing messaging, inefficient incentives for small businesses and potentially externalities affecting other Australians.

The ASBFEO considers that insurers should recognise potential savings from risk-mitigation steps undertaken by their small business customers and share these benefits with them. Policies for how risk mitigation actions should be undertaken by small business customers and how their benefits are recognised and shared, should be clearly communicated to small business customers as part of the information that insurance providers are required to share under the Code.

Given the complexity of insurance coverage and the often-limited choice for small businesses to either underinsure or not insure, these policies should be simple and include specified options and clear explanations of how they would work. In developing such policies, consultation with small business stakeholders in different industries may be needed to ensure that these policies are fit-for-purpose and deliver on their intended benefits.

For example, the Caravan Industry Association of Australia Industry Roadmap illustrates how industry associations can inform and educate broader elements of the insurance industry of risk profiles and work together with member businesses on effective and recognised mitigation strategies.

⁸ ASBFEO, *Small Business Natural Disaster Preparedness and Resilience Inquiry Report*, ASBFEO, Australian Government, 10 November 2022, p. 11.



Recommendation 5: Strengthen Part 8 of the Code to improve insurers' response to Catastrophes.

As set out in Recommendation 2, the ASBFEO considers that the entire Code, including Part 8, should apply to small business customers. However, even if Part 8 of the Code were to apply to small-business customers, it sets out only a limited set of standards for how insurers must respond to Catastrophes under the Code.

The ASBFEO considers this to be inadequate, given the level of financial urgency and personal impact that a Catastrophe may have for affected small businesses. Accordingly, Part 8 of the Code should be strengthened to improve how insurers plan for and respond to Catastrophes and to manage the risk of capacity constraints at critical times. For example, insurers must do more to comply with the communication timelines set in the Code when responding to a Catastrophe. As Deloitte suggests, this may be achieved by implementing a more deliberate communication plan specifically designed for responding to Catastrophes.⁹

Recommendation 6: The Code should be strengthened to better ensure that insurers' internal dispute resolution processes are timely and effective.

In its 2022-23 General Insurance Industry Data and Compliance Report, the CGC noted substantial increases in the number of breaches of multiple Code provisions relating to internal dispute resolution timeframes and processes compared to the 2021-22 financial year.¹⁰ Most concerning, the number of breaches of paragraph 147 of the Code, which requires insurers to make an internal decision about a complaint within 30 days, more than doubled compared to the 2021-22 financial year.¹¹ This also coincides with an increase in the number of claims that were withdrawn.¹²

The ASBFEO is concerned that the failure of insurers to abide by Code timeframes is not only causing significant delays and accompanying financial losses for many customers, but is also discouraging other customers from seeing out attempts at dispute resolution or from making any attempt at all. If so, this is highly concerning because it usurps the rightful commercial freedoms of market participants, severely undermining trust and confidence in the industry. It also harms the insurers that do comply with Code requirements but nonetheless are affected by the broader reputational harms to the industry and the repercussions that follow.

To address these issues, the ASBFEO recommends the Code be strengthened to require insurers to sufficiently resource their internal dispute resolution framework to meet Code timeframes. The ASBFEO also supports AFCA's recommendation for the Review Panel to consider how the Code can ensure there are appropriate incentives or sanctions in place to improve compliance with Code timeframes.¹³ As these measures require insurers to have the needed resources and structures in place for an effective internal dispute resolution framework, they would also reduce opportunities for insurers to strategically undermine their internal disputes resolution processes to discourage customers from raising or escalating disputes.

⁹ Deloitte, *The New Benchmark for Catastrophe Preparedness in Australia*, Deloitte, October 2023, p. 26.

¹⁰ CGC, *General Insurance Industry Data and Compliance Report 2022-23*, CGC, 2 May 2024, p. 16.

¹¹ CGC, *General Insurance Industry Data and Compliance Report 2022-23*, CGC, 2 May 2024, p. 16.

¹² AFCA, *Submission in response to initial consultation paper*, AFCA, June 2024, p. 15.

¹³ AFCA, *Submission in response to initial consultation paper*, AFCA, June 2024, p. 19.



These changes are urgently needed to bolster trust and confidence in the industry and ensure that there are enduring incentives in place for good business behaviour.

If you require any further information in relation to this submission, please contact advocacy@asbfeo.gov.au.

Yours sincerely,

The Hon Bruce Billson

Australian Small Business and Family Enterprise Ombudsman