

Questions on Notice – Insurance Council of Australia

Question		Response
1	What provisions in the General Insurance (GI) Code of Practice does ICA believe need to be strengthened, and why?	<p>The ICA is committed to supporting the independent review of the Code that is currently underway and believes this process is the best way to consider potential changes to the Code. The independent Review will consider the diverse range of stakeholder views and perspectives received in submissions and also recommended by the Committee's Inquiry, not just the views of industry. The two phased approach to the Review, as set out in the Review's Terms of Reference, has been designed to enable the Review Panel to consider the issues raised in and findings of the Committee's Inquiry, including but not limited to provisions relating to vulnerable customers, cash settlements and communication with customers.</p> <p>As part of the Code Review process the Insurance Council will make its own submission, based on the views of its members. That submission is currently being developed, and it is not possible at this stage to flag which provisions the ICA will suggest for amendment, strengthening or improvement. The ICA's submission will be finalised by 31 May and will be made available to the Committee at that time.</p> <p>With regards to the potential for enforceable Code provisions, in November 2022 ASIC advised the ICA that it considered engagement on potential enforceable Code provisions during the course of the Code Review would assist the ICA with its proposed application for ASIC approval of the Code. Under the Terms of Reference for the Code Review, the Review Panel is tasked with identifying the possible Code commitments which might be advanced for designation as an enforceable Code provision as part of any application for Code approval to ASIC.</p>
Deloitte Report		
2	Deloitte recommends that 'Extraordinary Catastrophe' be 'redefined'. Does ICA agree? Please explain your reasoning.	<p>The ICA commissioned Deloitte to undertake a review into insurers' response to the event known as CAT 221. The report, <i>The New Benchmark for Catastrophe Preparedness in Australia</i>, recommended that the Extraordinary Catastrophe definition in the General Insurance Code of Practice should be reworked as part of the independent review.</p> <p>The terms of reference for the independent Code Review directs the Review Panel to take the Deloitte Review into account, which includes considering the recommendation relating to the Extraordinary Catastrophe definition. The ICA is committed to supporting the independent review of the Code and believes this is the best way to consider potential changes to the Extraordinary Catastrophe definition.</p> <p>As noted in the ICA submission, an Extraordinary Catastrophe has never been declared. The ICA Board elected not to declare an Extraordinary Catastrophe for CAT 221 because it was unlikely to improve outcomes for policyholders. Any change to the Extraordinary Catastrophe declaration should aim to balance the impacts of an extraordinary catastrophe while supporting outcomes for customers</p>

<p>Deloitte Recommendations</p> <p>ASIC said late last year that insurers had provided insufficient detail on steps they've taken to improve staffing, better service, investment in systems and timeframes for making these changes. You say you will report back on progress against the recommendations later this year.</p>		
3	<p>What steps have you taken to ensure that measurable, verifiable progress is reported?</p>	<p>The ICA has committed to undertake an independent review of progress against the recommendations in the second half of 2024.</p> <p>We expect this review to include the release of a public report that will include information on measurable progress. Members are aware that their progress will be reviewed and reported on.</p> <p>The Scope of Works for this independent review is currently being finalised.</p>
<p>Building Contracts</p> <p>The inquiry has been told that although insurers choose the builder, and dictate the terms and price of building contracts, they take no responsibility for any problems that arise between the builder and consumer.</p>		
4	<p>Would it be fairer to the consumer for the contract to be between the builder and insurer? Or for the insurer to be a party to the contract they organise for consumers?</p>	<p>In general, insurers have service contracts with builders to complete insurance claims. While there may also be a contract between the builder and customer due to state warranty scheme requirements, in practice the insurer is the party making payments to the builder, takes responsibility for the management and completion of the build, and offers a lifetime guarantee on the repair.</p> <p>Issues raised in the inquiry, such as poor communication by builders with policyholders, are unlikely to be resolved by a contract being between the builder and the policyholder. Insurers can generally be expected to have more influence and leverage over builders to resolve issues given their significance as a large customer.</p> <p>The General Insurance Code of Practice (paragraph 61) requires that, where a scope of works is needed for a home building claim, the insurer is required to provide the customer with information to help them understand how it works, its purpose and the process involved.</p>

<p>Cash settlements</p> <p>ICA's submission says that unlike overseas insurers, Australian insurers bear the 'burden' of project managing rebuilds and repairs. This suggests that cash settlements are easier for insurers, and evidence to the inquiry suggests that they are occurring more often than in the past.</p>		
5	Is this the case? If not, why not?	The ICA does not have data on the prevalence of cash settlements across the industry or for individual insurers, however we note that insurers have told the Inquiry that they prefer to manage the rebuild of homes and do not prefer to offer cash settlements. We understand the Committee has separately asked insurers for historical cash settlement data.
6	If the incidence is increasing, what accounts for the increase?	See answer to Question 5
7	Do insurers record settlements by 'type' so that settlement trends can be identified over time?	The ICA does not have detailed insights into the data held by insurers on claims settlements. Each insurer will have different approaches to how they collect and classify data on cash settlements.
	Should consumers be advised more strongly to get legal or financial advice before accepting a cash settlement?	<p>Insurers are required by law to give consumers a Cash Settlement Fact Sheet (CSFS) that includes "a statement that the client should consider obtaining independent legal or financial advice before settling". This decision is rightly a matter for the customer to consider given their individual circumstances and it is not clear how this advice could be made stronger.</p> <p>The Code (paragraph 79) also requires that if an insurer offers a cash settlement under a home building policy, they will provide the policyholder with information to help them understand how they work and how decisions are made on cash settlements.</p> <p>The ICA has developed, in consultation with its members and consumer advocates represented on ICA's Consumer Advisory Committee (CAC), an information sheet about cash settlements to support Code paragraph 79. The information sheet may be provided in addition to the CSFS and notes that consumers can consider seeking independent legal or financial advice whether the cash settlement is fair and reasonable.</p>

9	<p>Andrew Hall told the inquiry that consumers who are offered cash settlements 'often very much need the scaffolding around them of a financial counsellor, of a legal aid representative and the like' (Hansard, p. 6).</p> <p>Should insurers not be able to proceed with a cash settlement until they have evidence that the settlement has been approved by an independent reviewer – i.e. a financial counsellor or lawyer?</p>	<p>The type of advice a customer seeks regarding a cash settlement should be a decision for the customer, depending on their individual circumstances. Not all customers will want or require external advice, so a requirement that an insurer cannot pay a cash settled claim unless this occurs would impose additional costs and delays on these customers.</p> <p>As noted in the answer to Question 8, insurers are required to provide a Cash Settlement Fact Sheet that includes "a statement that the client should consider obtaining independent legal or financial advice before settling".</p>
Transparency		
10	<p>Should insurers have to identify on their websites all third-party service providers they have contractual arrangements with?</p>	<p>As a general comment, more transparency for consumers is a good thing.</p> <p>It is unclear whether this information would be of benefit to consumers or the purpose it would serve, given many third-party providers are likely to have contractual arrangements with multiple insurers.</p> <p>Insurers, like most major companies, can be expected to have contractual arrangements with third-party providers for numerous services including those that do not relate to directly serving customers or to assessments and rebuilds after a claim is made.</p>
11	<p>Do third-party service providers tend to work for only one insurer, or can it be multiple insurers? What is the usual nature of these relationships, for example: are providers contracted to provide services when required?</p>	<p>We understand that some third-party service providers may be contracted to work for multiple insurers. Given the pools of available service providers are finite, it logically follows that during times of significant additional demand, more service providers would undertake work for more insurers. The ICA does not have access to information to comment on the nature of these relationships.</p>
12	<p>Should third-party service providers instead be registered with ICA to form a pool on which insurers/consumers can call (rather than working for individual insurers)?</p>	<p>It is not clear what benefits such an arrangement would provide to customers, insurers or third-party service providers. Such an arrangement appears likely to create significant inefficiencies and friction that would lead to higher costs for consumers by adding an unnecessary additional layer (with associated financial and time costs) to the relationship between insurers and third-party service providers.</p>

13	Is it reasonable that customers be CCed in on all communications between the insurer and their third-party service providers, as consumer groups recommend?	<p>As a general comment, more transparency for consumers is a good thing.</p> <p>insurers have a very large volume of correspondence with third-party service providers. It is not clear that CCing customers in on a large volume of potentially highly technical correspondence would benefit consumers. Some communication with third-parties may also occur via telephone, meaning customers would only receive partial context to communication between insurers and third-parties.</p> <p>Such correspondence can often involve reference to multiple jobs involving multiple customers,. Separating these out would create inefficiencies for insurers and third-parties when progressing claims that could lead to the risk of increased errors and would lead to additional costs that would be passed on to customers.</p>
14	Should the GI Code stipulate that when insurers reject a customer's independently obtained quote or assessment, they must provide a sound and detailed explanation for doing so?	<p>The ICA is committed to supporting the independent review of the Code that is currently underway and believes this process is the best way to consider potential changes to the provisions of the Code.</p>
15	The Trowbridge Report, 2011, recommended (no. 43) that ICA conduct regular audits of insurance companies for compliance with the Code. Do you? If not, why not?	<p>The Trowbridge Report recommended that the ICA should "amend the Code such that the Code Compliance Committee [now known as the Code Governance Committee] 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" (Recommendation 43).</p> <p>The Code Governance Committee (CGC) is the independent body that monitors and enforces insurers' compliance with the General Insurance Code of Practice in accordance with Part 13 of the Code and the CGC's Charter.</p> <p>The CGC has the ability to monitor compliance with the Code, investigate reports of breaches of the Code (including Significant Breaches of the Code), conduct detailed monitoring activities and investigate compliance in areas of emerging risk, publish information about the sector's performance against the Code, require an insurer to audit compliance with the Code at their own cost, and impose sanctions on insurers who breach the Code.</p> <p>Recent examples of CGC thematic inquiries (or special audits) include the CGC's Report on Better Claims Decisions at IDR, which is being followed up by a thematic inquiry into Oversight of Experts.</p>

Expert assessment reports Consumer groups and the GI Code Governance Committee would like the industry to use a standard expert report form to improve the consistency of information supplied and to improve the quality and consistency of claims decisions. (See: Making better claims decisions, GICGC, July 2023.)		
16	Do you agree this would be helpful and encourage best practice assessments? Will you develop such a form? If not, why not?	<p>The ICA has begun work to design an industry best practice standard for the use of expert reports in insurance claims. The standard will serve as a reference for both insurers and consumers and would enhance the industry's commitment to greater transparency and better consumer outcomes.</p> <p>The ICA will engage the Australian Financial Complaints Authority (AFCA), regulators, the General Insurance Code Governance Committee, and consumer advocates during this process.</p>
17	Would the GI industry benefit from the introduction of a standard 'scope of works' form, as AFCA has recommended?	<p>The ICA is working with members to understand areas of operation where standardisation may assist consumer understanding of claims processes. We will continue to review these options, including suggestions such as this, for efficacy and practicality.</p> <p>The General Insurance Code of Practice requires Code signatories to provide information to consumers to help them understand scopes of work for home building claims, their purpose, and the process involved. To support this provision, the ICA has worked with members and consumer advocates through the ICA's Consumer Advisory Committee, to provide additional information for consumers (see Info on Scope of Works).</p>
'Maintenance' and 'wear and tear' exclusions ICA is looking at 'maintenance' and 'wear and tear' exclusions		
18	What is ICA doing on this systemic issue? Is the industry working on a standardised definition of each term?	The ICA is working with members to undertake the process of applying to the ACCC for authorisation to consider a standardised 'maintenance' or 'wear and tear' clause. The application to the ACCC is necessary to ensure the industry complies with all relevant competition laws.
19	Has ICA sought authorisation from the ACCC yet to standardise these clauses. If not, when do you expect to submit your case to them?	The ICA is currently working with members and external legal advisers to develop an application to the ACCC for authorisation to consider standardised maintenance or wear and tear clauses. The application has not yet been lodged with the ACCC. Subject to development of the case for standardisation, the ICA expects to lodge an application with the ACCC within the next six months.

20	Would the standardised clauses you develop need to be approved by ASIC or APRA?	No.
21	Would adoption of these standardised clauses be voluntary for ICA members?	Yes. The ICA does not have the capacity to bind members to use particular clauses.
22	When are these standardised terms likely to appear in policies? What's the likely timeframe?	Updating product disclosure statements and insurance contracts can be a lengthy process given the significant administrative burden that goes with such a change. We would expect that members who chose to use the standardised clause would start including these in their new policy documents within 12 months of finalisation of any standard words.
23	<p>Unfair contract term protections were applied to insurance contracts in April 2021 (p. 11 of ICA's submission).</p> <p>The widely reported misuse of maintenance and wear and tear exclusions suggests that unfair contract terms remain. Does ICA agree? If not, why not?</p>	<p>All ICA insurer members regularly review their contracts for compliance with relevant legislative and regulatory regimes, including the Unfair Contract Terms regime. The ICA does not monitor or review individual contract wordings as this is a matter for individual members.</p> <p>Unfair contract terms protections were applied to consumer and small business insurance contracts entered into or renewed from 5 April 2021. Insurers worked with ASIC to proactively make changes to insurance policies in response, including:</p> <ul style="list-style-type: none"> • removing terms that gave insurers unilateral discretion to do something, • removing or qualifying terms to reduce barriers for an insured person to lodge a claim, • qualifying overly broad terms so that they only apply in specific situations, • extending certain timeframes that might be difficult for an insured person to meet, • removing or qualifying terms where compliance with preconditions was not feasible, • amending terms to provide greater collaboration between the insurer and the insured around decision-making processes; and • amending insurance policies to provide greater transparency and clarity for consumers.
Code Review		
24	The GI Code Governance Committee wants approval to name insurers who breach the code. Will ICA allow this? If not, why not?	The ICA is committed to supporting the independent review of the Code that is currently underway and believes this process is the best way to consider potential changes to enforcement of the Code. We expect the Review Panel to consider the issues raised by the Code Governance Committee in its submission/(s) to the independent review of the Code.

Data collection Regarding the APRA Insurance Data Transformation (IDT) project:		
25	<p>ICA says in its IDT discussion paper that the breadth and depth of the proposed data collection includes many items that are not currently collected by insurers.</p> <p>Can you give us two or three examples of the types of information sought by regulators that insurers do not collect, or maybe collect but do not disclose?</p>	<p>Insurers do not currently collect data related to 'fraud flags' and as such this may not be available to be provided to regulators.</p> <p>Policy-level and claims data is collected by insurers but not submitted to the regulators on an ongoing basis so the format, data items and definitions adopted will vary from insurer to insurer and differ from what is proposed by the regulators. For example, the proposed policy-level data includes the policyholders' address ('risk street' and 'risk suburb'), home building's 'year of construction', 'building type' and policy coverage details.</p>
26	<p>In ICA's IDT discussion paper, it says that providing regulators with the extra information they seek will be costly and time-consuming; in short, that it would be an impost on insurers.</p> <p>Wouldn't investment in better processes and data collection enable insurers to better understand their business – the risks, challenges, code breaches?</p>	<p>Insurers currently collect a significant amount of customer data and welcome industry-wide uplift of data processes and systems to gain richer industry insights. IDT will require significant upfront investment and sustained (increased) resourcing. As such, ICA members are eager to co-design the data collection with the regulators to ensure that any future collection will effectively inform policy development, government initiatives, regulatory reform and good consumer outcomes. IDT intends to collect granular data that can be shared across government agencies but this is separate to an insurers' Code Governance Committee data reporting obligations, and the data items and definitions are not expected to align, posing additional data collection and dissemination challenges.</p>
Insurance coverage		
27	<p>Are there any postcodes, or parts of Australia, where insurers do not offer home and contents insurance?</p>	<p>The ICA does not have access to data to answer this question. All insurers will have different approaches to where they offer insurance based on their market strategy (i.e. some insurers focus on particular states) and risk appetite. As the Committee has heard, insurance may be offered in very high-risk areas, however the customer may not be able or willing to pay the premium offered.</p>

Mould and water damage remediation standards Many are calling for the introduction of national mould and water damage remediation standards. It seems there are no external standards/qualifications required before people can call themselves mould/water remediation experts. And the treatments carried out include the cursory and faux-scientific.		
28	Do you agree that such standards – and adherence to them – are required? What is happening on this front: how far away are such standards?	<p>The ICA is currently a member of a Standards Australia Committee reviewing mould and water restoration standards. The Committee's scope is standardisation in the field of water damage restoration and mould remediation.</p> <p>The Committee is currently considering a national modified adoption of international standard IICRC S500 Standard for Professional Water Damage Restoration.</p> <p>This Standard describes the procedures to be followed and the precautions to be taken when performing water damage restoration in residential, commercial, and institutional buildings, and the systems and personal property contained within those structures.</p>