



Law Council
OF AUSTRALIA

Review of the General Insurance Code of Practice

Insurance Council of Australia

19 January 2018

Telephone +61 2 6246 3788 • *Fax* +61 2 6248 0639
Email mail@lawcouncil.asn.au
GPO Box 1989, Canberra ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.asn.au

Table of Contents

| | |
|---|-----------|
| About the Law Council of Australia | 3 |
| Acknowledgement | 4 |
| Introduction | 5 |
| Proposal 1 - Vulnerable consumers | 5 |
| Vulnerable consumers generally | 5 |
| Mental health principles..... | 9 |
| Family Violence | 10 |
| Financial Hardship..... | 10 |
| Proposals 3 and 4: Product design and distribution | 13 |
| Product design | 13 |
| Product distribution..... | 16 |
| Consumer redress..... | 17 |
| Deferred sales model | 18 |
| Proposal 5: Standards relating to third party distributors | 18 |
| Proposal 6: Standards relating to service suppliers | 19 |
| Insurer responsibility and oversight | 19 |
| Service supplier training | 20 |
| Proposal 8 – Meeting the requirements for ASIC approval | 21 |
| Contact | 21 |

About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2018 Executive as at 1 January 2018 are:

- Mr Morry Bailes, President
- Mr Arthur Moses SC, President-Elect
- Mr Konrad de Kerloy, Treasurer
- Mr Tass Liveris, Executive Member
- Ms Pauline Wright, Executive Member
- Mr Geoff Bowyer, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Acknowledgement

This submission has been prepared by the Law Council of Australia's National Insurance Lawyers Committee (**the Committee**), which is a committee of the Legal Practice Section of the Law Council of Australia.

Introduction

1. The Committee welcomes the opportunity to provide comments on the Interim Report of the Insurance Council of Australia (**ICA**), dated November 2017, in relation to the Review of the General Insurance Code of Practice (**Code**).
2. In the time available, the Committee makes submissions on the following:
 - Proposal 1: the Code should strengthen standards relating to vulnerable consumers
 - Proposal 3: the Code should provide product design and distribution principles and provide guidance to insurers
 - Proposal 4: the Code should provide product design and guidance specific to add-on insurance products
 - Proposal 5: the Code should strengthen standards relating to third party distributors
 - Proposal 6: the Code should strengthen standards relating to Service Suppliers
 - Proposal 8: the revised Code should meet the requirements for Australian Securities and Investments Commission (**ASIC**) approval
3. The Committee otherwise generally agrees with the approach taken by, and recommendations of, the ICA.

Proposal 1 - Vulnerable consumers

4. The Committee agrees that there is an opportunity for the industry to improve how it interacts with vulnerable consumers.
5. However, care needs to be taken with the definition of vulnerability, and the circumstances in which it will be appropriate to place the onus on the insurer to assess this. In some cases, it will be easy to recognise, for example, where it becomes apparent that a consumer for whom English is a second language is not following the interaction. In other cases, vulnerability will be much more difficult to recognise and/or assess.
6. At all times the starting point must be the autonomy of the individual concerned. Potential for discrimination may arise if consumers are treated differently because they are inappropriately assessed as 'vulnerable'. Privacy issues can also arise if additional information is sought to assess 'vulnerability' which is not strictly necessary for the particular underwriting or claims management situation.
7. Against this, however, must be weighed the right of an individual to be provided with appropriate support to make decisions where that individual is subject to vulnerability.

Vulnerable consumers generally

Question 1.1

It seems reasonable that the Code should require insurers to accommodate vulnerable consumers' requirements for formal or informal assistance from third parties. Please detail any concerns with this suggestion.

8. The Committee agrees that the Code should require insurers to accommodate vulnerable consumers' requirements for formal or informal assistance from third parties. This is consistent with the National Decision-Making Principles outlined by the Australian Law Reform Commission¹ and reiterated in the 2017 review of the Code of Banking Practice.²
9. In general terms, the Principles assume that all adults have an equal right to make decisions about their insurances, and to the extent they require support in the decision-making process, they have a right to access the support necessary to make and communicate their decisions.
10. The Committee suggests that this approach must ensure that:
 - (a) Appropriate identification of a vulnerable consumer, given that vulnerability:
 - (i) can take many different forms, including age, physical disability, mental health, language, race, trauma, financial, or family violence; and
 - (ii) can be fluid in nature, for example, it may fluctuate over time or in response to certain situations.
 - (b) Adequate and appropriate support is provided, given the variety of forms which vulnerability can take.
 - (c) The assistance provided is free from undue influence and abuse.
 - (d) Decisions are made in the best interests of the consumer, but still recognising the right of the consumer to direct and control the decisions (including the right to reject advice or assistance).
 - (e) The focus remains on assisting the consumer with his or her decision-making and does not unnecessarily move from a 'supporter' role to a 'representative' role, where the nominated person makes decisions for the consumer.
 - (f) The consumers' rights to privacy and rights not be discriminated against are respected.
11. With this in mind, the Committee recommends that the Code introduce provisions requiring insurers to develop policies and procedures consistent with the following principles:
 - (a) Consumers have a right to autonomy in decisions about their insurances.
 - (b) Vulnerable consumers have the right to support to the extent necessary to enable them to make and communicate decisions about their insurances.
 - (c) The support must be free of conflict of interest, undue influence and abuse, and, to the extent possible in the particular circumstances, consistent with the consumers' other rights including privacy and anti-discrimination.

¹ Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Report 124 (August 2014) rec 6-5.

² *Independent Review: Code of Banking Practice* (31 January 2017) rec 72.

Question 1.2

The ICA suggests that the Code should require staff to be trained to identify and engage appropriately with vulnerable consumers, and to escalate requirements for additional support. Are there any implementation factors that need to be considered?

12. The Committee agrees that the Code should require staff to be trained.
13. As the ICA has recognised, staff are not 'counsellors or advisers'. Given the many forms that vulnerability can take, training and information must:
 - (a) be provided by different specialists to address the variety of scenarios which staff may face (this will introduce issues with consolidation of the education provided by different specialists and integration of policies and procedures);
 - (b) assist staff to understand a wide range of different red flags or clues which may suggest vulnerability;
 - (c) empower staff with flexible policies and procedures (insurers will need to be able to provide this while maintaining consistency of service); and
 - (d) if vulnerability has been identified or assistance requested, provide staff with clear direction for escalation or referral (this may include specialist in-house teams and/or external government, private and/or not-for-profit service providers).
14. Insurers will also need to remain vigilant in relation to their own obligations to their staff to ensure they are provided with adequate training and support to meet their job requirements effectively.

Question 1.3

The ICA suggests that the Code should not prescribe specific products or payment arrangements, such as through Centrepay. However, Proposal 3 sets out product design principles for the Code. How could these principles improve product design for vulnerable consumers?

15. The Committee agrees that the Code should not impose obligations requiring specific products to be offered.
16. Rather, the Committee recommends that vulnerable consumers can be seen as a 'target market'. Insurers can then apply the design principles set out in Proposal 3 and the product design and distribution considerations contained in Appendix 4 to create products for this particular target market, taking into account the specific requirements and limitations of vulnerable consumers.
17. This could benefit both insurers and vulnerable consumers. For example, nearly 20% of Australians do not access insurance because of one or more of the following barriers:
 - (a) unaffordability (the entry price point is too high);
 - (b) accessibility (such as inability to pay by instalments);

- (c) understanding (including a lack of understanding of the benefits of insurance, or product disclosure documents that are unwieldy and not in plain English); and
- (d) trust (including a fear that insurers won't pay out or won't insure them).³

18. Addressing these issues for a vulnerable consumer 'target market' will provide insurers with access to consumers who are not currently purchasing insurance and will provide those consumers with products that meet their needs.

Question 1.4

The ICA suggests that the Code should require insurers to provide assistance to those who have trouble meeting identification requirements. Please identify any concerns you may have with this approach.

19. The Committee agrees with the ICA's approach.

20. The Committee notes concern regarding the need for protection against identity theft and fraud. Insurers will need to have policies in place to manage these potential issues.

Question 1.5

Noting the Commonwealth Ombudsman best-practice principles, and the point raised by some insurers, would the following principles satisfactorily reflect best practice standards for the use of interpreters?

- (a) *Insurers must provide access to an interpreter, either when one is requested by the customer or when a staff member needs one to communicate effectively with a customer (whether formally or informally).*
- (b) *Staff must make a record of a customer's interpretation needs and plan ahead to meet these needs. Where an interpreter is offered but declined, staff must also record this.*
- (c) *Insurers must provide a direct link on their website to information on interpretation services and any other relevant information for non-English speakers. This includes any product information that insurers have translated into other languages.*

Do you have any concerns with this approach or suggestions for improvement?

21. The Committee agrees with the ICA's approach.

22. One suggestion for improvement is a requirement that staff are provided with training and access to interpreter and other relevant services so that they are aware of the services available and how to access them.

³ Good Shepherd Microfinance, Submission to Senate Standing Committee on Economics, *Inquiry into Australia's General Insurance Industry*, 10 February 2017, 2.

Mental health principles

Question 1.6

The ICA proposes that the mental health best-practice principles (detailed in Appendix 1) should be developed into an ICA guidance document. Do the principles adequately respond to the issues raised by stakeholders? Are there any matters that have not been addressed?

23. The Committee agrees with the ICA's approach and the contents of Appendix 1.

Question 1.7

The ICA's view is that the Code should not contain guidelines for complying with the DDA. However, the Code could include a statement explaining how underwriting decisions will be made. For example:

- (a) Decisions will be evidenced based;*
- (b) Underwriting decisions will be regularly reviewed to ensure decision making is not relying on out-of-date information.*

Is this a suitable alternative? Are there any issues or concerns with this approach?

24. The Committee agrees that the Code should not contain guidelines for complying with the *Disability Discrimination Act 1992 (Cth) (DDA)*. The Committee recommends that the Code contain a statement of how underwriting decisions will be made to ensure consistency with the DDA.

25. The Committee does not agree with the proposed wording. For example, simply stating that 'decisions will be evidence based' may not be strictly correct as the DDA permits discrimination based on 'other relevant factors' where actuarial or statistical data is unavailable.

26. The Committee recommends that the wording of section 5.17 of the Financial Services Council's Life Insurance Code of Practice be used as a model. Section 5.17 which states:

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.⁴

⁴ Financial Services Council, *Life Insurance Code of Practice* (2017) <<https://www.fsc.org.au/policy/life-insurance/code-of-practice/life-code-of-practice.pdf>>.

Question 1.8

Should the Code require insurers to provide, on request, a summary of the type of data or a description of the relevant factors relied upon, and why that data or those factors are relevant, when they rely on the DDA to make a decision about the provision of insurance or about a claim? What are the strengths or weaknesses of this approach?

27. The Committee considers it to be in the interests of procedural fairness and transparency for the Code to require insurers to provide a summary of the type of data or description of the relevant factors relied upon, and why that data or those factors are relevant, when they rely on the DDA to make a decision about the provision of insurance or about a claim.
28. In support of this position, the Committee notes that, if a dispute was to become litigious, this is the minimum information that insurers would be required to provide to defend their position. Consumers, particularly vulnerable consumers, should not have to escalate their request to a dispute to obtain this information.

Family Violence

Question 1.9

The ICA proposes that the family violence document attached in Appendix 2 be developed into an ICA guidance document. Does the document adequately respond to the issues raised by stakeholders?

Question 1.10

Does it appropriately capture the areas that an insurer should include in their family violence policy?

29. The Committee agrees with the contents of Appendix 2.

Financial Hardship

Question 1.11

The ICA suggests that the Code should require insurers and Service Suppliers to receive training on their obligations with regard to consumers in financial hardship, and to identify signs of financial hardship when engaging with individuals who owe money to an insurer. Are there any implementation factors to consider with this approach?

30. The Committee considers that financial hardship is a form of vulnerability. The Committee agrees that the Code should require insurers to provide training to their staff with regard to consumers in financial hardship in accordance with the matters discussed at paragraph 1.2.2 above.
31. The Committee also agrees that insurers should be required to ensure their Service Providers undergo training with regard to consumers in financial hardship. Insurers should be required to ensure contractual obligations with Service Providers reflect this obligation.

Question 1.12

Noting that an individual will still have to provide evidence of actual financial hardship, are there any practical implications to consider, if the Code were to require debt recovery letters to include information about the financial hardship process?

32. The Committee recommends that debt recovery letters outline the financial hardship process.
33. The Committee understands that insurers may be concerned about 'prodding' individuals to make a claim for financial hardship. The Committee considers this issue can be overcome by the insurer outlining the information which the insurer requires to be submitted to support a claim for financial hardship at the same time that reference is made to the financial hardship process [as to which, see the Committee's comments at paragraph 34 below].

Question 1.13

Should an insurer who is contacted directly by a consumer in hardship, who is aware that the consumer has a representative, always be required to notify the representative that such contact has occurred? If there are any privacy implications, please detail them. Are there any alternative solutions?

34. The Committee recommends that where a consumer contacts an insurer directly, the insurer should be required to explain that it intends to inform the consumer's representative of that contact and seek consent from the consumer to do so.

Question 1.14

It has been identified that timeframes for assessing hardship requests vary among insurers. If the Code required that financial hardship applications should be processed in line with the National Credit Code, would this be a satisfactory solution? Is there another preferable way to address this matter? The timeframes would require that:

- (a) The insurer will assess an application for hardship assistance and inform the consumer of its hardship decision within 21 calendar days, or inform them that it needs more information.*
- (b) If the insurer needs more information, the consumer has 21 calendar days to provide it.*
- (c) Within 21 calendar days of the consumer providing the requested information, the insurer must make its hardship decision and inform the consumer of its decision.*
- (d) If the consumer fails to provide the requested information, then the Code Subscriber must make its hardship decision on the information available within 28 calendar days of the date that information was requested, and inform the consumer of the decision.*

35. The Committee considers it appropriate for time frames to be imposed and the wording proposed by the ICA appears reasonable to the Committee.

Question 1.15

There appears to be sound reasons for the Code to require that consumers requesting financial hardship assistance are only asked to provide information that is genuinely necessary to assess their application. Also, any request for information should not unreasonably or unnecessarily delay the assessment of the hardship request. Are there any issues that would have to be resolved in order for this to be implemented?

36. The Committee agrees with this approach but recommends the use of the term 'reasonably necessary'. The Committee considers that this is a phrase that insurers are familiar with and is unlikely to cause confusion.

Question 1.16

To address the concerns noted above, should the financial hardship section of the Code make it clear that it applies to situations where a customer cannot pay their excess? Also, should the options for financial hardship assistance in clause 8.8 include 'deduction of the excess from the claim payment'? Are there any practical implications with this approach?

37. The Committee recommends that the Code makes it clear that the financial hardship process also applies to payment of excess.
38. The Committee recommends that the options contained in clause 8.8 include 'deduction of the excess from the claim payment'.
39. The Committee also recommends that the Code requires insurers develop guidelines for dealing with payment of premiums in circumstances of financial hardship, which could include review of policy terms, the excess and applicable limits, as well as maintaining the right to cancellation of the policy as a 'last resort' if agreement cannot be reached.
40. The guidelines should be triggered only in the event that the consumer has sought consideration on the basis of financial hardship. Otherwise the insurer could be left 'second guessing' its rights to cancel a policy for non-payment.

Question 1.17

If a customer in financial hardship has the ability to pay their debt in instalments, should the Code specify that this option should not be refused by the insurer?

Question 1.18

What would the potential challenges or advantages be if the Code were to specify criteria for debt waiver?

41. The Committee does not agree that the Code should impose an obligation not to refuse an offer from a consumer in financial hardship to pay their debt by instalments. Each situation is different and there may be other factors which mean the particular offer is not reasonable.
42. However, insurers should be aware that if they were to seek to enforce a judgment debt and a reasonable offer has been made by the debtor to pay by instalments, such

an offer is likely to be sanctioned by the court. Given this, the Committee suggests wording to the effect that an insurer must consider all offers to pay by instalment which are reasonable having regard to the extent of the policyholder's financial hardship which is known, or which reasonably ought to be known, by the insurer.

Question 1.19

Should the financial hardship process include a complaint handling timeframe of 21 days, in line with the timeframe for credit disputes about hardship in RG 165? Would this create any administrative or resourcing issues that would outweigh the benefit to consumers?

43. The Committee recommends that a timeframe of 21 days be included to bring this section into line with other obligations already imposed.

Question 1.20

There is confusion and varying interpretations about the interaction between section 8 and 10 of the Code. How can the obligations and rights of uninsured third parties be clarified? What factors need to be considered?

Question 1.21

Are there any practical implications with expanding access to an insurer's internal complaints process for those who have a financial hardship complaint that relates to wholesale insurance?

44. The Committee considers it appropriate that individuals who come within the terms of section 8 should also be able to access the internal disputes process outlined in section 10 of the Code in relation to disputes regarding the insurer's decision in relation to financial hardship.
45. The Committee notes that section 8.6 refers to providing information about the insurer's complaints process where financial hardship has not been agreed. It would be inconsistent if the complaints process referred to was different depending on whether the person was an individual 'Insured' or an individual 'Third Party Beneficiary' for a retail product (for which section 10 applies) or a wholesale product (for which section 8 would apply but not section 10 under the current wording).
46. We recognise that an individual against whom an insurer is seeking to recover (who is not an insured) is not governed by the implied contractual obligations of utmost good faith. However, the Committee considers it would be reasonable and in the interests of consistency for such an individual to also have access to section 10 complaints procedures to the extent relevant.

Proposals 3 and 4: Product design and distribution

Product design

47. The Committee agrees that insurance products should be designed to meet the genuine needs of consumers and to provide real benefit to consumers in the event the insurance is required to be called upon.

48. Further, the product in its features and exclusions must be capable of being communicated to and understood by the target market.
49. The Committee, however, recognises the difficulty that will be encountered by insurers in determining whether the insurance offered overlaps with an existing right of the consumer or another insurance product held by the consumer.
50. The Committee's view is it would be unreasonable to require insurers to move to an advice based model when offering insurance to consumers and that it would create unreasonable potential liability for insurers. That is particularly so where many, if not most, consumer products are now sold online or verbally, or through third party distributors. Requiring employees of insurance companies selling the product or third-party distributors to provide advice to consumers on appropriate insurance would create an unreasonable burden and liability on insurers. It would also significantly increase the distribution costs of such insurance products.
51. The Committee considers that sufficient consumer protection is achieved by requiring that products are able to be clearly understood by the target market in respect of the benefits they offer and the exclusions that would prevent the customer from obtaining benefit under the policy.
52. The Committee also agrees that:
- appropriate insurance should be offered to target markets and not offered to non-target markets;
 - there should be no pressure selling and that there should be a cooling off period in respect of add on products; and
 - products should not be bundled in such a way that parts of the insurance will not be available or effective for the consumer, unless the consumer is advised of that fact clearly and the price of the bundled product is appropriately adjusted to reflect the real value of the insurance product to the consumer.

Question 3

Would the inclusion of the following principles in the Code be an effective means of improving product suitability? Are there any other principles to add?

- (a) *Cover must be designed with a clear target market in mind. Equally, it should be clear to insurers and distributors which consumers are not part of the target market.*
- (b) *Cover must be designed to meet a genuine need and offer a tangible benefit at reasonable value. This applies to additional as well as core benefits.*
- (c) *Insurers must not design products that offer (or are capable of offering) negative or very low value.*
- (d) *The product and its features and exclusions must be capable of being communicated to and understood by the target market.*
- (e) *When designing products for bundling, insurers must consider how this impacts on the target and non-target market and product value.*
- (f) *Insurers must regularly review product performance and act promptly on any identified concerns.*

53. With the reservations outlined above, the Committee agrees that the principles mentioned in Question 3 would be an effective means of improving product suitability.

Question 3.1

Do the product design considerations attached in Appendix 4 adequately respond to stakeholder concerns? Can the principles be applied to all general insurance products and does the material provide sufficient detail as to how the principles are to be applied?

54. The Committee generally agrees that the product design considerations in Appendix 4 are appropriate. The Committee, however, cautions against insurance company employees and third-party distributors providing advice to consumers in relation to what product is appropriate for their needs. The Committee is of the view that, provided the product itself is clear and the limitations on the product are clear, it is for the consumer to make the decision as to what insurance is appropriate for their needs. It is therefore the design of the product and the transparency of the real cover offered by it that, in the Committee's view, is critical.
55. The Committee, however, does agree that no insurance company employee or third-party distributor should suggest to a consumer that they have a need for a particular product and the consumer should merely be informed that a particular product is available and what need it would cover, in an entirely transparent way. There should be no pressure selling of any product, particularly add on products.
56. For example, a Consumer Credit Insurance product should clearly state the benefit it provides and highlight in bold any waiting period and any real restrictions on the cover that would limit its effectiveness. No representation should be made about the product by the distributor other than what is evident from the product itself. A Product Disclosure Statement (**PDS**) should be provided to the customer and they should be given sufficient time to consider the PDS before being required to make a decision on whether to accept the product.
57. A good example is the practice now followed by financial institutions dealing with guarantors. The bank representative meets with the proposed guarantor and provides them with the agreement, which clearly sets out their obligations. The time at which the paperwork is provided to the guarantor is recorded and acknowledged by both the bank officer and guarantor and the guarantor is then not permitted to sign the guarantee agreement until at least 24 hours after being provided with the documentation.
58. The Committee recommends that a similar principle be introduced in relation to additional benefits and complex products and endorses the ICAs view that, except in relation to compulsory motor vehicle third party insurance and comprehensive motor vehicle insurance, there should be a cooling off period for consumers.
59. The Committee also agrees with the ICA that all distributors of products should be trained to ensure both that they are familiar with the product being offered and any limitations of the product. The Committee also agrees that insurers should set clear standards for a good sales process, reflected in processes and manuals and monitored compliance with these standards. The Committee endorses the examples for unacceptable conduct set out in Item 8 of Appendix 4.

Proposal 4

The Code should provide product design and distribution guidance specific to add on insurance products

Question 4

Would it be appropriate to develop product specific guidance in the Code around product design and distribution for add on insurance products? Are the product specific considerations relevant to add on products in Appendix 4 adequate, or is further detail needed?

60. The Committee generally endorses the considerations in Item 4 of Appendix 4 and repeats that if the products clearly state the benefits available and invite the consumer to consider whether those benefits are duplicated by any other insurance they may have, that would be adequate protection for the consumer in most contexts. The Committee again notes that that it considers a 'no advice' model appropriate.
61. However, the Committee considers that the particular problems evident in respect of the dealership distribution model for add on insurance in the motor vehicle industry make a case for the Code to include guidance specific to add on insurance products in that industry.
62. The Committee endorses the non-price initiatives agreed in relation to add on products offered through motor vehicle dealer channel as being appropriate and endorses the minimum cooling off period of 30 days.
63. Additionally, the Committee refers to its separate submission dated 25 October 2017 made in respect of ASIC's Consultation Paper 294 entitled 'The sale of add-on insurance and warranties through caryard intermediaries'. A copy of the Committee's submission provided at **Attachment A** to this submission. The Committee recommends that specific requirements relating to add on insurance reflect the principles set out in that submission.

Product distribution

64. The Committee endorses the ICA's view that if insurers were required to sell retail general insurance products under a personal advice model, the cost in training, education and authorisation of advisers would be significant.
65. The Committee has a further concern in that it would effectively require the product distributors to take on the role of the broker or the financial adviser, which requires special qualifications and gives rise to professional obligations.
66. The Committee considers that to require insurers to take on that obligation would not only have serious impact on insurance affordability and availability, but potentially give rise to significant litigation against insurers for failing to provide appropriate advice. The current 'no advice' model should be retained.

Question 3.2

Would the inclusion of the following principles in the Code effectively help consumers to purchase insurance that is suitable for them? Are there any other principles to add?

Insurers must have reasonable controls in place to ensure that:

- (a) The product reaches the target market for whom it is intended;*
- (b) The product does not reach those outside the target market;*
- (c) The product does not offer low or negative value;*
- (d) That they set clear expectations about what constitutes good sales practices and, equally, what conduct is not acceptable;*
- (e) They must provide the necessary training and information to their distributors to enable them to sell the products in line with stated policies;*
- (f) They regularly review distribution and promptly address any identified concerns.*

67. The Committee generally agrees that the principles outlined above would assist consumers to purchase insurance that is suitable for them. The Committee suggests that those objectives can be achieved by ensuring the products are designed in such a way as to clearly indicate both their benefits and their limitations and what value a consumer would obtain from the product if they were required to make a claim.
68. The Committee also endorses that insurers should have policy and procedure manuals in relation to the distribution of products and that such manuals should be provided to distributors, that training sessions be held on a regular basis and that their agreement with distributors require that they follow those policies and procedures for sale of products. Naturally, insurers should immediately address any identified concerns of consumers in relation to the sale of products and whether the sale was in accordance with the insurer's policies and procedures.

Question 3.3

Do the distribution considerations attached in Appendix 4 adequately respond to stakeholder concerns? Can the principles be applied to all general insurance products covered by the Code and does not the material provide sufficient detail as to how the principles are to be applied?

69. The Committee refers to and repeats the comments made above in relation to product design (Question 3.1).

Consumer redress

Question 3.4

Are there any issues that would have to be considered if the Code were to include options for consumer redress in circumstances where an insurer identifies issues with the distribution of a product? Examples could include:

- (a) *Cancelling the cover;*
- (b) *Arranging a refund of premiums and interest;*
- (c) *Arranging more suitable cover;*
- (d) *Honouring a claim.*

70. The Committee is of the view that if insurance products are designed to be transparent so as to indicate both the benefits available and limitations of the product, then the only circumstances in which redress should be available is if a distributor fails to follow the insurer's policies and procedures for sale of the product. If that has occurred, then the Committee endorses the examples of redress and considers that this would provide incentive for distributors to strictly follow the insurer's policies and procedures for sale of a product and to avoid unfair selling practices.

Deferred sales model

71. The Committee refers to its comments on this issue contained in paragraphs 3 to 9 of its separate submission dated 25 October 2017 made in respect of ASIC's Consultation Paper 294 'The sale of add-on insurance and warranties through caryard intermediaries' (**Attachment A**). For the reasons set out in that submission, the Committee supports, in the limited context of such add on insurance, a short deferral period of four days commencing when the vehicle has been purchased by the consumer and consumer communication has been provided.

Proposal 5: Standards relating to third party distributors.

72. The Committee endorses a recommendation that authorised representatives who will service suppliers of a Code subscriber should be required to comply with the Code. The Committee is of the view that this should be a requirement of the agreement between the Code subscriber and the authorised representative or service supplier. The Committee endorses the ICAs view that beyond that obligation, the Code should not be broadened to cover all third-party distributors.

Question 5

The ICA has identified obstacles with requiring all entities, engaged in an activity covered by the Code, to subscribe to the Code directly. We suggest that as an alternative, the Code should require that when an insurer enters into a formal agreement with a third party to sell its product, the agreement should include the following:

- (a) *Sales to be conducted in an efficient, honest, fair and transparent manner;*
- (b) *Sales people to be appropriately trained and educated, their conduct monitored by their employer and problems with conduct addressed;*
- (c) *Insurers to notify their distributors of the identified target and non-target market for the product;*
- (d) *Pressure selling is not permitted;*

- (e) *Distributors to notify insurers of any complaints and tell customers the identity of the relevant insurer.*

Is this a suitable option for strengthening the standards relating to third party distributors? Please identify any concerns with this approach.

73. The Committee endorses the ICA's recommendation and considers that it would be strengthened by providing all entities with the insurer's policies and procedures manual in relation to the sale of products and requiring strict compliance with those policies and procedures as a term of the agreement with the entity.

Question 5.1

Industry has noted the operational challenges of requiring insurers to monitor the sales practices of third parties. Is there an alternative approach that would allow for the effective monitoring of outsourced third parties?

74. The Committee suggests the only measure that may assist would be to require all entities, say on a quarterly basis, to confirm that there has been strict compliance with the policies and procedures over the previous period. The Committee considers anything beyond that would impose an unreasonable burden upon trade subscribers.

Proposal 6: Standards relating to service suppliers

Insurer responsibility and oversight

Question 6

Would making the following requirements explicit help to strengthen insurers' responsibility for the conduct of their Service Suppliers:

- (a) *Insurers are responsible for the conduct of their Service Suppliers and their approved subcontractors*
- (b) *Insurers must have measures in place to ensure that due skill and care is taken in choosing suitable Service Suppliers*
- (c) *Service Suppliers should notify the insurer of a customer complaint by the next business day*
- (d) *Insurers will appropriately address any actions by Service Suppliers that breach the Code, Service Level Agreements or licence obligations*

Are there any further provisions to be considered?

75. The Committee considers it is reasonable for insurers to have measures in place to ensure that due skill and care is taken in choosing suitable service suppliers but does not consider that insurers should be responsible for the conduct of their service suppliers or approved subcontractors. That obligation does not exist at law and should not be imposed upon insurers.

76. The Committee does consider that it would be reasonable to include in the Code a requirement that the agreement between the insurer and service supplier require the service supplier to notify the insurer of a customer complaint by the next business day and that insurers will appropriately address any breach of the Code, service level agreements or licence obligations within a specified period of time.

Service supplier training

77. The Committee considers that it is appropriate that service suppliers reflect the standards of the Code and that agreements between insurers and service suppliers require compliance with the Code. The Committee considers that it is incumbent upon the insurer to be satisfied that the service supplier is appropriate and holds any required qualifications or experience to carry out the service required.

78. The Committee notes that during the tender process, insurers require service providers to provide evidence of qualification and experience. However, it should not be a requirement for insurers to be involved in the training of any service providers, except to the extent that such training is reasonably necessary by reason of any system, policy or guidelines imposed by the insurer.

Question 6.1

Are there any issues to consider if the Code were to require insurers to ensure that service suppliers are appropriately skilled and qualified to carry out their duties and remain up to date with industry developments as well as the requirements of the Code?

79. The Committee considers that to impose that obligation on insurers would be unreasonable and unnecessary. Tender processes ensure that insurers only use appropriately qualified and experienced service providers. It could be suggested to insurers that they include in tender requirements that service providers remain up to date with industry developments and the requirements of the Code, leaving it to those service providers to carry out that obligation themselves.

Question 6.2

The ICA does not believe that the definition of Service Suppliers should be expanded to include External Experts. Do you agree with the concerns we have raised with this proposal? How can the standards of External Experts be improved without compromising their independence?

80. The Committee endorses the ICA's view that the definition of service suppliers should not be expanded to include external experts and endorses the ICA's view that could compromise the independence of external experts.

81. The Committee notes that it could be made a requirement of the engagement of any external expert that they agree to some aspect of the Code that is necessary to ensure the insurer's compliance with the Code. The expert would then be free to either accept the engagement or not do so.

Proposal 8 – Meeting the requirements for ASIC approval

82. It is the Committee's view that the Code would not be appropriate for approval in its current form. The current contents have not been drafted with that in mind. The Committee considers that review for this specific purpose would have to be undertaken and would lead to a reduced form of the Code. The ability of the Code to provide more flexible guidance and assistance for Code Subscribers and consumers would be reduced.

Contact

83. The Committee would welcome the opportunity to discuss its submission further and to provide additional information in respect of the comments made above. In the first instance, please contact:

- Mr Andrew Sharpe
Chair, National Insurance Lawyers Committee
(T) 0402 352 404