

# Constitution of Code Governance Committee Association Inc.

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Version 2  
Approved at AGM on 27 Nov 2020  
Effective from 1 July 2021

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## CODE GOVERNANCE COMMITTEE ASSOCIATION INC.

### CONSTITUTION

#### 1 Name

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##### 1.1 Code Governance Committee Association Inc.

The name of the Association is the Code Governance Committee Association Inc. ("**the Association**").

#### 2 Definitions and Interpretation

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##### 2.1 Dictionary

In this Constitution, unless inconsistent with the context or subject matter or otherwise stated:

**Act** means the Association Incorporation Act 2009 (NSW).

**AFCA** means the Australian Financial Complaints Authority.

**Association** means the Code Governance Committee Association.

**Association Chair** means the chair of the Association.

**Association Deputy Chair** means the deputy chair of the Association.

**Association Member** means a member of the Association.

**Association Membership** means membership of the Association.

**CGC or Code Governance Committee** is the committee established pursuant to clause 5 to be responsible for the monitoring, reporting and enforcement of Code compliance.

**CGC Chair** means the chair of the Code Governance Committee.

**CGC Member** means a member of the Code Governance Committee.

**Charter** means the charter of the CGC as amended from time to time and set out in Schedule 1.

**Code** means the General Insurance Code of Practice dated 1 January 2020 as amended in accordance with its terms from time to time.

**Code Subscriber** means the organisation that has adopted the Code.

**Constitution** means this document, being the Constitution of the Association.

**Criteria** means the prerequisites for Association Membership listed in clause 4.1(c)(i) and (ii).

**EDR Scheme** means AFCA, or any replacement or successor external dispute resolution scheme, whose jurisdiction encompasses subjects addressed by the Code.

**EDR Scheme Board** means the board of directors of the EDR Scheme.

**Financial Year** means the twelve months ending 30 June in any calendar year.

**ICA** means the Insurance Council of Australia Limited ABN 50 005 617 318.

**ICA Board** means the board of directors of the ICA.

**Independent** means a person who is not an Association Member or a director, officer, employee or agent of any Code Subscriber or ICA Member, ICA, the Service Provider or the EDR Scheme and is free from business or other relationships that could materially interfere with or could reasonably be perceived to materially interfere with the independent exercise of judgement.

**Management Committee** means the committee constituted under clause 7 for the purposes of managing the affairs of the Association.

**Management Committee Member** means a member of the Management Committee.

**Public Officer** means the position of public officer of the Association filled by a person who is appointed pursuant to clause 10.1.

**Register** means the register of members of the Association.

**Regulation** means the Association Incorporation Regulation 2016 (NSW).

**Service Provider** means the service provider appointed by the Association, through the CGC, from time to time, in accordance with the Code and the Charter, to monitor Code compliance on behalf of the Code Governance Committee.

## 2.2 References to an Act

A reference to any legislation or to any provision of any legislation includes any consolidation, amendment or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.

## 2.3 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty;
- (c) words importing the singular include the plural and vice versa, and words importing one gender include each gender; and

- (d) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this Constitution and for the avoidance of doubt any schedule or annexure to the Constitution, forms part of this Constitution.

### **3 The Association**

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#### **3.1 Objectives**

The objectives of the Association are to:

- (a) amend and determine further objectives for the Association from time to time and update the Charter and Constitution as necessary;
- (b) provide for the appointment of candidates to the Code Governance Committee to ensure that the Code Governance Committee is able to operate independently and fulfil its functions under the Code and this Constitution; and
- (c) represent the respective interests of the general insurance industry and consumers in the appointment of CGC Members.

### **4 Association Membership**

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#### **4.1 Association Members**

- (a) The Association will have a minimum of six members at any one time of which at least:
  - (i) three members must satisfy the Criteria listed in clause 4.1(c)(i); and
  - (ii) three members must satisfy the Criteria listed in clause 4.1(c)(ii),so that at all relevant times the Association Membership is equally represented by the interests of the general insurance industry and consumers.
- (b) A person is eligible to be a member of the Association only if:
  - (i) the person is a natural person;
  - (ii) the person meets one of the Criteria; and
  - (iii) the person has been nominated and approved for membership of the Association in accordance with clause 4.2; or
  - (iv) the person was one of the individuals on whose behalf an application was made for the registration of the Association under section 6(1)(a) of the Act.
- (c) A person satisfies the Criteria for Association Membership where they meet one of the following prerequisites:

- (i) they either have the support of the EDR Scheme Board (as evidenced by written endorsement) to be nominated for membership to the Association to represent the interests of consumers and the person is not an EDR Scheme Board member at the time; or
  - (ii) they have the support of the ICA Board (as evidenced by written endorsement) to be nominated for membership to the Association to represent the interests of the general insurance industry.
- (d) For the avoidance of doubt, a person may only satisfy one of the Criteria in clauses 4.1(c)(i) and 4.1(c)(ii) at the same time.

#### **4.2 Nomination of new Association Membership**

- (a) A person may only be nominated for membership of the Association if they are eligible to be a member in accordance with clause 4.1(b).
- (b) The Management Committee will approve a nomination for membership that complies with the requirements of clause 4.2(a).

#### **4.3 Membership of the Association**

On approval of a nomination for membership, the Public Officer will enter the nominee's name in the Register and membership commences from the date the name is added to the Register.

#### **4.4 Resignations**

An Association Member may resign from the Association by giving the Association Chair, or, in the absence of the Association Chair, the Association Deputy Chair, not less than three months' prior notice effective from the first day of a calendar month.

#### **4.5 Cessation of Membership**

A person ceases to be a member of the Association immediately if the person:

- (a) dies;
- (b) resigns membership;
- (c) becomes bankrupt or makes any arrangement or composition with their creditors generally;
- (d) becomes mentally incapacitated;
- (e) is convicted of an offence involving fraud or dishonesty;
- (f) no longer satisfies a relevant Criteria under either clause 4.1(c)(i) or clause 4.1(c)(ii) as a consequence of the support of the EDR Scheme Board or ICA Board (as relevant) being withdrawn; or
- (g) was an Association Member by reason of holding an ex officio role or position within the ICA or EDR Scheme and that role or position ends.

#### **4.6 Membership entitlements not transferable**

A right, privilege or obligation which a person has by reason of being an Association Member is not capable of being transferred or transmitted to another person, and terminates on cessation of the person's membership.

#### **4.7 Register of Association Members**

- (a) The Public Officer must maintain a register of Association Members, which must be open to inspection.
- (b) The Public Officer must record the date on which an Association Member ceases to be a member in the Register.

#### **4.8 Liabilities of Association Members**

An Association Member shall have no liability to contribute towards the payment of any debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association.

#### **4.9 Policies and views of and disputes between Association Members**

- (a) An Association Member is not prevented from adopting or expressing policies or views that differ from the policies or views of the Association by reason of their membership provided that an Association Member does not attribute their policies or views to the Association, or acts in a manner which is inconsistent with upholding the objectives of the Association, and the independence of the CGC and its members.
- (b) The Association Members will use their best endeavours to promptly resolve any dispute that may arise between them.

### **5 The Code Governance Committee**

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#### **5.1 Establishment of a Code Governance Committee**

A Code Governance Committee shall be constituted as a committee of the Association and with the powers and obligations set out in the Charter.

#### **5.2 Commencement**

The CGC shall commence its operations on 1 July 2014.

#### **5.3 Independence of CGC**

The Association and each Association Member:

- (a) must not, except as expressly provided in this Constitution, intervene in the CGC's activities; and
- (b) will recognise, respect and support the independence of the CGC and its members.

## **6 Membership of the Code Governance Committee**

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### **6.1 Number of CGC Members**

The Code Governance Committee must have three persons selected in accordance with clauses 6.2 to 6.5.

### **6.2 CGC Member with insurance industry experience**

One CGC Member must be a person:

- (a) with relevant broad experience at a senior level of the general insurance sector in Australia, (for example, as a former employee of an insurer, or as an industry adviser or representative);
- (b) nominated in writing by the ICA Board; and
- (c) appointed by resolution of the Association.

### **6.3 CGC Member with consumer interest experience**

One CGC Member must be a person:

- (a) with relevant broad experience and knowledge appropriate to be appointed as a consumer or community representative;
- (b) nominated in writing by the EDR Scheme Board; and
- (c) appointed by resolution of the Association.

### **6.4 Independent CGC Chair**

The CGC Chair must be a person:

- (a) with relevant and broad experience in industry, commerce, law, public administration or government service and who must be Independent;
- (b) nominated in writing jointly by the EDR Scheme Board and ICA Board; and
- (c) appointed by the Association.

### **6.5 CGC Member selection criteria**

- (a) A CGC Member must not hold any of the following positions at the time of selection or while they are a member of the CGC:
  - (i) an Association Member;
  - (ii) an employee of a Code Subscriber or ICA Member, the EDR Scheme, the ICA or an Association Member; or
  - (iii) a member of the EDR Scheme Board or the ICA Board.
- (b) The Association may only appoint a CGC Member that satisfies the criteria in clauses 6.2 to 6.4 and clause 6.5(a) as relevant.

## **6.6 Appointment**

CGC Members may only be appointed by a general meeting of Association Members.

## **6.7 Appointment of alternate CGC Members**

An alternate to a CGC Member (other than the CGC Chair) may be appointed:

- (a) by a general meeting of Association Members provided the alternate satisfies the eligibility and selection criteria set out in clause 6.5; or
- (b) in any other manner set out in the Charter.

A person appointed as an alternate may exercise the same powers as the CGC Member they are an alternate for, other than the power to nominate another alternate, and are subject to all the requirements applying to the office of that CGC Member.

## **6.8 Term**

- (a) Each CGC Member will hold office for an initial period of three years.
- (b) Each CGC Member will be eligible for re-appointment to the CGC for a further term not exceeding three years.
- (c) A person may not be appointed as a CGC Member for more than two terms in aggregate.

## **6.9 Resignation from the CGC**

- (a) A CGC Member may resign at any time by giving reasonable notice according to the circumstances, but in any case not less than three months' notice, to the Association Chair.
- (b) A person will immediately cease to be a CGC Member if:
  - (i) they die or become mentally incapacitated;
  - (ii) they resign from the CGC;
  - (iii) they become bankrupt or makes any arrangement or composition with their creditors generally;
  - (iv) they are convicted of an offence involving fraud or dishonesty;
  - (v) they hold any of the positions in clause 6.5(a); or
  - (vi) their appointment is terminated by resolution of the Association, notice of which must be given to the CGC Chair (or, if the appointment of the CGC Chair is to be terminated, to the other CGC Members) not less than seven days before the termination is to take effect.

## **6.10 The CGC Charter**

- (a) The CGC will be responsible for the independent administration and enforcement of the Code in accordance with the principles of its Charter.
- (b) The Association, after consultation with the CGC, ICA and the EDR Scheme, may amend the Charter including but not limited to the requirement to take into account changes affecting or made to the Code and any other matters relevant to the operation of the CGC.

## **7 Management of the Association**

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### **7.1 Powers of the Management Committee**

Subject to the Act, Regulation and this Constitution, the Management Committee:

- (a) will be responsible for controlling and managing the affairs of the Association;
- (b) may exercise all such functions as may be exercised by the Association, other than those functions that are required by this Constitution to be exercised by a general meeting of Association Members; and
- (c) has power to perform all such acts and do all such things as appear to the Management Committee to be necessary or desirable for the proper management of the affairs of the Association,

however for the avoidance of doubt, the Management Committee shall have no power to perform any of the functions reserved to the Code Governance Committee in the Charter.

### **7.2 Composition and membership of Management Committee**

- (a) The Management Committee is to consist of:
  - (i) the Public Officer; and
  - (ii) two other Association Members, each of whom is to be elected at the annual general meeting of the Association under clause 8;
- (b) One of the Management Committee Members appointed in accordance with clause 7.2(a)(ii) will be elected to represent the interests of the ICA and the other Management Committee Member will be elected to be representative of consumer interests.
- (c) The maximum number of members of the Management Committee is three.
- (d) Each member of the Management Committee is, subject to this Constitution, to hold office until the conclusion of the annual general meeting following the date of the member's election, but is eligible for re-election.

### **7.3 Election of Management Committee Members**

- (a) Nominations of candidates for the Management Committee:
  - (i) must be made in writing, signed by two Association Members and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination); and
  - (ii) must be delivered to the Public Officer at least seven days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (b) If insufficient nominations are received to fill all vacancies on the Management Committee, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.
- (c) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (d) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (e) The ballot for the election of Management Committee Members is to be conducted at the annual general meeting in such usual and proper manner as the Association Chair may direct.

### **7.4 Public Officer**

- (a) It is the duty of the Public Officer to also keep minutes of:
  - (i) all appointments of office-bearers and members of the Management Committee;
  - (ii) the names of the Management Committee Members present at a Management Committee meeting or a general meeting; and
  - (iii) all proceedings at Management Committee meetings and general meetings.
- (b) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

### **7.5 Casual vacancies**

- (a) In the event of a casual vacancy occurring in the membership of the Management Committee, the Management Committee may appoint an Association Member, who meets the criteria in clause 7.2(b), to fill the vacancy and the member so appointed is to hold office, subject to this Constitution, until the conclusion of the annual general meeting next following the date of the appointment.
- (b) A casual vacancy in the office of a member of the Management Committee occurs if a Management Committee Member:
  - (i) dies;

- (ii) ceases to be an Association Member (other than where the Management Committee Member is a Public Officer);
- (iii) becomes bankrupt or makes any arrangement or composition with their creditors generally;
- (iv) resigns office by notice in writing;
- (v) is removed from office under clause 7.6;
- (vi) becomes mentally incapacitated;
- (vii) is absent without the consent of the Management Committee from three consecutive meetings of the Management Committee; or
- (viii) is convicted of an offence involving fraud or dishonesty.

#### **7.6 Removal of Management Committee Members**

The Association in general meeting may by resolution remove any Management Committee Member from the Management Committee before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.

#### **7.7 Management Committee meetings and quorum**

- (a) The Management Committee must meet at least once in each period of twelve months at such place and time as the Management Committee may determine.
- (b) Additional meetings of the Management Committee may be convened by the Association Chair or by any member of the Management Committee.
- (c) Oral or written notice of a meeting of the Management Committee must be given by the Public Officer to each member of the Management Committee at least forty-eight hours (or such other period as may be unanimously agreed on by the members of the Management Committee) before the time appointed for the holding of the meeting.
- (d) Notice of a meeting given under subclause (c) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the Management Committee Members present at the meeting unanimously agree to treat as urgent business.
- (e) Three members of the Management Committee constitute a quorum for the transaction of the business of a meeting of the Management Committee.
- (f) No business is to be transacted by the Management Committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to be dissolved.

#### **7.8 Voting and decisions**

- (a) Questions arising at a meeting of the Management Committee are to be

determined by a simple majority of the votes of members of the Management Committee present at the meeting.

- (b) Each member present at a meeting of the Management Committee is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (c) Subject to clause 7.7(e), the Management Committee may act despite any vacancy on the Management Committee.
- (d) Any act or thing done or suffered, or purporting to have been done or suffered, by the Management Committee is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Management Committee.

## **8 General Meetings of the Association**

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### **8.1 Annual general meetings**

- (a) The Association must hold its first annual general meeting within eighteen months after its registration under the Act.
- (b) Thereafter, the Association must hold its annual general meetings within six months after the close of the Association's financial year.
- (c) The annual general meeting is, subject to the Act and clause 8.1(a) and 8.1(b), to be convened on such date and at such place and time as the Management Committee thinks fit.
- (d) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
  - (i) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting;
  - (ii) to receive from the Management Committee reports on the activities of the Association during the last preceding financial year;
  - (iii) to elect office-bearers of the Association and Management Committee Members;
  - (iv) to receive and consider any financial statement or report required to be submitted to Association Members under the Act;
  - (v) to amend this Constitution including the Charter following a process of consultation with the Code Governance Committee, ICA and the EDR Scheme in respect of the proposed amendments; and
  - (vi) for any other purpose arising from this Constitution.

## **8.2 Special general meetings**

- (a) The Management Committee may, whenever it thinks fit, convene a special general meeting of the Association.
- (b) The Management Committee must, on the requisition in writing of at least fifty per cent of the total number of Association Members, convene a special general meeting of the Association.
- (c) A requisition of Association Members for a special general meeting:
  - (i) must state the purpose or purposes of the meeting;
  - (ii) must be signed by the Association Members making the requisition;
  - (iii) must be lodged with the Public Officer; and
  - (iv) may consist of several documents in a similar form, each signed by one or more of the Association Members making the requisition.
- (d) If the Management Committee fails to convene a special general meeting to be held within one month after that date on which a requisition of Association Members for the meeting is lodged with the Public Officer, any one or more of the Association Members who made the requisition may convene a special general meeting to be held not later than three months after that date.
- (e) A special general meeting convened by an Association Member or Members as referred to in subclause (c) must be convened as nearly as is practicable in the same manner as general meetings are convened by the Management Committee.

## **8.3 Notice of meeting**

The Association Chair shall send to each Association Member, not less than twenty one days (or such other period the Association Chair deems appropriate, which decision shall be conclusive) before the date fixed for the meeting of the Association, a notice stating:

- (a) the date and time of the meeting;
- (b) the location of the meeting;
- (c) if the meeting is to be held in two or more places pursuant to clause 8.12, the places at which the meeting will be held and the means by which the holding of the meeting in that manner will occur;
- (d) the nature of the business to be transacted at the meeting; and
- (e) specify whether the meeting is an annual general or special meeting in the notice convening it.

## **8.4 Notice of business at meeting**

An Association Member who wishes to bring any business before a meeting of the Association of which they have received notice may, not less than fourteen days

(or any other period the Association Chair deems appropriate, which decision shall be conclusive) prior to the date of the meeting, give notice of that business to the Association Chair. The Association Chair must include that business in the agenda for the relevant meeting.

#### **8.5 Quorum**

- (a) A quorum for a meeting of the Association shall be five Association Members.
- (b) No item of business is to be transacted at a general meeting unless a quorum is present during the time the meeting is considering that item.
- (c) If within half an hour of the appointed time for the commencement of a meeting of the Association a quorum is not present, the meeting:
  - (i) if convened at the requisition of Association Members, is to be dissolved; and
  - (ii) in any other case, is to stand adjourned to the same day, the following week at the same time (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to the Association Members given before the day to which the meeting is adjourned) and at the same place.

#### **8.6 Association Chair**

- (a) The Association Members shall elect an Association Chair and Association Deputy Chair at the first meeting of the Association. The chief executive officer of ICA or his or her nominee shall chair the meeting of the Association held to elect an Association Chair and an Association Deputy Chair for the first time.
- (b) Unless otherwise agreed, the Association Members shall elect an Association Chair and an Association Deputy Chair annually.

#### **8.7 Association Chair to preside and other matters**

- (a) The Association Chair, or in his or her absence the Association Deputy Chair, shall preside over each meeting of the Association. If neither the Association Chair nor Association Deputy Chair is present, the Association Members shall choose a member of the Association present at the meeting to act as chair.
- (b) A notice that must be provided under this Constitution by an Association Member to the Association Chair must be provided to the Association Deputy Chair if:
  - (i) an Association Chair is not in office at the time that the notice must be provided; or
  - (ii) the Association Member that must provide the notice is the Association Chair at the relevant time.

## **8.8 Adjournment**

- (a) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of Association Members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (b) If a general meeting is adjourned for fourteen days or more, the Public Officer must give written or oral notice of the adjourned meeting to each Association Member stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (c) Except as provided in subclauses (a) and (b), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

## **8.9 Voting generally on questions**

- (a) Every question, other than a special resolution, arising at a meeting of the Association shall be determined, on a show of hands or as determined by the Association Chair, by a simple majority vote of attendees.
- (b) Each Association Member shall have one vote only on all questions arising at a meeting of the Association.
- (c) Proxy voting or postal ballot voting must not be undertaken at or in respect of a general meeting.

## **8.10 Voting on special resolutions**

- (a) A special resolution may only be passed by the Association in accordance with section 39 of the Act where:
  - (i) Association Members are given at least twenty one days' notice before the date on which the meeting is to be held; and
  - (ii) is supported by at least seventy five percent of Association Members who, under the Constitution, are entitled to vote on the proposed resolution.

## **8.11 Minute book as evidence**

A declaration by the Association Chair that a resolution has been carried or lost, and an entry in the minute book of the Association to that effect, is evidence of the fact without proof of the number, proportion or composition of votes recorded in favour of or against that resolution.

## **8.12 Multiple meetings**

A meeting of the Association may be constituted by separate meetings of Association Members held at the same time at different places (whether involving less than two Association Members at any one place and whether in person or by simultaneous linking together by telephone or other method of audio or audio visual or electronic communication) which will for the purposes of this Constitution be taken to constitute one meeting.

### **8.13 Written resolution**

A resolution in writing signed by each Association Member entitled to vote on the resolution has the same effect and validity as a resolution passed at a duly convened meeting of the Association, and any such resolution may consist of several documents in like form each signed by one or more Association Members that together constitute the resolution.

## **9 Financial matters**

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### **9.1 Source of Funds**

The funds of the Association shall be derived from annual subscription fees to be paid by the Code Subscribers, and such other sources as the Association may determine from time to time, and must be used for the benefit and operation of the Association and Code Governance Committee.

### **9.2 Fees and subscriptions**

Association Members shall not be required to pay an annual fee in connection with Association Membership.

### **9.3 Income and property of the Association**

The income and property of the Association shall be applied solely towards the promotion of the objectives of the Association.

### **9.4 Funds management**

- (a) The Association Chair may take action in accordance with a resolution of the Association to operate accounts.
- (b) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments relating to the funds of the Association must be signed by two of either the Association Chair, the Association Deputy Chair or the Public Officer.

### **9.5 Distribution of assets**

In the event of dissolution of the Association, any remainder of its net assets after discharge of all its just debts and other legal and moral obligations, shall not be distributed to Association Members but shall be distributed to some other organisation that has similar restrictions upon distribution of assets to its members as may be approved by the Association Members.

## **10 Miscellaneous Matters**

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### **10.1 Public Officer**

The Association shall determine the Public Officer of the Association for the

purposes of the Act from time to time.

## **10.2 Common seal**

The common seal of the Association must be kept in the custody of the Public Officer. The common seal must not be affixed to any instrument except by the authority of the Association Chair, or in his or her absence the Association Deputy Chair. The affixing of the common seal must be attested by:

- (a) the signature of the Association Chair, or in his or her absence the Association Deputy Chair, and
- (b) the Public Officer.

## **10.3 Custody of books**

The Public Officer must keep in his or her custody, or under his or her control, all records, books and other documents relating to the Association.

## **10.4 Inspection of books**

The records, books and other documents of the Association must be open to inspection, free of charge, by a member of the Association at any reasonable hour.

# **11 Notices**

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## **11.1 Notice requirements**

All notices given for the purposes of this Constitution must be:

- (a) in writing; and
- (b) delivered by facsimile, electronic mail or prepaid ordinary post.

# **12 Financial Year**

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## **12.1 Financial year**

The financial year of the Association is:

- (a) the period of time commencing on the date of incorporation of the Association and ending on the following 30 June; and
- (b) each period of twelve months after the expiration of the previous financial year of the Association, commencing on 1 July and ending on the following 30 June.

## **13 Alteration to Constitution**

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### **13.1 Alteration to Constitution**

This Constitution may only be altered by a special resolution passed by Association Members and following consultation with the Code Governance Committee, the EDR Scheme and ICA in respect of the proposed amendments.

# Schedule 1 - The Code Governance Committee Charter

The Code Governance Committee (CGC) is a committee of the Code Governance Committee Association Inc. (Association).

The Code is monitored and enforced by the CGC which is an independent body. The CGC is made up of a consumer representative, an industry representative and an independent chair. These three CGC Members are appointed by the Association in accordance with its Constitution.

## **1 Functions and responsibilities of the Code Governance Committee**

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**1.1** Consistent with the Code and the Constitution, the CGC will be responsible for the independent administration and enforcement of the Code and will have the functions, powers and responsibilities set out in the Code.

**1.2** The CGC is responsible for:

- (a) providing stewardship of the Code by helping the general insurance industry understand and comply with the Code;
- (b) identifying areas for improvement of insurance practices;
- (c) liaising with the ICA on relevant matters;
- (d) providing quarterly reports to the ICA Board;
- (e) publishing an annual public report containing aggregate industry data and consolidated analysis on Code compliance.

**1.3** The CGC is also responsible for monitoring and enforcing compliance with the Code through:

- (a) investigations, analysis of data, analysis of evidence and stakeholder engagement;
- (b) receiving, investigating and making decisions about alleged breaches and giving Code Subscribers the opportunity to respond to any allegations that they have breached the Code;
- (c) considering whether it is more appropriate for ASIC or another enforcement agency to investigate an alleged breach of the Code;
- (d) agreeing with Code Subscribers on any corrective measures to implement within an agreed timeframe;
- (e) imposing sanctions; and
- (f) publishing breach decisions on a de-identified basis.

**1.4** The CGC may also provide advice to the Association on:

- (a) financial matters associated with the activities, or proposed activities, of the CGC;
- (b) amendments that in the CGC's view, should be made to the Constitution or the Charter to facilitate the objectives of the Code; and
- (c) other matters as determined by the CGC from time to time.

### **1.5 Responsibilities of CGC Members**

Each CGC Member will do all things necessary to ensure the duties and responsibilities of the CGC as specified in the Charter are effectively discharged.

Each CGC Member has a duty to:

- (a) comply with the Charter, Code and Constitution; and
- (b) act impartially and objectively in the discharge of their duty.

### **1.6 Outsourcing of CGC functions**

- (a) Consistent with the Code and Charter, the CGC may outsource its responsibilities to the Service Provider.
- (b) The CGC will not outsource its power to impose a sanction in relation to Code non-compliance.
- (c) On the request of the CGC, the Management Committee will grant approval for the Association to enter into an outsourcing agreement with the Service Provider.
- (d) For the avoidance of doubt, the CGC may outsource its secretariat function to the Service Provider.
- (e) Any reports of the CGC will be approved by the CGC before being released including where the preparation of a report has been outsourced.
- (f) Any publication of the CGC will be approved by the CGC before being made public including the preparation of a de-identified decision.

## **2 Meeting of CGC Members**

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### **2.1 Meetings and proceedings of CGC**

- (a) Subject to the Code, the CGC will meet, discharge its responsibilities and convene, adjourn and otherwise regulate its meetings and proceedings in such manner as it may from time to time determine.
- (b) The CGC will meet at least four times in each period of twelve months.
- (c) No person is entitled to attend a CGC meeting unless that person is:

- (i) a member of the CGC, or the CGC Member's alternate;
- (ii) the secretary of the CGC; or
- (iii) a person invited to attend the meeting by the CGC Chair, including but not limited to the Service Provider or a person providing advice to the CGC in accordance with clause 4.1(b).

## **2.2 Quorum**

A quorum for a meeting will be the three CGC Members (or alternates) who comprise the Code Governance Committee at the time of the meeting. A duly convened CGC meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the CGC.

## **2.3 CGC Chair to preside**

The CGC Chair will preside over each meeting of the Code Governance Committee.

## **2.4 Notice of meetings**

- (a) Subject to this clause 2.4, a CGC meeting may be called by a member of the CGC or the Service Provider giving to every other member:
  - (i) notice confirming the venue, time and date of the meeting no fewer than ten business days prior to the meeting; and
  - (ii) an agenda of items to be discussed no fewer than five business days prior to the meeting.
- (b) A member of the CGC or the Service Provider may call a CGC meeting in relation to an urgent matter by giving to every other member prior notice of no fewer than two business days confirming the venue, time and date together with an agenda of items to be discussed.
- (c) A notice or agenda may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the member or at any other address given to the secretary of the CGC by the member or by any technology agreed by all the members.
- (d) A failure to meet this clause 2.4 does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing if, at a meeting at which all members are present, the CGC resolves unanimously to excuse the failure to meet this clause 2.4.

## **2.5 Minutes**

- (a) The secretary will minute the proceedings and resolutions of all CGC meetings, including the names of those present and in attendance.
- (b) Minutes of CGC meetings will be circulated to each member of the CGC

and will be approved by the CGC.

## **2.6 Meetings by Technology**

- (a) Each member of the CGC consents to the use of each of the following technologies for holding a meeting of the CGC:
  - (i) video;
  - (ii) telephone;
  - (iii) electronic mail;
  - (iv) any other technology which permits each member of the CGC to communicate with every other member; or
  - (v) any combination of these technologies.
- (b) Where the members of the CGC are not all in attendance at one place and are holding a CGC meeting using technology and each member can communicate with the other members:
  - (i) the participating members are, for the purpose of the Code and this Charter concerning CGC meetings, taken to be assembled together at a CGC meeting and to be present at that CGC meeting; and
  - (ii) all proceedings of those members conducted in that manner are as valid and effective as if conducted at a CGC meeting at which all of them were physically present in the one location.

## **2.7 Voting**

- (a) Each CGC Member has one vote.
- (b) Every question arising at a meeting will be determined, on a show of hands or as determined by the CGC Chair, by a simple majority.

## **2.8 Delegation of authority by the CGC**

The CGC may from time to time, by written resolution, assign to or vest in the CGC Chair powers and responsibilities of the CGC. A copy of the resolution of the CGC as to the authority of the CGC Chair in respect of any matter shall be accepted as conclusive.

## **3 Material Personal Interests and Conflicts**

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### **3.1 Personal interest in a matter being considered at a CGC meeting**

If a CGC Member has a material personal interest in relation to a matter that is being considered at a meeting of the CGC they will not:

- (a) be present while the matter is being considered at the meeting; or

- (b) vote on the matter, unless:
  - (i) the CGC Member has notified the other CGC Members and the Association Chair of their material personal interest;
  - (ii) the other CGC Members and the Association Chair are satisfied that the material personal interest should not disqualify the CGC Member from voting on the matter;
  - (iii) the nature of the personal material interest and the circumstances in which it was disclosed have been recorded in a minute; and
  - (iv) the minute, relevant determination or other reports on the matter are made available for the inspection on request by any Code Subscriber affected.

For the avoidance of doubt, a material personal interest for the purposes of this clause does not arise solely by reason of a CGC Member's previous employment with a Code Subscriber, or by reason of the insurance company of which a CGC Member is a customer.

### **3.2 General Law obligations**

The requirements in clause 3.1 have effect in addition to and not in derogation of any general law about conflicts of interest or conflicts of duties.

### **3.3 Appointment of alternate CGC Members**

- (a) From time to time, it may be necessary for an alternate to a CGC Member to attend and vote at CGC meetings when a CGC Member is unable to do so because of illness, absence from Australia, conflicts of interest or conflicts of duties, a material personal interest or because of other significant circumstances.
- (b) In addition to the process in the Constitution for appointing alternates in the same way as a CGC Member, an alternate may be appointed for a specified meeting in accordance with clause 3.3(c).
- (c) The process for appointing an alternate for a specified meeting requires that:
  - (i) each CGC Member, other than the CGC Chair, may nominate an alternate to take part in a specified meeting provided that the nominee has the relevant broad experience and knowledge as would be required if they were appointed a CGC Member and cannot be;
    1. an Association Member;
    2. an employee of a Code Subscriber or ICA Member, the EDR Scheme, the ICA or an Association Member; or
    3. a member of the EDR Scheme Board or the ICA Board; and
  - (ii) the nominee's appointment is confirmed in writing before the meeting which the alternative is to attend, by:

1. each of the other CGC Members; and
  2. the Association Chair, or in his or her absence the Association Deputy Chair.
- (d) A person appointed as an alternate may exercise the same powers as their nominator, other than the power to nominate another alternate, and are subject to all the requirements applying to their nominator at the meeting they attend and where their nominator is not present.

## **4 CGC Compliance Monitoring Process**

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### **4.1 Monitoring and information gathering**

The CGC is responsible for monitoring and enforcing compliance with the Code in the manner set out in the Code. Without limiting the CGC's Code functions and powers, the CGC may for the purposes of monitoring compliance with the Code:

- (a) make reasonable requests for a Code Subscriber and/or the Service Provider to provide access to information, documents and systems, which the CGC considers necessary to discharge its functions;
- (b) seek independent professional legal, accounting or other advice;
- (c) request each Code Subscriber to lodge an annual data return and survey reporting on their compliance with the Code; and
- (d) enter into appropriate arrangements with the Service Provider or the EDR Scheme for the purpose of facilitating:
  - (i) information exchange relevant to the CGC's functions; and
  - (ii) referrals to the CGC of an allegation that a Code Subscriber has breached the Code.

## **5 CGC Compliance Investigation Process**

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### **5.1 Investigations undertaken by the CGC**

- (a) The CGC may commence an investigation of Code compliance in the following ways:
  - (i) in response to an allegation that a Code Subscriber may have breached the Code; or
  - (ii) in response to a referral or report from the Service Provider or the EDR Scheme that a Code Subscriber may have breached the Code; or
  - (iii) as an outcome of the CGC's monitoring and information gathering, if the CGC has reason to suspect that a Code Subscriber may have breached the Code.

## **5.2 Matters outside the scope of CGC's investigation powers**

The CGC:

- (a) has discretion to determine whether a matter falls outside the scope of its investigation powers; and
- (b) may develop a policy on how it will exercise its discretion to consider allegations of Code breaches pursuant to 5.1.

## **5.3 Process for considering alleged Code breaches**

- (a) Subject to clause 5.1, the CGC may, within a reasonable time of receiving a report of an alleged breach, consider that allegation in accordance with this Charter (including clause 11.2) and any operating procedures determined by the CGC in accordance with clause 10.
- (b) Where the CGC investigates an alleged Code breach, the CGC will provide the Code Subscriber with an opportunity to respond to the alleged breach.

## **5.4 Notice of decision**

- (a) Following an investigation in accordance with clause 5.3, the CGC may make a decision in respect of the alleged breach.
- (b) A decision made by the CGC will:
  - (i) be in writing;
  - (ii) include a brief description of the allegation;
  - (iii) include a statement that in the CGC's view the reported allegation was proven in whole or in part or was unfounded;
  - (iv) if applicable, state any finding by the CGC that the Code Subscriber is responsible for serious or systemic non-compliance with the Code;
  - (v) include reasons for the conclusions and findings of the CGC; and
  - (vi) be provided to the Code Subscriber.

## **6 Sanctions against Code Subscribers**

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### **6.1 Imposing a Sanction**

The CGC may, in accordance with the Code and the Charter, impose one or more sanctions on a Code Subscriber for a Code breach or a Significant Breach of the Code.

## **6.2 Reporting to ASIC**

The CGC will report Significant Breaches or serious misconduct to ASIC in accordance with the Code.

## **7 Publications**

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### **7.1 Publication of Significant Breaches**

When the CGC imposes a sanction of publication on the Code Subscriber for a Significant Breach, the CGC has discretion to set the manner and the duration for which the publication will be made available by the Code Subscriber.

### **7.2 Publication of de-identified CGC decisions of sanctions imposed on Code Subscribers**

- (a) In order to increase Code Subscriber and public awareness of the Code and the functions, powers and responsibilities of the CGC, the CGC may publish de-identified decisions made by the CGC to impose sanctions on Code Subscribers for breaches of the Code including sanctions for Significant Breaches.
- (b) When publishing decisions made by the CGC under clause 7.2(a), the CGC will de-identify confidential information as defined at clause 11.2(a), and any other information which could be used to identify complainants or Code Subscribers, contained in the decisions. The CGC may elect not to publish a decision where the protection of confidential information cannot be effectively achieved by any de-identification process.
- (c) De-identification will not apply when the CGC imposes the sanction of requiring the Code Subscriber to publish the fact they have committed a Significant Breach of the Code.

## **8 Complaints concerning CGC**

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### **8.1 Complaints**

- (a) The CGC Chair will consider and investigate any complaint that the CGC has not acted in accordance with the Code or the Charter received by the CGC or referred to it by the ICA or the EDR Scheme.
- (b) The CGC Chair will make recommendations to the CGC in respect of what, if any, steps should be taken in respect of the complaint.
- (c) If the CGC Chair believes that a complaint raises issues which involve the Chair or a CGC Member in a conflict of interest, then the CGC Chair may appoint an Independent person to consider and investigate and make recommendations to the CGC in respect of the subject matter of the complaint.
- (d) The CGC will advise a complainant of its determination in relation to any complaint.
- (e) The CGC Chair may report complaints and their outcomes to the Association Chair.

## **9 Reporting by CGC**

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### **9.1 Collection of information for Annual Report**

The CGC will, for each period for which it will prepare an Annual Report, collect and record data for the purposes of analysis and reporting on Code compliance.

### **9.2 Publication of Annual Report**

- (a) By 31 March each year, the CGC will prepare and give to the ICA Board and EDR Scheme Board an Annual Report including the industry data analysis for the period ending on 30 June in the preceding year.
- (b) Each Annual Report will include a fair and adequate summary and analysis of the information specified in clause 9.2(c). It may include any other matters the CGC thinks fit that are consistent with the functions of the CGC under the Code and this Charter.
- (c) The Annual Report will include the following:
  - (i) an outline of the activities of the CGC in the relevant period, including:
    1. information as to the reported allegations of breaches of the Code;
    2. information as to investigated alleged breaches and any corrective measures agreed with Code Subscribers;
    3. information as to any sanctions imposed by the CGC; and
    4. information as to the number of meetings of the CGC and the attendance of CGC Members;
  - (ii) any recommendations on Code improvements and education relevant to the operation of the Code arising out of its experiences of Code compliance in the relevant period; and
  - (iii) a statement that the CGC has complied with the terms of the Charter in the period of the Annual Report and, if there has been any non-compliance, the Annual Report will identify that non-compliance and the reasons for it including any action that may have been instituted by the CGC or the Association to ensure that such non-compliance does not occur in the future.
- (d) Each year, the CGC will prepare and give to the ICA Board and EDR Scheme Board aggregated industry data and consolidated analysis of Code compliance by the Code Subscribers for the relevant period. This information may be provided separately to the Annual Report.

### **9.3 Provision and lodgment of Annual Report**

The CGC will provide a copy of the Annual Report to:

- (a) each Association Member;
- (b) each Code Subscriber;
- (c) the ICA Board;
- (d) the EDR Scheme Board; and
- (e) ASIC.

The CGC will make copies of the Annual Report available to the public. To the maximum extent permitted by law, Annual Reports of the CGC may be provided and made available in electronic form.

## **10 Policies, guidelines, reporting forms and operating procedures**

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### **10.1 Development of reporting forms and operating procedures**

The CGC may develop:

- (a) policies and guidelines on the administration of the Code; and
- (b) compliance reporting and other forms; and
- (c) operating procedures related to the activities of the CGC and/or the Service Provider (if relevant);

that is consistent with this Charter and the Code.

In conjunction with the ICA, the CGC will consult with Code Subscribers in developing these policies, guidelines, reporting forms and operating procedures. The CGC may also consult with other organisations and individuals with an interest in the Code, as the CGC sees fit.

## **11 General principles and procedures**

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### **11.1 General principles**

When considering an alleged breach, the CGC will:

- (a) ensure a Code Subscriber, or Code Subscribers, to whom an alleged breach or investigation relates is, or are, accorded procedural fairness throughout the course of the CGC's consideration of the alleged breach or conduct of the investigation;
- (b) ensure, as far as practicable, that:
  - (i) a Code Subscriber's business is not disrupted unduly; and
  - (ii) a Code Subscriber's customers are not inconvenienced unduly; and

- (c) act reasonably in all the circumstances.

## 11.2 Confidentiality of information

- (a) In this Charter, "confidential information" means all technical, commercial and other confidential information and materials of a Code Subscriber, consumer or small business and includes any information or material that discloses or relates to:
  - (i) a Code Subscriber's compliance or non-compliance with the Code;
  - (ii) an actual or alleged breach of the Code;
  - (iii) commercial, financial or legal affairs including but not limited to pricing policies, costing information, supplier lists and customer lists;
  - (iv) a matter to which an obligation of confidence applies under a privacy law; and
  - (v) any other information or material which is of a confidential or sensitive nature, is marked or denoted as being confidential or which a reasonable person to whom that information or material is disclosed, or to whose knowledge that information or material otherwise comes, would consider confidential.
- (b) Subject to clause 11.2(c), a person referred to in clause 2.1(c) will not disclose, or use for a purpose other than contemplated by this Charter or the Code, any confidential information supplied to it in connection with the conduct of the business of the CGC.
- (c) The CGC may disclose any confidential information:
  - (i) within the CGC or to any person to whom disclosure is reasonably required for the purpose of the CGC exercising its functions, powers and responsibilities, under the Code and the Charter;
  - (ii) to any person to whom disclosure of confidential information is required by law;
  - (iii) in response to a request for that confidential information from ASIC or another enforcement agency, the EDR Scheme or the Service Provider;
  - (iv) under corresponding obligations of confidence as imposed by this clause 11 to a person retained to provide advice in accordance with clause 4.1(b), to ASIC or another enforcement agency, the EDR Scheme, the Service Provider, or another person, where the CGC determines that such disclosure is reasonably necessary for the purpose of investigating, determining or imposing a sanction on a Code Subscriber in accordance with the Code; or
  - (v) with the prior written consent of the Code Subscriber.

### 11.3 External expertise

In discharging its functions the CGC may consult such external parties as the CGC thinks appropriate, provided that the CGC takes reasonable steps to ensure that any such external parties also comply with the requirements of this Charter where applicable.

### 11.4 Authority to give oral or written public statements

The CGC, and each CGC Member, will not make public statements on behalf of the Association, except:

- (a) as contained in the Annual Report; or
- (b) as required in the performance of its functions and responsibilities as set out in clause 1 of this Charter.

## 12 Definitions

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In this Charter, unless inconsistent with the context or subject matter or otherwise stated:

**AFCA** means the Australian Financial Complaints Authority.

**Annual Report** means the report published by the Code Governance Committee.

**ASIC** means the Australian Securities and Investments Commission or any replacement or successor government agency.

**Association Member** means a member of the Association.

**CGC or Code Governance Committee** is the committee established pursuant to the Code Governance Committee Association's Constitution to be responsible for the monitoring, reporting and enforcement of Code compliance.

**CGC Chair** means the chair of the Code Governance Committee.

**CGC Member** means a member of the Code Governance Committee.

**Code** means the General Insurance Code of Practice dated 1 January 2020 as amended in accordance with its terms from time to time.

**Code Subscriber** means the organisation that has adopted the Code.

**Confidential information** has the same meaning at clause 11.2(a).

**EDR Scheme** means AFCA, or any replacement or successor external dispute resolution scheme, whose jurisdiction encompasses subjects addressed by the Code.

**EDR Scheme Board** means the board of directors of the EDR Scheme.

**ICA** means the Insurance Council of Australia Limited ABN 50 005 617 318.

**ICA Board** means the board of directors of the ICA.

**Independent** means a person who is not an Association Member or a director, officer, employee or agent of any Code Subscriber or ICA Member, ICA, the Service Provider or the EDR Scheme and is free from business or other relationships that could materially interfere with or could reasonably be perceived to materially interfere with the independent exercise of judgement.

**Service Provider** means the service provider appointed by the Association, through the CGC, from time to time, in accordance with the Code and the Charter, to monitor Code compliance on behalf of the Code Governance Committee.

**Significant Breach** has the same meaning in the Code

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