General Insurance Code of Practice: Consultation Draft

AFCA's submission

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afca
Australian Financial Complaints Authority

Contents

Introduction

The Australian Financial Complaints Authority (AFCA) is the independent external dispute resolution (EDR) scheme for the financial services sector.

AFCA welcomes the opportunity to provide feedback to the Consultation on a redrafted General Insurance Code of Practice (draft Code). Financial sector codes play a critical role in lifting standards and improving consumer outcomes in the financial system. AFCA and predecessor schemes have strongly contributed to the development and evolution of financial services industry codes for more than 30 years.

AFCA has a dual role in relation to financial sector codes of practice:

- in our primary dispute resolution role, we must have regard to applicable industry codes or guidance in accordance with AFCA's Rules[1]
- a separately operated and funded team in AFCA, the Code Group, acts as the administrator for several industry codes.

AFCA's Code Group supports independent code compliance committees, including the General Insurance Code Governance Committee, (CGC) to monitor compliance with codes to achieve service standards people can trust.

This submission is made on behalf of the AFCA, not the CGC.

Executive summary

1.1 Context

General insurance products are essential to the financial security of Australians - both consumers and small businesses. People take out insurance for peace of mind, to protect their homes, cars, other property, pets and travel. The value of an insurance policy is in the promise that allows consumers to feel confident and secure they will be looked after and treated fairly, with dignity and respect, if or when something goes wrong.

The general insurance code of practice is the primary self-regulatory vehicle to drive, lift and improve industry standards and consumer outcomes in the general insurance sector.

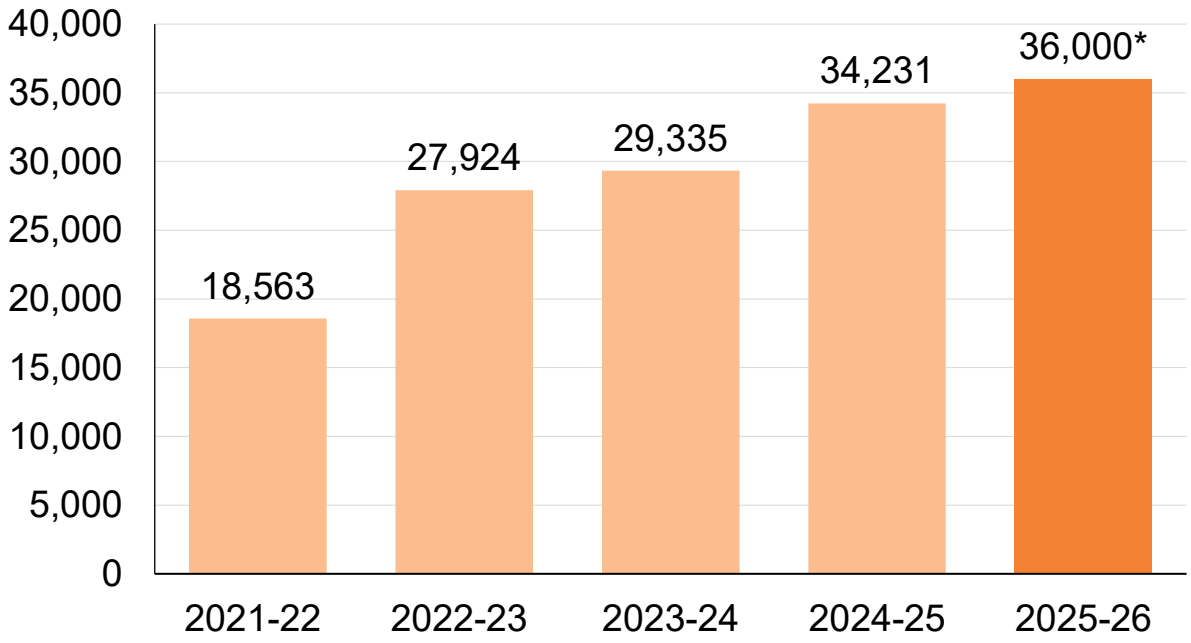
Self-regulation is a privilege. It speaks to an industry's:

[1] Under Rule A 14.2, in assessing and determining life insurance complaints, an AFCA decision maker must do what they consider is fair in all the circumstances, having regard to: a) legal principles b) applicable industry codes or guidance c) good industry practice and d) previous relevant determinations of AFCA or predecessor schemes.

- maturity and commitment to an enforceable set of rules for the conduct of subscribing firms
- willingness to meet and be held accountable to those commitments
- ambition to respond to known issues, improve products, processes and outcomes, and aspiration to reduce customer complaints over time.

AFCA's evidence base shows that general insurance complaints have grown, and continue to grow over time, almost doubling in 5 years. This is an unsustainable growth curve. See Table 1 below.

Table 1: General insurance complaints received[2]



*AFCA's full FY 25-26 data will be available in the Annual Review later this year. This data is preliminary and may change after further analysis and classification.

Behind this trend is a message from customers to general insurers. The message speaks to their experience of your products and services. It tells you where standards need to improve, where processes fail, where outcomes are poor and what needs to change.

The general insurance industry has been gifted a roadmap for change. This roadmap, prepared by your own Independent Review with lessons from the Flood

[2] We note that the increase in 2022-23 largely reflects the impact of major flood events, while the increase in 2024-25 was influenced by a significant volume of add-on insurance complaints. While these factors contributed to year-on-year fluctuations, the underlying trend of increasing complaint volumes remains relatively steady over the period.

Inquiry and 23 comprehensive stakeholder submissions, signposts the changes required.

The draft Code is an opportunity to reframe and refresh your commitments to your customers and respond to challenges they face:

- challenges maintaining essential insurance cover as premiums increase
- challenges with claims handling delays and claim processes, such as cash settlements and expert reports
- challenges experienced because of hardship or vulnerability.

The draft Code in its current state fails to follow the roadmap or fully meet the moment.

This submission sets out key areas we consider the Code needs to respond to. It offers insights about how to take a good code and build on it with concrete commitments that insurers will stand behind and be held accountable to.

The alternative is—as in the superannuation sector—government mandated service standards. We urge insurers to follow the roadmap and not miss this opportunity to take your industry and your customers forward.

1.2 Need to align the drivers to the outcomes

In our view, the imperative to make the Code contractually enforceable has resulted in perverse outcomes, specifically, the hollowing out of:

- concrete, actionable customer commitments or the moving of these commitments to unenforceable guidelines
- the compliance and supervisory framework, the very mechanisms that evidence code subscribers' commitment to accountability for their promises.

The draft Code leaves many important Review recommendations unaddressed or inadequately implemented, while existing provisions and commitments are diluted or moved out of the Code and into guidance. While welcome, many of the new commitments are weak or, because of the hollowing out of the code governance arrangements, lack meaningful oversight and governance to test whether they do or will in fact, improve standards over time.

It has been challenging to provide thoughtful and considered feedback on the draft Code in the timeframes imposed by the ICA. There was an *informal and confidential* consultation process led by the ICA during the development of the draft Code. The ICA invited AFCA feedback at intervals during this process, however, the complexity of the issues, the shifting nature of the proposals and the limited timeframes for

response has affected AFCA's confidence in the outcomes and positions taken on important Review and other recommendations.

1.3 Preserving principles of independent Code oversight and governance

AFCA is very concerned that the package of proposals in the draft Code and Charter threaten one of the fundamental principles underpinning self-regulatory Codes: the commitment by subscribing firms to independent governance, monitoring and oversight arrangements. These arrangements evidence subscribers' accountability commitment to their customers.

The proposals in the Draft Code and Charter with respect to the CGC fetter the CGC in the performance of its role and materially depart from established and sound governance settings that apply to other financial services industry codes. We also note ASIC's commentary in *Regulatory Guide 183: Codes of conduct for the financial services and credit sectors* at RG 183.47 that:

> An independent body or person (most commonly a code administrator) should be empowered to *effectively* [our emphasis] administer and enforce the code, including by imposing appropriate sanctions for code breaches.

Critically, proposed amendments in the Draft Code weaken and undermine the CGC's monitoring and enforcement role including, for example:

- omitting a requirement that subscribers have appropriate systems and processes in place to monitor Code compliance.
- limiting the scope of the CGC's role with respect to code breaches
- undermining the efficacy of the CGC's sanctions powers substantially reducing its enforcement role and reducing accountability for serious non-compliance.

These concerns are set out in detail in the body of this submission below.

AFCA is not just another interested stakeholder with respect to these proposed changes. The Code standards are essential for confirming appropriate industry conduct, which has a direct influence on complaints. In addition, the AFCA Code group, an independent business unit, supports five independent code compliance committees, including the GI CGC.

Together the Code owners (each of the respective industry associations) and AFCA share a joint custodial responsibility for these Codes and the commitments they contain about the independence, powers and scope of committee responsibilities for compliance settings, monitoring and sanction arrangements. We consider the proposals as currently foreshadowed in the Draft Code to be materially out of step with all the other peer financial sector Codes. AFCA strongly opposes the proposed changes as we believe they unnecessarily fetter the discretion of the Committee and

undermine its independence. If the ICA were to proceed with these, AFCA would make representations in the strongest terms to ASIC and the Government.

These are very important matters for consideration by the AFCA Board which assesses whether a Code Compliance Committee is sufficiently empowered to deliver effective, independent oversight to a Code. In making these assessments, the AFCA Board will have regard to threshold considerations such as whether governance arrangements are sufficient to support a credible Code, its independence, functions and powers, ability to address systemic issues and other relevant factors.

Recommendations to genuinely take this important Code forward include:

1. maintain and enhance existing protections, including the current obligation for insurers to act honestly, efficiently, fairly, transparently and in a timely manner
2. ensure enforceability strengthens the Code, rather than narrowing obligations, qualifying commitments or reducing the ambit and ambition of Code promises
3. strengthen claims handling standards by including commitments to clearer and more accountable timeframes, better communication with claimants, stronger protections for delayed claims, and enhanced safeguards to respond to known issues involving cash settlements and expert reports
4. embed key protections for consumers experiencing vulnerability in the Code itself, rather than relying on non-binding guidance for practical commitments that are central to consumer outcomes
5. make concrete and practical commitments that support the economic participation and empowerment of First Nations consumers with culturally appropriate service standards and improved access to products and services
6. preserve and strengthen independent Code governance, including by subscribers' commitment to robust monitoring, transparent reporting and meaningful sanctions where subscribers fail to meet Code standards
7. respond to known gaps in consumer protection, including for small business consumers, consumers covered under complex insurance arrangements, and consumers who may otherwise fall outside Code protections because of product or policy structures.

This submission follows the general structure of the draft Code.

Industry Principles

AFCA opposes the removal of the existing Code obligation committing insurers to be honest, efficient, fair, transparent and timely in their dealings with consumers[3], and its replacement with a narrower, general commitment set out in the Industry Principles (Principles) in the draft Code. The draft Code also weakens these commitments by stating that the Principles merely 'influence' industry behaviour and are a 'guide only'.[4]

The draft Code should retain and build on these core consumer commitments, not weaken them. It should also ensure that the CGC can have regard to the Principles in the performance of its oversight and monitoring role.

Reduced scope of obligations

The draft Code Principles narrow the scope of the current obligation. It appears to apply an element of these standards *only* to specific activities, such as:

- honesty and efficiency *when providing services*
- transparency *when designing, reviewing, improving and marketing products*
- fairness *when providing services or designing, reviewing, improving and marketing products.*

This reduces the breadth of the current obligation, including its application to timely claims handling and other consumer interactions. The Insurance Council of Australia (ICA)'s Consultation Paper presents the removal of the current obligation in positive terms, noting that it 'has been included in the principles, aligning its language with the Corporations Act'.[5] This does not acknowledge that the 'alignment' has the practical impact of reducing commitments by removing references to timeliness and narrowing obligations for honesty, efficiency, fairness and transparency.

Erosion of existing timeliness commitments

The proposed Principles in the draft Code do not contain an express commitment regarding timeliness. The current Code recognises the importance of timeliness in its principles which acknowledges its role in:

- communications with customers and the community
- accessible processes and
- resolving consumer concerns.[6]

[3] Current Code, paragraph 21.
[4] Draft Code, p. 5.
[5] Consultation Paper, p. 3.
[6] Current Code, p. 6.

Relative to the current Code, timeframes in the draft Code are often vague or non-committal, weakened by broad qualifying language that reduces accountability. This failure to commit to specific timeframes recurs throughout the draft Code, see:

- section 9 – Standards for our representatives - insurers only require a representative to report breaches of the Code to them **promptly**.[7] Comparatively the current Code requires breaches to be reported within 2 business days.[8]
- section 4 – Making a claim - insurers are only required to take action to **promptly** correct any known claims handling mistakes.[9] In comparison, the current Code requires the insurer to immediately take action.[10]

These changes erode existing commitments, reducing the strength of the Code's effectiveness to improve standards and outcomes.

AFCA recommends adopting shorter and more concrete timeframes that build on, rather than dilute, current Code standards.

Apply an outcomes lens to technology and AI obligations

AFCA welcomes the commitment in the Code Principles that insurers will use technology responsibly. However, we suggest an enhancement to reinforce that insurers are responsible for maintaining standards and, critically, for *outcomes* where new technologies, including AI, are deployed.

This could be achieved by expressing this commitment as an overarching technology neutral commitment to meet Code obligations. This recognises that relying on technologies such as AI in certain contexts may amplify risks and compromise customer care and service. Responding to this, the draft Code may commit insurers to mitigating those risks with practical actions such as ensuring human involvement or oversight of key roles and functions, including:

- making decisions on underwriting, claims or complaints, recognising that human oversight strengthens quality assurance and helps mitigate risks including of potential bias or discrimination
- handling consumers' enquiries about their premiums or how their policies work
- responding to customer vulnerability
- oversight of AI systems that identify patterns and process data.

[7] Draft Code, paragraph 191.
[8] Current Code, paragraph 27.
[9] Draft Code, paragraph 54.
[10] Current Code, paragraph 62.

AFCA recommends that the Code Principles:

- preserve the existing obligation for insurers to act honestly, efficiently, fairly, transparently and in a timely manner
- ensure that the CGC's continuing monitoring and supervisory role can monitor and enforce compliance with the Principles
- include outcomes-based commitments on the deployment of technologies and maintenance of human oversight over key roles and functions.

Section 1: Code overview

Products the Code does not apply to

We note that paragraph 6 of the draft Code states that the Code does not apply where there are multiple insurers on the same policy and one is not a subscriber. In AFCA complaints, we see underwriting by subscribers with other insurers and white labelled products. These policies would all be exempt from the protections afforded by the Code, under the current drafting of paragraph 6.

Policy terms prevailing over Code provisions

The draft Code allows policy terms to prevail where there is a conflict or inconsistency between the Code and an insurance policy.[11]

This provision risks undermining the purpose and operation of the Code. The draft Code should set clear minimum standards for insurer conduct and consumer protection. If policy terms can override those standards, the result will allow insurers to effectively contract out of Code protections. It is inconsistent with the objective of a set of self-regulatory commitments in a code to allow for the erosion of Code protections by the terms of individual insurance policies.

AFCA recommends amending provision 23(a) of the draft Code to state that where there is any inconsistency between a policy term and a Code obligation, the Code should prevail to the extent that it provides a higher level of protection for the consumer.

[11] Draft Code, paragraph 23(a).

Representatives and third-party authorities

AFCA supports authority provisions that make it easier for consumers to appoint a representative or support person where they need assistance. Clear and consumer-centred terminology and authority provisions help consumers:

- understand who can support them
- the scope of any authority
- how to appoint a representative.

They also help insurers recognise and act on valid authorities in a timely and consistent way.

The draft Code refers to 'nominees',[12] whereas the Guidance uses 'advocate' and 'support person' as defined terms.[13] This inconsistent terminology may create confusion for consumers and make the authority process harder to navigate. The term 'nominees' is not commonly used in this context and does not capture the role the representative or support person is being asked to perform.

AFCA recommends using consistent, plain language terminology across the Code, Guidance and supporting documents. In our view, 'support person' is likely to be clearer and more accessible for consumers, while still allowing for different types of assistance, including financial counsellors, community workers, family members or other appropriately appointed representatives.

The draft Code also permits insurers to communicate directly with the customer where a 'nominee' is not acting in the customer's best interests.[14] AFCA supports appropriate safeguards to protect consumers from representatives who may not be acting in their interests. However, these safeguards should not create unnecessary barriers for consumers who need assistance. The Code should support an authority process that enables financial counsellors and other appropriately appointed representatives to help consumers easily, while allowing insurers to respond appropriately where there are genuine concerns about a representative's conduct (see for example the relevant provisions in the banking Code).

AFCA recommends simplifying the third-party authority process with adoption of plain English terms to ensure it is easy to use by consumers and insurers and has appropriate safeguards in line with other mature codes.

Confirming customers identity

AFCA welcomes paragraph 14(b) of the draft Code which requires insurers to have processes in place to reduce barriers that customers may face in obtaining standard

[12] Draft Code, paragraphs 8-12.
[13] The Guidance, p. 23.
[14] Draft Code, paragraph 9(b).

forms of identification and accessing financial services by supporting non-standard identification methods, including customers from:

- First Nations communities,[15]
- non-English speaking backgrounds, or
- migrant communities.

We recommend extending this list of customers potentially experiencing barriers in obtaining standard forms of identity to include older people and customers experiencing illness.

Section 2: Buying insurance

Honouring promises to provide discounts

Clear and enforceable commitments requiring insurers to honour promises to consumers, including promises to provide discounts, should be a core code promise, particularly given the systemic impacts that can result from failures to do so.

For example, ASIC enforcement action highlighted the consumer harm that can arise when insurers' pricing systems fail to deliver promised discounts.[16] In 2023, the Federal Court imposed a $40 million penalty on an insurer for failing to provide promised discounts, affecting 600,000 consumers.[17]

The current Code's Principles commit insurers to meet their promises, act openly, fairly and with integrity, and design and sell insurance fairly.[18] An insurer's failure to honour promised discounts would clearly depart from those principles. The proposed principles in the draft Code refer to fairness and honesty, but do not expressly require insurers to meet their promises.

For example, while AFCA welcomes the provision on 'No Claims Bonuses and Multi-Party Discounts'[19] we note the provision focusses on disclosure, rather than committing insurers to honour promised discounts in practice.

AFCA recommends specific enhancements to the draft Code to expressly commit insurers to ensure their pricing systems accurately apply promised discounts and benefits to:

- honour promises to provide discounts and benefits

[15] See page 19 for further discussion on improving outcomes for First Nations consumers.
[16] ASIC, 2023, 23-169MR General insurers to repay consumers $815 million for broken pricing promises | ASIC.
[17] ASIC, 2023, 23-179MR IAL penalised $40 million over pricing discount failures | ASIC.
[18] Current Code, p. 4.
[19] Draft Code, paragraph 44.

- ensure pricing systems accurately apply promised discounts and benefits
- monitor pricing systems to identify and remediate failures promptly.

Section 4: Making a claim

Complaints about claims handling and delays remain a persistent theme in complaints to AFCA. Insurance delay in claims handling is one of the most complained about issues to AFCA across all product areas, and the leading cause of complaints about general insurance.[20] The Independent Review and the Flood Inquiry made a series of practical recommendations to improve claims handling, communication and transparency, particularly where consumers are experiencing prolonged delays or making claims after a natural disaster.

AFCA strongly supports these recommendations. They go to the central insurance promise that insurers will respond efficiently and fairly when a claim is made. Effective claims handling is critical to consumer confidence in general insurance, particularly where consumers rely on their insurer for financial security and support after something has gone wrong.

However, the draft Code does not fully implement or respond to these key recommendations, including:

- requiring quicker responses to routine enquiries by claimants[21]
- providing each claimant a single contact point[22]
- reporting numbers of claims that take over 12 months to resolve to the CGC to enable monitoring[23]
- giving all claimants real-time access to information on progress of claims[24]
- enhancing communication about natural disaster claims[25]

While section 4 of the draft Code maintains existing claims handling timeframes and introduces some additional protections for prolonged delays, it also includes caveats that may reduce accountability and create scope for avoidance. These include:

- broad exclusions from the 12-month timeframe in which insurers must make a decision or automatically cover the loss. Examples include **but are not limited to**:
  - failure to cooperate,
  - inability to contact,

[20] AFCA 2024-2025 Annual Review, pages 52 and 90. Delay in claim handling was the top issue in general insurance complaints from financial years 2021-22 to 2024-25.
[21] The Review, Recommendation 67.
[22] The Review, Recommendation 62 – the draft Code only provides for primary contact for some claims, subject to qualifications.
[23] The Review, Recommendation 64.
[24] Flood Inquiry Report, Recommendation 33.
[25] Flood Inquiry Report, Recommendation 30.

- delayed expert reports,
- or lodging a complaint with AFCA.[26]

- insurers may set alternative claim timeframes without agreement from the claimant.[27]
- insurers may request further information beyond the current ten-day timeframe.[28]

The Review's Terms of Reference stated that its 'overarching principle will be to overall maintain or enhance consumer protections'.[29]. In AFCA's view, the draft Code fails to respond to the Review's concrete and practical recommendations about timeliness in claims handling. As a result, it fails to materially improve consumer outcomes or reduce customer dissatisfaction resulting in complaints to AFCA.

AFCA recommends meaningful changes to improve claims management systems which strengthen communications with claimants. At a minimum, these changes should more directly and flexibly respond to the Review recommendations (set out below) in ways that are operationally practical, to improve the timeliness of responses:

- reduce the timeframe for responses to routine enquiries from ten to three business days[30]
- reduce the timeframe for the insurer to update the consumer about their claim from 20 to 10 business days[31]
- give each claimant a single contact point[32]
- give claimants access to real-time information on progress of claims.[33]

Transparency and accountability: Reporting to the CGC on delayed claims

AFCA endorses the Review's recommendation for:

- insurers to report to CGC on the number of claims that take over 12 months to resolve, and
- CGC to report transparently on those numbers by individual insurer.[34]

[26] Draft Code, paragraph 76 – departing from current Code, paragraph 78.
[27] Draft Code, paragraphs 60 and 61 – departing from current Code, paragraph 83.
[28] Draft Code, paragraphs 57 and 58 – departing from current Code, paragraph 68.
[29] The Review, p. 29.
[30] The Review, Recommendation 67.
[31] Draft Code, paragraph 59.
[32] The Review, Recommendation 62.
[33] Flood Inquiry Report, Recommendation 33.
[34] The Review, Recommendation 64.

Section 10 of the draft Code and draft Charter do not appear to include any provision that expressly requires reporting in accordance with this recommendation.

The draft Code reporting framework contains provisions which require insurers to report non-compliance and to decide claims within 12 months.[35] However, this obligation applies only to a limited range of policies and remains subject to exceptions.

AFCA considers the draft Code should more directly implement the recommendation by requiring comprehensive reporting on claims handling delays, rather than relying on limited reporting obligations attached to narrow and qualified Code provisions.

Consumers need clear communication, accountable timeframes and transparency in their dealings with their insurer when navigating a claims process. It is unacceptable that the draft Code fails to implement key recommendations and appears to dilute the strength of current Code settings.

Expert reports

AFCA's complaints experience shows that the use and quality of expert reports remain a persistent issue. These issues have also been examined in the Parliamentary Flood Inquiry and have also been the subject of recommendations in CGC's 2023 thematic inquiry into home building claims.

In complaints to AFCA, concerns about expert reports commonly include:

- inadequate or incomplete investigations underpinning expert conclusions
- unsupported assumptions or overly inferential reasoning
- internal inconsistencies or illogical conclusions within reports
- overreliance on single data points or limited evidence sets
- reports that effectively shift the evidentiary burden to consumers to disprove insurer positions.

AFCA welcomes the draft Code's new requirement that insurers comply with, and instruct experts to comply with, the ICA's Guide *Use of Expert Reports*.[36] This is an important step to improving the quality, transparency and reliability of expert evidence in claims handling.

However, this commitment will only be effective if insurers are required to monitor compliance and respond meaningfully when external experts do not meet the required standard. We consider that paragraph 72 should refer to paragraphs 70 and 71 of the draft Code.

[35] Draft Code, paragraph 199 and 75.
[36] Draft Code, paragraph 71.

The draft Code currently requires insurers to monitor external experts' compliance with the timeframe for providing reports and to take action where needed.[37] AFCA considers this obligation should be expanded so that insurers must also monitor and address compliance with the ICA's expert report standards.

We consider this should include clear obligations requiring insurers to take steps to ensure consumers are not disadvantaged by non-compliant expert reports.

Cash settlements

AFCA's complaints experience shows that cash settlements can create significant risk for consumers. While a cash settlement may be appropriate in some circumstances, consumers may not always understand the practical, financial and legal consequences of accepting one, particularly after a natural disaster or other stressful claims event.

AFCA supports strong and comprehensive safeguards for consumers in relation to cash settlements. These safeguards are essential to ensure consumers understand the basis of an offer, the risks involved, and whether the settlement amount is likely to enable them to complete the relevant repairs or replacement works.

AFCA welcomes new provisions in the draft Code that require insurers to give consumers clearer information about the cash settlement process, the reasons for offering a cash settlement, the risks involved and the scope of works. AFCA also supports provisions that give consumers an opportunity to review a cash settlement.

However, AFCA considers these safeguards should be strengthened to ensure they respond to the key issues that arise in complaints.

Ensuring cash settlements are appropriate

The draft Code currently requires insurers to have processes in place to consider whether a cash settlement may be appropriate. AFCA considers this should be strengthened into a direct obligation to consider the consumer's individual circumstances before offering a cash settlement.

We recommend that paragraph 87 be amended to clearly set out that, before offering a Cash Settlement, an insurer is required to consider a consumer's individual circumstances to determine whether they are likely to be able to carry out the repairs, including:

- whether the consumer is experiencing vulnerability
- the location of the property and availability of relevant trades
- the complexity of the repairs

[37] Draft Code, paragraph 72.

- the consumer's ability to manage the repair process

Scope of works

Clear and complete scope of works are key to ensuring consumers can understand what has been assessed, what has been allowed for, and whether a proposed cash settlement amount is sufficient. A consumer needs enough information to understand the basis of the offer and to make an informed decision about whether to accept it. Complaints to AFCA commonly involve deficient scope of works.

The draft Code does not adopt any of the Review or Flood Inquiry recommendations relating to Scope of Works. It is a significant omission that the draft Code fails to respond to known issues, and to require scopes of works and quotes to be clear, complete and practical. This should include requirements that scopes of works and quotes:

- describe the work to be undertaken
- identify the costs allowed for each component of the work
- are provided in a form the consumer can understand and use
- are not unnecessarily redacted
- are sufficiently detailed to enable the consumer to obtain comparable quotes.

It is also essential that any quote relied on for a cash settlement is actionable. This means the consumer should be able to use the quote, together with the scope of works, to understand the necessary repairs to have those repairs completed.

Policy benefits in cash settlements

While accepting a cash settlement will always involve some level of risk, consumers should not lose any policy benefits or access to their full entitlements because they accept a cash settlement.

The draft Code introduces a new requirement for insurers to disclose additional policy benefits that may be relevant when making a cash settlement offer.[38] Disclosure alone is not sufficient to safeguard consumers.

AFCA recommends that the draft Code require final cash settlement offers to include all relevant policy benefits available to the consumer. Where temporary accommodation is relevant, the settlement should take account of the scope of

[38] Draft Code, paragraph 88 (e).

works, progress on the claim or repair process, and a reasonable allowance for the time needed to complete the works, as recommended by the Flood Inquiry.[39]

Reviewing a cash settlement

AFCA welcomes draft Code provisions that enhance review options for consumers, including a cooling-off period and the ability to seek review the cash settlement amount within a set period.

We note the 12-month review period responds to Recommendation 14 of the Independent Review, which recommended that policyholders be able to seek a review of a final cash settlement where there is a change in the facts on which the original settlement was based.

However, the Code should make clear that this review period does not limit a consumer's broader rights to make a complaint. Consumers may bring complaints to AFCA about cash settlements up to six years after becoming aware, or reasonably becoming aware, that they have suffered loss. This information should also be clearly disclosed to consumers as part of information provided when offering a cash settlement offer.[40]

This is particularly important in large-scale natural disasters, where repairs and rebuilds may not commence, or progress sufficiently, within 12 months due to the scale of damage, shortages of trades or materials, or delays outside the consumer's control. In these circumstances, consumers may not be able to assess whether a cash settlement is adequate until after the proposed review period has expired.

Cash settlements can create significant practical and financial risks for consumers. Stronger safeguards are needed to ensure consumers understand the offer, retain access to their policy benefits and can complete the relevant repairs or replacement works.

AFCA recommends that the Code:

- provides a more flexible review period for cash settlements, particularly where delays in commencing or completing repairs are caused by circumstances beyond the consumer's control, including natural disasters, trade shortages or other market-wide constraints
- clarify that the 12-month review period is an additional safeguard and does not limit a consumer's ability to dispute a cash settlement under applicable statutory limitation periods, or through internal or external dispute resolution.

[39] Parliamentary Inquiry into insurers' responses to 2022 major floods claims, Recommendation 19.
[40] Draft Code, paragraph 88.

- require insurers, when providing information under paragraph 88, to clearly explain the consumer's ability to seek review of a cash settlement, and that the 12-month review period is an additional safeguard and does not limit the consumer's broader dispute rights.

Section 6: Complaints

Complaints handling

The Consultation Paper explains that complaint handling provisions have been streamlined to avoid duplicating ASIC's Regulatory Guide 271 *Internal Dispute Resolution* (RG 271). However, we consider there may be utility in the draft Code reflecting key regulatory requirements in simplified terms for consumers. We also note that the draft Code removes the existing obligation to update consumers every 10 business days.[41]

The draft Code currently provides that insurers' complaints resolution processes must comply with the enforceable provisions of RG 271.[42] AFCA suggests strengthening the Code with an inclusion of a simple, unqualified commitment that subscribers will comply with RG 271.

The existing 10 business day update requirement provides consumers with a clear benchmark for when they can expect to hear from their insurer about the progress of their complaint. AFCA recommends retaining this timeframe.

Section 7: Extra care and vulnerability

Supporting consumers experiencing vulnerability

AFCA supports stronger and more comprehensive code obligations to improve outcomes for consumers experiencing vulnerability. AFCA welcomes the inclusion of a dedicated vulnerability framework in the draft Code, which signals the importance of identifying and supporting consumers who may be at greater risk of harm.

However, AFCA considers the draft Code does not go far enough in several respects. It does not implement important recommendations from the Review, including:

- expanding financial hardship support to cover premium payments,[43] and

[41] Current Code, paragraph 146. Draft Code, paragraph 135 only provides a promise to keep the consumer informed on the progress of their complaint.
[42] Draft Code, paragraph 130(b).
[43] The Review, Recommendation 1.

- requiring insurers to proactively seek information to identify vulnerability.[44]

There are opportunities for enhancements in the draft Code to ensure it appropriately supports customers experiencing vulnerability and that the industry keeps pace with evolving community expectations and the commitments made in other financial sector Codes.

AFCA endorses these recommendations and considers them essential for insurers to appropriately recognise and support consumers experiencing vulnerability. AFCA also recommends the draft Code commit insurers to incorporate Safety by Design principles into the design of new products to protect customer experiencing vulnerability in circumstances of family violence. Examples of potential measures include an industry wide 'Conduct of others' clause,[45] ensuring safe consent for cancellations or changes[46] and offering protected claims handling.[47] These are issues where mature codes can materially enhance protections for vulnerable consumers.

Definition of vulnerability

The Review recommended that the draft Code adopt a broad definition of vulnerability: where someone who, due to their personal circumstances and market practices, is especially susceptible to harm.[48]

The draft Code defines vulnerability as certain circumstances. Rather than acknowledging circumstances may result in vulnerability, it suggests that 'vulnerability means circumstances'.[49]

Different finance sector Codes respond to this differently. For example, the

- Insurance Brokers Redrafted Code refers to vulnerability as circumstances in which a client is experiencing difficulty engaging with a subscriber, understanding the advice or information a subscriber provides, or making decisions about insurance, because of a range of factors.[50]
- Banking Code acknowledges that all customers may be at risk of experiencing vulnerability.[51]

[44] The Review, Recommendation 25.
[45] 'Conduct of others' clauses allow claims to be considered where damage was caused by another person's violent or abusive conduct, rather than automatically applying exclusions.
[46] Requires the insurer to detect, delay or block requests to cancel or change joint policies where this may leave a victim-survivor uninsured or exposed.
[47] Protected claims handling offers safe contact methods, protected addresses and privacy settings so one policyholder cannot use a claim or policy record to locate, monitor or intimidate another person.
[48] The Review, Recommendation 20.
[49] Draft Code, p. 59.
[50] The Insurance Broker Code of Practice – Draft 2027, p. 14.
[51] The 2025 Banking Code of Practice, paragraph 52.

We recommend the draft Code adopt a broad approach to vulnerability, consistent with the Review's recommendation and other financial sector approaches. There is an opportunity to align and harmonise definitions and approaches to vulnerability across all peer financial sector codes.

Definition of Extra Care

The draft Code defines Extra Care as 'the additional support or flexibility **we are able to provide**, if you are an individual, to assist you while you are experiencing Vulnerability'. This definition limits the obligations of the insurer to customers experiencing vulnerability. Specifically, it provides insurers with an easy avenue to justify non-compliance by asserting they were unable to provide the required support.

AFCA recommends this ambiguity be replaced with a clear commitment to provide appropriate support to customers experiencing vulnerability, a practical commitment that customers can rely on when they most need the protection it affords.

Code commitments to consumers experiencing vulnerability

The draft Code sets out extra care commitments, but detail on the practical actions insurers may take to make those commitments meaningful are not in the body of the draft Code but relegated to guidance – the Extra Care for General Insurance Customers Experiencing Vulnerability (Guidance).

While we recognise the intention that insurers adopt or adapt the guidance to their business, we recommend that good practice commitments on important issues such as proactive identification, trauma-informed claims handling, digital accessibility, cash settlements, supplier conduct, lived experience, governance and continuity of care should be reflected in the body of the draft Code.

Where appropriate, the Guidance may assist in identifying good industry practice. However, we hold concerns about the CGC's ability to monitor and oversee the non-binding Guidance.

All key commitments to identify and support consumers experiencing vulnerability should sit within the draft Code itself. While guidance can provide useful operational detail, the tangible commitments that deliver consistent consumer protections should be enforceable Code obligations, rather than voluntary guidance insurers may adopt or adapt to suit their individual needs.

Mental health provisions

We are uncertain as to why the draft Code limits the drafting from existing provision 104 and limits the mental health protections of the Code to only travel and sickness

and accident products. We consider this should at least extend to CCI and we recommend retention of the existing drafting that does not introduce specific product limitations. We note that AFCA has had experience of complaints where the DDA has been enlivened in cases involving CCI.[52]

There does not appear to be a clear policy basis for limiting these protections to only some insurance products. The *Disability Discrimination Act 1992* (*DDA*) applies to general insurance, including 'a policy of insurance against accident or any other policy of insurance'.[53] This suggests the underlying legal framework is not confined to travel and sickness and accident products.

The proposed fairness obligation in the draft Code requires insurers to treat people with past or current mental health conditions fairly by taking two specified steps.[54] This may provide less protection than the current Code's broader, open-ended obligation to treat consumers fairly.[55]

The Review proposed that insurers be required to comply with the ICA guide on mental health. The draft Code does not implement this recommendation.

AFCA also recommends that the draft Code develops and includes a definition of 'mental health condition' with appropriate clinical and consumer experts, so it aligns with recognised diagnostic standards and provides practical guidance to support accurate consumer disclosure.

Improving outcomes for First Nations consumers

A comprehensive code review presents an opportunity to:

- prioritise the economic empowerment and participation, of First Nations peoples
- improve access to products and culturally appropriate services that meet the needs of First Nations consumers.

The Review specifically recommended that insurers:

- invite customers to identify as First Nations.[56]
- provide cultural awareness training to staff who assist First Nations customers[57]
- clarify that interpreting services includes interpreting for First Nations customers who do not speak English as their first language.[58]

[52] Determination 509552.pdf.
[53] *Disability Discrimination Act 1992* (Cth), s 46.
[54] Draft Code, paragraph 154.
[55] Current Code, 104(b).
[56] The Review, Recommendation 32.
[57] The Review, Recommendation 33.
[58] The Review, Recommendation 34.

AFCA welcomes the draft Code's provisions which implement two of the Review's recommendations, including cultural awareness training for employees,[59] and improved access to information about interpreting services for First Nations languages.[60] However, the draft Code does not invite customers to identify as First Nations. This is a missed opportunity.

AFCA considers the draft Code should include specific requirements for insurers to better identify First Nations customers, including by adopting Australian Transaction Reports and Analysis Centre (AUSTRAC)'s guidance on flexible identification procedures as a normative standard across industry codes.[61]

We also consider the more broadly drafted principles in the current Code provide a more robust foundation upon which to build stronger First Nations commitments. For example, we note the current Code commits industry to:

- be inclusive by providing insurance designed to meet the diverse and changing needs of the whole community
- add value to the community by engaging with the government, consumers and other relevant stakeholders in building an inclusive, thriving and adaptable community.[62]

This draft Code should build on this platform of industry commitment to inclusion and community engagement, not walk back from it. We recommend the Code developers work closely with First Nations representatives and/or organisations with relevant expertise, to design and deliver on commitments to improve outcomes for First Nations consumers of general insurance products. This includes:

- documenting specific Code commitments in a Reconciliation Action Plan
- introducing measures inviting consumers to identify as First Nations consumers
- strengthening standards to support a clear, consistent approach to documentation and identification
- enhancements to training, communication and engagement.

[59] Draft Code, paragraph 181(a)(iv).
[60] Draft Code, paragraph 142(c)(i).
[61] AUSTRAC, 2024, Assisting customers who don't have standard forms of identification.
[62] Current Code, pp. 3-4.

Section 8: Financial hardship

AFCA supports the draft Code's recognition that consumers experiencing financial hardship may need debt recovery action paused while their circumstances and support options are considered.[63]

However, the draft Code has not implemented important recommendations from the Review, including:

- expanding financial hardship support to cover premium payments,[64] and
- requiring insurers to proactively seek information to identify vulnerability.[65]

AFCA endorses these recommendations and considers them essential for insurers to appropriately recognise and support consumers experiencing vulnerability.

Financial hardship and premium payments

Maintaining insurance cover is increasingly challenging for many consumers making appropriate responses to financial hardship essential.

A simple and effective measure would be a Code commitment that instalment premium payment options do not incur penalties. That is, consumers should not be charged more for paying premiums in instalments (such as monthly), rather than yearly. A recent CGC report found that many consumers paying by instalments are charged 7-11% more than annual payers, but nearly half of the insurers charging extra did not clearly disclose the cost difference or potential savings.[66]

The Financial Hardship section of the draft Code specifically 'does not apply to support with paying premiums'.[67] AFCA considers that the draft Code should require insurers to make premium payment options available to consumers experiencing financial hardship in line with the Review's recommendation.

The draft Code needs to respond to financial hardship in a way that reflects the real-world challenges of customers and the importance of maintaining access to insurance. AFCA recommends the draft Code:

- expand financial hardship support to cover premium payments
- require insurers to proactively identify where a consumer may need additional support

[63] Draft Code, paragraph 164.
[64] The Review, Recommendation 1.
[65] The Review, Recommendation 25.
[66] General Insurance Code Governance Committee 2026, Clear costs at renewal: payment options and pricing transparency.
[67] Draft Code, p. 42.

Section 9: Standards for representatives and third parties

AFCA welcomes revisions to the draft Code that clarify insurers are responsible for breaches of the Code by representatives and third parties acting on their behalf.

However, we remain concerned that some provisions in the draft Code still frame the insurer's obligation as limited to instructing or telling a third party to act in a particular way, rather than making the insurer accountable for the standard or outcome delivered to the customer.[68]

The draft Code also appears to only require skilled trades undertaking work to comply with Code obligations where they are part of the insurer's preferred network, which is currently undefined in the Code.[69]

AFCA recommends the draft Code require insurers to:

- ensure that services delivered by representatives and third parties acting on their behalf meet the standards required by the Code
- ensure Code obligations apply to all insurer-appointed third parties and define 'Preferred network' in the Code
- have effective systems to monitor representatives' conduct, compliance with the Code and the outcomes delivered to customers.

Section 10: Enforcement, sanctions, compliance and review

The key to delivering on the promises in a self-regulatory code is independent and robust code monitoring, compliance and governance arrangements. Further to the comments in the Executive Summary, the following sets out in more detail our specific concerns about the proposed changes in the Draft Code and Charter.

Proposals that undermine effective and independent code governance

The draft Code proposes changes to the CGC's independence and its monitoring and enforcement role, with significant consequences for insurers' accountability for the commitments in the draft Code.[70]

There is a long history of the CGC's work, its ongoing oversight and thematic reviews, driving systemic change. Undermining this longstanding model, the draft Code fetters the CGC and materially departs from established and sound governance settings that

[68] For example, sections 69, 98, 101, 116, 117, 124, 178, 182, and 184-186 of draft Code.
[69] Draft Code, p. 47.
[70] Draft Code, Section 10.

apply to other finance sector industry codes. Critically, proposed amendments weaken and undermine CGC's monitoring and enforcement role, including by:

- omitting the requirement for insurers to have appropriate systems and processes to monitor code compliance[71]
- limiting the CGC's functions and ability to identify and promote improvements in industry practices to circumstances involving to 'serious and systemic breaches'[72]
- requiring the CGC to consult with the ICA to understand the intent for Code drafting and relevant provisions and consider the ICA's intent when deciding to impose sanctions[73]
- extending the timeframe to report a Significant Breach from 10 business days to 30 calendar days.[74]
- introducing a new qualification to the 'significant breach' definition.

Compliance obligations

It is not a credible position for a self-regulatory instrument such as the draft Code to omit a requirement that subscribers have appropriate systems and processes to monitor code compliance.[75] This is a fundamental obligation to retain in the Code.

Serious and systemic breaches

The draft Code weakens the CGC's monitoring and enforcement role, introducing a higher and more ambiguous threshold for intervention and limits the CGC's functions to 'serious and systemic breaches'.[76] This new threshold is undefined, creates uncertainty, and reduces the CGC's ability to identify and respond to non-compliance. It also narrows the CGC's ability to identify and promote improvements in industry practices by limiting its oversight to only 'serious and systemic breaches'.[77]

Effective Code governance and oversight require the CGC to look beyond specific types of breaches and consider any issues that may point to broader problems or opportunities for improvement. AFCA proposes removing this limitation and retaining the current Code's threshold for 'breaches'.

Consulting and considering the intent of the ICA

The draft Code requires the CGC to consult with the ICA to understand the intent for Code drafting and relevant provisions.[78] This approach risks undermining the CGC's

[71] Draft Code, paragraph 199.
[72] Draft Code, paragraph 197(b), (f) and paragraph 198(b).
[73] Draft Code, paragraph 204(a) and paragraph 197(c).
[74] Draft Code, paragraph 203.
[75] Draft Code, paragraph 199.
[76] Draft Code, paragraph 197(b) and (f).
[77] Draft Code, paragraph 198(b).
[78] Draft Code, paragraph 197(c).

independence, particularly as the consultation requirement is limited to industry stakeholders and does not contemplate broader engagement with consumer or other stakeholder groups.

The draft Code also introduces a new requirement for the CGC to consider the ICA's intent when deciding to impose sanctions.[79]

AFCA recommends removing these provisions to preserve the independence, impartiality and credibility of the CGC's oversight role.

Significant breach reporting timeframe and definition

The 'significant breach' definition of the draft Code introduces a new qualification:

> *'A breach will only be considered significant where, after considering all of these factors together, it is determined that the breach is significant in the context of our overall compliance with the Code.'*[80]

This introduces uncertainty into the assessment of a 'significant breach' and substantially raises the threshold for enforcement.

We recommend removing this qualifying sentence from the 'significant 'breach' definition.

The draft Code effectively prevents the CGC from imposing sanctions on insurers for significant breaches of the Code. Although the CGC may impose sanctions on insurers for a serious breach, that power does not apply where the breach is being, or has been, considered by another regulatory body or court.[81] As the draft Code also requires the CGC to report significant breaches of the Code to ASIC,[82] the combined effect of these provisions is that a significant breach may fall outside the CGC's sanctioning powers all together. This risks substantially undermining the CGC's enforcement role and reducing accountability for serious non-compliance.

The draft Code extends the timeframe to report a Significant Breach from 10 business days to 30 calendar days.[83] Prompt reporting is critical for oversight and accountability.

We recommend amending the sanctions provisions in the draft Code so as not to fetter the CGC's exercise of its sanctions powers and ensuing the Code retains the current reporting timeframe of 10 days to report a significant breach.

[79] Draft Code, paragraph 204(a).
[80] Draft Code, p. 58.
[81] Draft Code, paragraph 204.
[82] Draft Code, paragraph 208.
[83] Draft Code, paragraph 203.

Inconsistency with Charter

We note significant inconsistencies between the draft Code and the Charter, which risk narrowing the CGC's role. The interaction between the draft Code and the Charter should be clearer, more coherent and transparent. For example, the draft Code frames sanctions as available for a significant breach only, whereas the Charter permits sanctions for a Code breach.[84]

AFCA recommends the draft Code adopt the Charter's sanction threshold.

The documents also differ in how they deal with matters before another regulatory body or court. The draft Code limits sanctions where a breach is considered by another regulatory body, while the Charter requires the CGC to cease investigating or determining an alleged breach where the insurer notifies it that the conduct was reported to the regulator.

AFCA recommends amending both documents to address these inconsistencies, adopting the position that best supports effective Code enforcement.

Missed opportunity to close gaps in Code protections

Reviews, thematic inquiries and AFCA's complaints experience have consistently identified the need to close gaps in Code coverage to ensure the protections offered by the Code apply consistently.[85] These gaps have practical consequences for consumers and small businesses, including reduced access to Code protections, poorer claims handling safeguards and less consistent support when things go wrong.

Small business consumers

The Review recommended expanding the definition of 'Small Business' and applying all Code provisions to businesses captured by that definition.[86] However, the draft Code appears to retain substantially the same small business definition as the current Code, with only minor wording changes.[87]

This definition remains narrower than AFCA's Rules, which define a small business as a primary producer or other business with fewer than 100 employees at the time of the relevant act or omission.[88] By contrast, the draft Code continues to distinguish between manufacturing businesses with fewer than 100 employees and other businesses with fewer than 20 employees.

[84] Draft Code, paragraph 204 and CGC Charter, paragraph 6.1(a).
[85] Review, Recommendation 49. ASIC's work on incidental retail cover in business insurance contracts further illustrates the complexity and uncertainty created by current product-based distinctions.
[86] Review Recommendations 47 and 48.
[87] Draft Code, p.58. Current Code, p. 56.
[88] AFCA Rules, Section E.1, p. 48.

The Review made the case for change. Alignment of the draft Code definition to the AFCA Rules is essential to promote consistency, reduce complexity and ensure small businesses consistently receive the benefit of Code protections.

AFCA recommends that the draft Code ensures all relevant protections under the Code are made available to small business customers.

Retail insurance and strata insurance

The draft Code expressly includes strata insurance within the home building insurance category where at least 50% of the floor space is wholly or principally used for residential purposes.[89] This appears to change the position for some strata insurance policies and may not align with AFCA's Rules, which cover residential strata title insurance where the building is wholly occupied for residential or small business purposes.[90]

While the draft Code expressly includes some strata insurance, it does so within the existing framework for retail insurance and with a 50% residential floor space qualifier. This does not appear to extend Code protection beyond the protections already provided under the *Corporations Act* and Regulations.[91]

The draft Code does not appear to address an existing gap in the current Code. Retail Insurance is limited to products provided to an individual or for small business purposes. Some consumers may remain outside the Code protections even where they are the practical beneficiaries of the insurance, this may include:

- consumers with travel insurance provided through a credit cards, where the policy is issued to a financial firm; and
- consumers insured under group personal accident and sickness policies, where the policy is issued to their employer.

AFCA recommends that the draft Code protect customers who are intended beneficiaries of these insurance arrangements, not only the party to whom the policy is formally issued.

Wholesale Insurance definition

The current Code defines 'Wholesale Insurance' broadly as any general insurance product covered by the code that is not 'Retail Insurance'.[92] By contrast, the draft Code narrows the definition to a specified types of cover for products used in connection with a Small Business, while expressly excluding a range of common and

[89] Draft Code, p. 58.
[90] AFCA Rules, Section E.1, p. 48.
[91] *Corporations Act*, s 761G(5)(b)(ii); *Corporations Regulations 2001* (Cth), reg 7.1.12.
[92] Current Code, p. 57.

important business insurance products, including business interruption and industrial special risks.[93]

This approach risks reducing Code coverage for small businesses that hold products falling within the excluded categories. Many of these products are not peripheral or specialist in their practical impact. They are often central to the continuity, viability and risk management of a small business.

Excluding these products from the definition of 'Wholesale Insurance' will leave small businesses without the benefit of key Code protections, despite facing similar claims handling, communication and complaints issues as consumers of other general insurance products.

The draft Code also creates a further gap for small businesses that remain within the narrowed Wholesale Insurance definition. Even where a small business is within scope, it may not receive the benefit of key protections in sections 1 to 4 and section 7, including claims handling standards and vulnerability protections. Small businesses can experience significant financial, operational and personal vulnerability when an insured event disrupts their business, particularly where the business is family-run or the owner's primary source of income.

AFCA recommends amending the proposed definition to avoid reducing coverage for small business consumers. As a minimum, the exclusions should be removed or significantly narrowed, and the ICA should provide a clear explanation of why each excluded product should sit outside the Code's protections.

[93] Draft Code, Definitions on p. 60.