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Dear Fiona

### **General Insurance Code of Practice: Proposed Edits for 5 October 2021**

Thank you for the opportunity to comment on General Insurance Code of Practice: Proposed Edits for 5 October 2021. The Financial Rights Legal Centre, Consumer Action Law Centre, WestJustice and consumer advocate Denis Nelthorpe provide the following comments on each of the proposed amendments.

#### **New paragraph 109 (Individuals entitled to support)**

The new paragraph states:

*We will have information about applying for Financial Hardship support on our website. The information will set out the types of support options that may be available, and how you can access Financial Hardship support.*

This is a positive step. It will, in part, address some of the issues that arose for consumers during the COVID-19 crisis. During this time there was significant confusion and difficulties for consumers in obtaining and identifying financial hardship assistance measures provided by general insurers to help them with their financial struggles.

However, we note that the new commitment follows paragraph 108 which states that:

*The support that we provide does not include support with paying the premiums under an insurance policy we have issued*

It is therefore unclear whether the information about applying for Financial Hardship support referenced in paragraph 109 (and subsequent commitments in the paragraph) is limited to supporting those experiencing all forms of financial hardship (debts owing *and* premiums hardship), or limited to financial hardship for simply debts owing.

This ambiguity needs to be clarified in favour of the former interpretation. ASIC detailed significant expectations of general insurers in 2020 and 2021 with respect to improving

insurers' framework for responding to consumers in financial hardship.<sup>1</sup> COVID-19 demonstrated clearly that any one of us, at any time, can experience financial hardship. Given these lessons and the expectations of general insurers outlined by ASIC, we recommend that general insurers remove paragraph 108 altogether and ensure that financial hardship support measures are made available to all those experiencing hardship including those having difficulties with payment of premiums.

If implemented in this way, the new paragraph 109 will address *some* of the issues that arose for consumers during the past 20 months – that is, the significant confusion and difficulties for consumers in obtaining and identifying financial hardship assistance measures provided by general insurers.

However, the commitment does not address another more important issue faced by consumers experiencing hardship - that is, the lack of consistency in response. Over the previous 20 months some insurers provided a strong response and were transparent and proactive in doing so. Others did not. When insurers did provide a response, the measures across this group ranged from comprehensive to piecemeal – ensuring that the support people received varied depending on which insurer they were with.

The new paragraph 109 – while a step forward – does little to solve this second problem.

The proposed commitment requires insurers to simply have information about the types of support available, and that this be on their website. There is no commitment to meeting minimum standards with respect to the types of support that will be available.

Currently paragraph 123 lists measures that could make up an arrangement for those experiencing financial hardship unrelated to premium hardship. The measures “could” include one or more of the following:

- a. *delaying the date on which the payment must be made;*
- b. *paying us in instalments – we will not refuse a reasonable request from you to pay the amount you owe in instalments;*
- c. *paying a reduced lump sum amount;*
- d. *delaying one or more instalment payments for an agreed period;*
- e. *deducting the excess from the claim amount we pay you;*
- f. *waiving cancellation fees.*

We suggest that new Paragraph 109 cross reference paragraph 123 to ensure that hardship policies include consideration of all those listed and as well as assistance under paragraph 64.

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<sup>1</sup> ASIC's expectations about general insurers' responses to the Covid-19 pandemic (the Covid Pandemic), 27 April 2020, <https://asic.gov.au/media/5573527/letter-to-directors-of-general-insurance-companies-27-4-20.pdf> and ASIC's expectations of general insurers: responding to consumers in financial hardship, 22 April 2021, <https://asic.gov.au/media/vsmiorxc/letter-to-general-insurers-about-financial-hardship-22-april-2021.pdf>

In addition, further measures for people experiencing any form of financial hardship (including premium hardship) as identified during the COVID-19 crisis should be listed. Drawing on ASIC's expectations and other measures provided by insurers these should include<sup>2</sup>:

- reviewing payment terms and dates
- providing short-term premium waivers and discounts
- permitting a hold or deferral of premium payments
- the option to change premium payments from annual to pay by the month instalments for no additional cost
- removing the loading for monthly premiums
- waiving cancellation *and* administration fees for customers who cancel their policies, including refunds on the unused proportions of premiums
- providing a review of policy cover or reassessing the consumer's risk profile (e.g. because of changes in circumstances such as driving less or spending more time at home) resulting in reduced premiums, and
- implementing non-insurance initiatives such as access to free counselling, welfare checks and gift vouchers.
- waiving the excess on the claim in part or in full
- allowing the excess to be paid in instalments
- suspending or waiving third party debt recovery or allowing debts to be paid in instalments.

There may be other measures taken by other insurers that we are unaware of that would be appropriate for this list.

We note too that a similarly drafted commitment to have a Family Violence policy and have it on their website<sup>3</sup> was accompanied with a guideline.<sup>4</sup> There is no proposed guideline for drafting Financial Hardship policies that outlines the types of support measures that are recommended to make up an effective financial hardship policy.

This will lead to the same problem that we recently identified with respect to family violence policies: that is, significant inconsistency of standards across 47 subscriber insurers.<sup>5</sup>

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<sup>2</sup> See ASIC's *expectations of general insurers: responding to consumers in financial hardship*, 22 April 2021, Suncorp <https://www.suncorp.com.au/insurance/financial-hardship-policy.html>, and IAG, <https://www.iag.com.au/how-were-helping-our-customers-during-covid-19>

<sup>3</sup> Paragraph 95

<sup>4</sup> ICA, *Guide to helping customers affected by family violence*, [https://insurancecouncil.com.au/wp-content/uploads/2020/01/2021\\_07\\_REPORT\\_Family\\_Violence.pdf](https://insurancecouncil.com.au/wp-content/uploads/2020/01/2021_07_REPORT_Family_Violence.pdf)

<sup>5</sup> Financial Rights Legal Centre, *Family Violence and General Insurance: Desktop audit of family violence policies*, August 2021 [https://financialrights.org.au/wp-content/uploads/2021/08/210823\\_FamilyViolenceResearch\\_FINAL.pdf](https://financialrights.org.au/wp-content/uploads/2021/08/210823_FamilyViolenceResearch_FINAL.pdf)

Whether someone experiencing financial hardship is able to be supported in an appropriate manner will therefore be wholly dependent on chance and the vagaries and willingness of individual insurers who may provide minimal support, best practice support or somewhere in between.

Financial hardship practices should not be an area of competitive tension.

Minimum standards need to be set to ensure all policyholders, third party beneficiaries and those being pursued by insurers, no matter who they have signed up with or have to deal with – are able to afford themselves of the appropriate support they need.

Further, ASIC's expectations with respect to general insurers' response to financial hardship issues should be included in the Code as requirements for financial hardship policies. In addition to:

- offering a range of flexible support options to help consumers maintain cover and
- offering a range of support options to prevent unfair outcomes for consumers, as already outlined above

general insurers should commit to:

- providing proactive, clear and transparent communication about support options including
  - ensuring that this information is easily available and prominently displayed not just on websites but in written communications;
  - explaining the effect on insurance cover if an option is applied (e.g. any reduction in cover) and any relevant timeframes (e.g. end date of the support option).
- regularly collecting and monitoring data to identify and proactively help consumers in hardship;
- stating specifically to insureds that a claim will not be refused in the event that the insured cannot afford to pay the excess and that a claim will be processed even if the insured cannot afford to pay the excess;
- proactively engaging with consumers before the end of support options to consider the consumer's circumstances and whether any further assistance is needed;
- proactively engage with consumers before the end of any deferral period, rather than after a payment is missed, to ensure the consumer is aware that premium payments are due;
- avoiding asking for unnecessary documentation;
- provide refunds where policies are likely to provide no material value (such as where the consumer is unlikely to be able to travel due to a 'do not travel' warning issued by the Australian Government, or because of international border closures for nonessential travel); and
- offering to provide refunds in cash and not a credit note – but where a consumer chooses to receive a refund in cash credit notes selected by consumers will be valid for a reasonable period of time and provide material value.

## Paragraphs 147, 148, 150, 154 (Complaints)

The new paragraph 151 replacing 150 states:

*We will provide you with a written response where your Complaint is about Financial Hardship, a declined claim, the value of a claim or you have requested a written response. Otherwise, a written response may not be provided where, within 5 business days, we have been able to resolve your Complaint to your satisfaction, or we have given you an explanation and/or an apology and can take no further action to reasonably address your Complaint.*

This is in line with RG 271.71. However RG 271 goes on to provide guidance as to whether a complaint has been resolved to a complainant's satisfaction – that is, it should ideally involve verbal or in writing confirmation that the complainant is satisfied, or details the circumstances that exist that make it reasonable for the firm to form the view that the complaint has been resolved.<sup>6</sup>

We believe it is appropriate to spell out subscribers' understanding of "we have been able to resolve your Complaint to your satisfaction" in line with RG 271.73-74.

### Definition of complaint

We support the new definition of complaint as being in line with AS/NZS 10002:2014 which states:

Complaint means an expression of dissatisfaction made to us or about us, related to our products or services, our staff, or the handling of a Complaints where a response or resolution is explicitly or implicitly expected or legally required.<sup>7</sup>

We note however that ASIC RG271 goes further to make clear that a complaint can include an expression of dissatisfaction on social media:

*We interpret the words 'or about an organization' in the definition to cover expressions of dissatisfaction made on social media in accordance with RG 271.32(a)<sup>8</sup>*

...

*Under this guide, the following expressions of dissatisfaction are complaints:*

*(a) posts (that meet the definition of 'complaint' set out in RG 271.27) on a social media channel or account owned or controlled by the financial firm that is the subject of the post, where the author is both identifiable and contactable;<sup>9</sup> ...*

This element of the definition is neither explicitly included in the Code definition or in the Complaints section. While we note that current Paragraph 141 commits insurers to complying

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<sup>6</sup> RG 271.73.

<sup>7</sup> RG 271.27

<sup>8</sup> RG 271.28

<sup>9</sup> RG271.32(a)

with the ASIC guidelines, we believe for the sake of transparency, and for the avoidance of doubt, that the definition explicitly references posts on social media as complaints.

## Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights Senior Policy Officer, Drew MacRae at [drew.macrae@financialrights.org.au](mailto:drew.macrae@financialrights.org.au) or on 0404 604 978.

Kind Regards,



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