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**Insurance Council of Australia**

**Review of the General Insurance Code of  
Practice**

**Report - Independent Oversight**

**Phil Khoury**

**February, 2018**

## 1. Introduction

This report follows the release of the ICA Interim Report of the 2017 Review of the General Insurance Code of Practice (“the GI Code”). It provides comments on the process to date from the perspective of the Independent Overseer.

## 2. Background

Important to any assessment of the process for this review is to understand its genesis. The following excerpt from the Code of Practice Review website explains:

*Though the ICA believes the 2014 Code is fit for purpose and remains the benchmark for industry self-regulation in Australia, recent external developments impacting the general insurance industry have led the ICA to carry out a targeted review of the Code.*

*External developments that are being taken into account as part of the Review process include:*

- *Recently announced Senate inquiries*
- *The independent review of the financial system external dispute resolution framework*
- *Relevant ASIC reports and reviews*
- *The work of the Code Governance Committee*
- *The findings of the ICA’s Effective Disclosure Taskforce*

*The ICA is conducting the Review, in consultation with key stakeholders including the Code Governance Committee, the ICA’s Consumer Liaison Forum, the Australian Securities and Investments Commission and the Financial Ombudsman Service. Phil Khoury will be providing independent oversight of the Code Review process.*

## 3. The review methodology

The key context from this is that the ICA, given the extensive independent review conducted in 2014/15 were expecting a more targeted review and developed a methodology intended to produce a more streamlined process for the 2017.

This was sensible reasoning in my view. As a veteran of a number of independent reviews, I am aware of how 'noisy' and difficult they can be and I can sympathise with a desire to simplify where possible. I also understand that it was not a decision taken in isolation, the ICA testing the approach with some key stakeholders before committing. So, the choice to apply a different 'in-house' process was reasonable and thoughtfully made.

In Australia there has developed over many years an 'expected' methodology for reviews of financial sector self-regulatory codes. As for the 2014/15 review of the GI Code, this typically involves appointing an independent reviewer who is responsible for identifying the issues, managing the public consultation, analysing the input from an array of stakeholders and providing a report with a series of recommendations to the 'owner' industry association.

It is worth noting that the 'in-house' process has some differences from the independent approach described above that affects stakeholder perspectives of the process (and may place additional pressure on the ICA in the days to come). These include:

- a) The ICA is both facilitator (during process) and industry voice (at the end of the process)
- b) Industry views are not made public early in the process via public submissions – but are obtained through internal workshops and discussions
- c) Industry views are progressively exposed through the ICA Interim Report in discussion of the issues raised
- d) The array of issues raised are not 'filtered' by an independent reviewer and all must be dealt with by the ICA

Like any process, there are strengths and risks which will play out over the course of the Review.

## **4. Submissions**

As an observer, ICA's approach to stakeholders in the early stages of the Review has been very open and supportive of obtaining broad input. I understand that the ICA was generous in providing information, answering questions and providing extensions of time.

Consistent with the aim for a streamlined process, a brief terms of reference was provided highlighting a range of developments and guidance on scope but no detailed issues paper was provided as is sometimes the case. 10 public submissions and 4 confidential submissions were received. (This is a smaller number than is often received, principally because the process chosen provides a different path for industry input - largely through ICA facilitated workshops and internal input to the ICA).

Somewhat contrary to the ICA expectation of more targeted feedback, the submissions traversed a wide range of issues. The consumer advocacy organisation submissions taken together ran to over 250 pages.

## 5. Analysis of issues and the Interim Report response

Understandably, the ICA then confronted the task of sorting through the issues raised. Some time went into liaison with submitters to clarify what proposals meant and to obtain further supporting information. Further effort involved distilling the issues raised into a framework for the next stage of consideration. Some time was needed to progress the issues through industry and the ICA governance processes to be able to settle an Interim Report that would reflect the fact that an industry position on many issues had not been reached.

The Interim Report took some months to emerge and ran to over 100 pages. 8 priority areas were identified – each with a proposed mini-statement of principles intended to provide guidance about possible code content and a series of specific questions on the detail proposals. In addition, the Interim Report identified a number of matters raised, under 11 themes, that it proposed should be ruled out of scope for this round of revisions to the Code of Practice.

From my enquiries, the stakeholder reaction to the Interim Report has been very positive overall. Considerable effort has been made to acknowledge and deal with all the matters raised. The joint consumer submission welcomed the ICA response for the “breadth and range” of issues raised.

In my brief conversations with stakeholders I did detect some minor uncertainty about the extent to which ICA’s description of issues and framing of questions implied industry support or signalled the final industry position. I see this as a natural consequence of an unfamiliar process as discussed earlier and something that the ICA will need to clarify as the Review unfolds.

## 6. Interim Report consultation

The broadening of the agenda for revision of the Code and the posing of a number of detailed questions seem to have provided the stakeholder community with something more to get their ‘teeth into’. Rather than reducing the number of contributors – 12 public submissions including a joint submission from nine consumer organisations along with three confidential submissions were received in this second round. A number who had not previously submitted put forward thoughtful contribution in this second round.

The ICA were responsive to this level of interest, extending the period for comment until mid-January to allow contributing organisations sufficient time to complete and obtain approvals for their second round responses.

Once again, there were a few small signs of uncertainty about the process and its decision-making, with one submission suggesting that the Interim Report should have proposed the drafting for new clauses to enable more concrete and specific feedback and to save time. Another suggested that some of the proposed principles in the Interim Report should have been co-designed with authorities in the mental health space before being aired in the Code discussions.

I see these issues as an inevitable part of the exercise of bedding down a new public consultation and review process. Stakeholders will have different expectations of how the process will play out. Every outcome cannot be anticipated and some steps have to be designed 'on the move' in response to the issues that emerge.

One risk for any Review is that stakeholders may have high expectations of the extent of reform that will be ultimately approved for the Code – which may or may not be the outcome. It will be important during the next stages to be clear with stakeholders about the process for any further consultation and the decision-making path and timelines.

## **7. Next steps**

As part of the next stage of the Review process, the ICA have suggested that I participate in a series of workshops to be held during February and March to discuss the open issues for the Code that have emerged through the Interim Report and the stakeholder responses. I agree that some closer observation of the process would assist my role in independent oversight.

I am expected to provide a similar report on the process at the end of the Review.

## 8. Attachment A: Chronology

Provided by ICA.

STAGE 1	
17 Feb 2017	The ICA announced a fresh, targeted Review of the Code and called for submissions on the Terms of Reference.
31 Mar 2017	The ICA extended timeframes for submissions on the Terms of Reference by four weeks.
28 Apr 2017	<p>Submissions on the Terms of Reference closed.</p> <p>Ten public submissions and four confidential submissions were received. Public submissions were made by the following stakeholders:</p> <ul style="list-style-type: none"> <li>· The Australian Securities and Investments Commission</li> <li>· The Australian Institute of Chartered Loss Adjusters</li> <li>· The Code Governance Committee</li> <li>· The Consumer Action Law Centre</li> <li>· David Warner</li> <li>· The Financial Legal Rights Centre</li> <li>· Legal Aid NSW</li> <li>· The Motor Traders' Association NSW</li> <li>· The Public Interest Advocacy Centre</li> <li>· WEstjustice</li> </ul>
11 May 2017	Phil Khoury was engaged to provide independent oversight.
May-July 2017	<p>The ICA drafted the Interim Report based on stakeholder consultation and submissions to the Terms of Reference. Page 74 of the Interim Report states:</p> <ul style="list-style-type: none"> <li>· The ICA followed up with a number of submitters via telephone and/or face-to-face meeting, to discuss their feedback and ensure the ICA has properly captured and understood their concerns</li> <li>· ICA member committees have provided verbal and written feedback on key issues raised by submitters, as well as the various draft documents included as appendices to this report.</li> <li>· The ICA has taken member feedback into account in drafting this interim report in order to take a balanced view. The ICA Board has considered and approved the release of this report for consultation.</li> </ul>

3 Aug 2017	A draft Interim Report was considered by the ICA's Board. Further work continued.
9 Nov 2017	The ICA released the finalised Interim Report, announced a six-week public consultation period, and requested stakeholder feedback. The Interim Report identified 8 priority areas for a revised Code and 11 additional Code Review themes.
Nov-Dec 2017	The ICA met with a number of key stakeholders to discuss the Interim Report.
19 Dec 2017	The ICA extended timeframes for submissions on the Interim Report to 19 January, increasing the stakeholder consultation period to eight weeks.
STAGE 2	
19 Jan 2018	<p>Submissions on the Interim Report closed.</p> <p>The ICA received 12 public submissions and three confidential submissions. Public submissions were made by the following stakeholders:</p> <ul style="list-style-type: none"> <li>· Beyondblue</li> <li>· Caxton Legal Centre</li> <li>· The Code Governance Committee</li> <li>· The Consumers' Federation of Australia</li> <li>· IAG</li> <li>· The Law Council of Australia</li> <li>· Legal Aid NSW</li> <li>· Legal Aid Queensland</li> <li>· The National Code Committee</li> <li>· The Public Interest Advocacy Centre</li> <li>· Suncorp</li> <li>· The Victorian Equal opportunity and Human Rights Commission</li> </ul>
Next steps	<p>The ICA will review all submissions and conduct issue-specific workshops with stakeholders to further discuss the practical impacts of some of the proposals raised in the Interim Report.</p> <p>Once this consultation period is complete, the ICA will work on a Final Report and final recommendations.</p>