

## **Code of Insured Persons' Rights feedback form**

Thank you for the opportunity to submit on Toka Tū Ake EQC's (the Commission) consultation on the Code of Insured Person's Rights (the Code).

Te Kahui Inihua o Aotearoa Insurance Council of New Zealand (ICNZ) represents general insurers that insure about 95 percent of the Aotearoa New Zealand general insurance market, including well over a trillion dollars' worth of property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, cyber insurance, commercial property, and directors and officers insurance).

We start with some overarching comments and then answer each question in the feedback form.

### **Overarching comments**

#### **Application of the Code**

The Code will apply to interactions that occur from 1 July 2024. We note that this means it may apply with respect to claims that arose before that date so long as the interaction itself occurs after 1 July 2024. This could be challenging for customers to understand, particularly in the early period of the Code, and so there needs to be a very clear articulation of this Code's application. It is suggested for example that the 1 July 2024 date is also mentioned in clause 1.4.

In practice, customers' concerns and complaints may be multi-faceted. Customers may refer to interactions that occurred over a period of time and may not limit their concerns to claims covered by the Natural Hazards Insurance Act 2023 (NHI Act). It is important that customers are provided with clear information to help them understand when and to what this Code applies, and correspondingly to what it does not.

We are mindful that while the timing related issues with the Code's application will diminish over time, the fact the Code applies to insurers' actions as agents of the Commission but not their actions with the same customers on the private insurance

aspects of their claims (and related claims such as contents) will pose an ongoing risk of confusion.

### **Alignment with the Fair Insurance Code and Natural Disaster Response Agreement**

All private insurers who partner with the Commission and have entered the Natural Disaster Response Agreement (NDRA), comply with the obligations set out in the Fair Insurance Code (FIC). The FIC was developed by ICNZ and its members to clearly set out the standard of service that member companies must provide to their customers. ICNZ strongly believes that the FIC meets its objectives, sets suitable standards, and has improved customer experience.

Whilst the current EQC Code largely aligns with the FIC, the draft Code aligns more with the Code of Accident Compensation Corporation (ACC) Claimants' Rights, which was originally put in place in 2002<sup>1</sup>. Whilst ACC is also a Crown entity, the nature of the services it provides, namely administering the accident compensation scheme, is very different to the Commission's role under the NHI Act and therefore largely replicating the content of the ACC Code in this context is not entirely relevant or appropriate.

ICNZ has engaged with the Commission throughout the development of the Code and, whilst recognising that the Code has a specific statutory basis, has consistently advocated that the Code, or any amendment or replacement of the existing EQC Code, should follow the FIC to the greatest extent possible.

Due to the interplay between private insurance and EQCover, the introduction of the Code has the potential to add unnecessary complexity for customers who are dealing with a complex land or natural disaster claim. The intent behind the Code and the FIC are similar. However, the differences in the language used create additional uncertainty and complexity, which we do not consider is justified.

The application of both the Code and the FIC is likely to be confusing for customers, particularly when the two codes may apply to the same claimable event and the same property. It will also be unnecessarily operationally complicated for insurers who may have to comply with two codes with respect to one customer.

We also note insurers and EQC are working to update the NDRA to reflect the new NHI legislation and given the interplay between the NDRA and the Code, there is a need to ensure that these two documents are also aligned.

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<sup>1</sup> Refer to the Injury Prevention, Rehabilitation, and Compensation (Code of ACC Claimants' Rights) Notice 2002

Notwithstanding our primary position that the Code should align with the FIC to the greatest extent possible, we have provided additional feedback on the Code below.

### **Supporting customer understanding**

To assist customer understanding, we recommend the Commission provides a clear and detailed flow chart demonstrating:

1. The various aspects of a customer's claim under the NHI Act and its interaction with a private insurance claim;
2. The complaint processes if a customer (a) disagrees with a claim decision under the NHI Act (a referable decision) and/or (b) disagrees with a claim decision under their private insurance;
3. The application of the Code and the interaction with the FIC;
4. The complaint processes if a customer (a) disagrees with the application of the Code and/or (b) disagrees with the application of the FIC; and
5. The purpose of the dispute scheme under the NHI Act and the purpose of a private insurer's dispute resolution scheme.

We also note as a matter of drafting style that while the Code is a statutorily enabled and legal document, to also make it easier for insureds to use and understand the Code it may be necessary to include more content in it. For example, including definitions from the NHI Act in the Code rather than relying on insureds to find and cross-reference with the legislation itself.

### **Definitions**

The Code should be more explicit about when obligations apply only to the Commission and when they apply to the Commission and its agents. The Code provides that the term "We" refers to the Commission and in turn provides that the term "Commission", unless the context requires otherwise, includes persons acting as agents of the Commission, i.e. insurers. However, this may not be obvious to customers. The Code should expressly provide when an obligation applies to the Commission and when it applies to the Commission and its agents. Equally, there is a risk that when customers understand the Code applies to insurers as the Commission's agents, they may struggle to understand this does not apply to all insurers' activities.

We recommend including definitions of 'Claim', 'Complaint' and 'Referable Decision' in the definitions section of the Code to clarify the scope and that they relate specifically to the NHI Act. To make it easily understandable for customers it is

important the Code is as self-contained as possible, rather than requiring customers to cross-refer to the section of the NHI legislation itself.

### **Funding new commitments**

In some areas the Code provides open-ended commitments that could require a level of response and resourcing to implement that go beyond existing arrangements under the NDRA. We have identified these in our response to specific sections below but note overall that where meeting additional commitments would bring costs, these would then need to be reflected in the costs recovered by the Commission's agents.

## **Responses to questions in the feedback form**

### **About you**

#### **Question 1:**

What is your name?

Susan Ivory

#### **Question 2:**

Are you completing this form:

- As an individual? Please go to question 4.
- On behalf of an organisation? Please go to question 3.

#### **Question 3:**

If you are completing this form on behalf of an organisation, please provide the name of the organisation.

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#### **Question 4:**

If you are completing this form as an individual, do you have home insurance?

N/A

#### **Question 5:**

If you are completing this form as an individual, what region of New Zealand do you live in?

N/A

### **Contact information (optional)**

**Question 6:**

Would you like us to notify you when a written summary outlining how feedback has contributed to the development of the Code of Insured Persons' Rights is available on our website?

Yes

No

**Question 7:**

Would you like us to tell you when we'll be asking for feedback on a Dispute Resolution Scheme (this will happen in early 2024)?

Yes

No

If you've said yes to either of the above, please enter your email address.

susan@icnz.org.nz

**Feedback questions****Rights of insured persons and obligations on the Commission****Right one:**

You have the right to be treated with dignity and respect.

**Obligations on the Commission:**

- a. We will treat you with honesty and courtesy.
- b. We will act transparently and with integrity.
- c. We will listen to you and consider your views.

**Question 1:**

Will these obligations the Code sets for us support the right of insured people to be treated with dignity and respect?

Yes

No

Maybe

**Question 2:**

Please tell us why you gave that answer and/or any other feedback on: Right one - You have the right to be treated with dignity and respect.

While we do not disagree with the intent of the obligations imposed on the Commission under Right one, we consider that greater alignment with the FIC would be beneficial. Applying two Codes which are essentially aimed at establishing the same level of service and obligations but with varying wording is problematic.

There are two aspects of difference between the FIC and the draft Code. First, that the FIC puts obligations on both parties and has mutual obligations. The right to be treated with dignity and respect should for example be mutual. Customers also have an obligation to treat staff members of the Commission and its agents with dignity and respect. The Code could refer here to the Commission's expectations that a customer will engage respectfully and honestly with the Commission and its agents. The Commission should consider reflecting the language of the FIC, in the section 'Our general expectations of you' on page 5.

The second aspect of difference is that there are also examples of where similar but different language has been used in the Code to the FIC and where we recommend that the text is revised to bring the two into closer alignment. For example, at 1c the Code provides that "We will listen to you and consider your views." We propose that this text is amended to more closely align with the FIC. We propose that the obligation should state: "We will listen to you and explain the decisions we make."

### **Right two:**

You have the right to effective communication.

#### **Obligations on the Commission:**

- a. We will communicate with you openly, honestly and effectively.
- b. We will respond to your questions in a timely manner.
- c. We will provide you accessible information in a timely manner.

### **Question 3:**

Will these obligations the Code sets for us support the right of insured people to have effective communication?

- Yes  
 No  
 Maybe

### **Question 4:**

Please tell us why you gave that answer and/or any other feedback on: Right two - You have the right to effective communication.

We suggest that Right one should refer to “clear” communication to more closely align with the language used in the FIC.

At 2a the Code provides “We will communicate with you openly, honestly and effectively.” We consider it would be appropriate and useful for setting expectations, and more aligned with the FIC, for there also to be a reciprocal requirement that customers communicate openly and fairly.

At 2b the Code provides “We will respond to your questions in a timely manner.” “Timely” should be tied to what is reasonable in relation to the circumstances. This should be explicit in the Code itself (rather than being defined elsewhere). We suggest that the text of this obligation should be updated to “We will respond to your questions in a timely manner so far as is reasonable in the circumstances”. We note that expectations around timeliness will vary and be different following a major event. The FIC recognises that a catastrophe or disaster can affect the way insurers usually do things. This is of course a material matter given that a generally high proportion of claims under the NHI Act result from significant natural hazard events.

At 2c the Code provides “We will provide you accessible information in a timely manner.” We understand that the Commission intends the reference to “accessible information” to mean that the information should be accessible to the particular customer and that this means information should be provided in languages other than English, including through translators, and easy read formats. We note though that the phrase “accessible information” does not naturally read as covering this, particularly access to translators.

This is a potentially onerous obligation to be undertaken and funded by the Commission. While the intention is admirable, the expectations set need to be workable. We note that the Commission’s intention goes further than the FIC, which requires insurers to “*take reasonable steps to help ... people who have English as a second language*”. We suggest that the Code adopt the FIC’s language. As a minimum, the requirement should be linked to what is reasonable in the circumstances. For example, it is unlikely to be reasonable to expect insurers to provide information in a language that is not widely used in New Zealand. Noting there are an estimated 7,000 languages spoken internationally.

As above, the use of the words “timely manner” need to be tied to what is reasonable in the circumstances.

Whilst the cost of providing information in these formats will ultimately be borne by the Commission, given the proposed implementation time for the Code, we query how practically this will be implemented in the short timeframe available.

### **Right three:**

You have the right to be fully informed.

#### **Obligations on the Commission:**

- a. We will provide information on your rights under this Code.
- b. We will provide information on how to make a natural hazard damage claim.
- c. We will provide information about our processes, your claim and cover, your entitlements and your options if you do not agree with our decisions, in accordance with all relevant legislation.
- d. We will keep you updated on expected timeframes.

### **Question 5:**

Will these obligations the Code sets for us support the right of insured people to be fully informed?

- Yes  
 No  
 Maybe

### **Question 6:**

Please tell us why you gave that answer and/or any other feedback on: Right three – You have the right to be fully informed.

At 3a the Code provides “We will provide information on your rights under the Code.” The Code should provide more detail about when this information will be provided. For example, is it anticipated that the information will be provided when a claim is submitted, when a complaint is made and/or when it is requested?

### **Right four:**

You have the right to have your personal information protected and respected.

#### **Obligations on the Commission:**

- a. We will comply with all relevant legislation relating to personal information and privacy. This includes:
  - i. We will advise you when and why your personal information is being collected.
  - ii. We will keep your personal information safe and secure.



- iii. We will give you access to the personal information we hold about you and respond to requests to correct any mistakes or inaccuracies.
- iv. We will use and share your personal information appropriately.

#### Question 7:

Will these obligations the Code sets for us support the right of insured people to have their personal information protected and respected?

- Yes
- No
- Maybe

#### Question 8:

Please tell us why you gave that answer and/or any other feedback on: Right four - You have the right to have your personal information protected and respected.

We understand that Right 4 is intended to simply summarise the customer's existing legal rights under the Privacy Act 2020, in which case the Code should include a specific reference to the Privacy Act 2020 to make it clear that it is simply outlining the customer's existing rights and not restricting or expanding them.

At 4a(iii) the Code provides "We will give you access to the personal information we hold about you". This should be limited to what insurers are required to do under the law, as there will be some information insurers are entitled to withhold (e.g. privileged documents). Insurers are only required to provide personal information on request (i.e. a Privacy Act request for personal information). We suggest this obligation is reworded as follows: "Upon request and to the extent we are required to do so under law, we will give you access to personal information ...".

At 4a(iv) the Code provides "We will use and share your personal information appropriately." This should be amended to "We will use and share your personal information in accordance with the law."

The Commission should consider paragraphs 9 to 14 of the Fair Insurance Code which summarises how insurers comply with privacy law.

#### Right five:

You have the right to support.

**Obligations on the Commission:**

- a. We will provide you with an interpreter or other suitable assistance when necessary.
- b. We will welcome you and your support person(s) to engage with us provided that the safety of all can be assured.

**Question 9:**

Will these obligations the Code sets for us support the right of insured people to have support?

- Yes  
 No  
 Maybe

**Question 10:**

Please tell us why you gave that answer and/or any other feedback on: Right five - You have the right to support.

At 5a the Code provides “We will provide you with an interpreter or other suitable assistance when necessary.” It is assumed that the Commission will fund and provide interpretation services and other assistance to meet this commitment. However, there are broader considerations and implications to this requirement including:

- Will the Commission provide interpreters directly to the insured person?
- If the Commission does not intend to provide interpreters directly, what will be the refund or payment process between the Commission and its agents?  
Depending on the arrangements that the Commission anticipates, it may be better to refer to connecting the insured person to an interpreter rather than providing an interpreter. We suggest that the text refer to connecting a customer to an interpreter or other suitable assistance “where reasonable and practicable”.
- Will the Commission and its agents be resourced to provide translation services so that they can also meet the Code’s other requirements around timeliness?
- What proportion of customers does the Commission anticipate will require translation services? Where a customer requires those services, how many interactions per claim does the Commission anticipate will require translation?
- We note there may be flow on effects of this, for example, when a customer then expects that insurers will continue to communicate with them through translators around the non-NHI part of the claim or in relation to other claims. This could significantly increase the cost of providing private insurance to customers which in turn could affect pricing.

At 5b the Code provides “We will welcome you and your support person(s) to engage with us provided that the safety of all can be assured.” Where a third party intends to represent an insured person, that person needs to have proper authority to do so. We would suggest changing this text to “You have the right to a support person or to appoint a representative to act on your behalf”. This change would remove the words “provided that the safety of all can be assured”. While we support the intent, the use of this phrase could be off-putting for most customers who pose no safety risk. Please also refer to our comments on Right one that the right to be treated with dignity and respect should be mutual. Such an approach would support the identified here.

### **Right six:**

You have the right to have your culture, values and beliefs respected.

### **Obligations on the Commission:**

- a. We will be respectful of all culture, values and beliefs.
- b. We will be respectful of Māori culture, values, and beliefs.

### **Question 11:**

Will obligation a. support the right of insured people to have their culture, values and beliefs respected?

- Yes  
 No  
 Maybe

### **Question 12:**

Will obligation b. support the right of insured people to have Māori culture, values and beliefs respected?

- Yes  
 No  
 Maybe

### **Question 13:**

Please tell us why you gave that answer and/or any other feedback on: Right six - You have the right to have your culture, values and beliefs respected.

The cultural competency of agents of the Commission will differ and there is a vast array of different cultures, values and beliefs within New Zealand. We would like to explore further with the Commission what support it will provide to its agents in cultural competency to discharge these obligations. Some broader considerations and implications to consider include:

- Will the Commission be providing cultural competency training to its agents to equip them with the skills and understanding required to meet this obligation?
- There could be additional costs associated with respecting a culture, values and beliefs in relation to specific claim and, if so, will the Commission cover this? For example, travel for in-person meetings etc.

In practice, the Commission or its agents may not be aware of a particular customer’s culture, values and beliefs and, unless the customer informs them, may not be aware of a need to adjust a particular practice or process for the customer. In these circumstances, it would be difficult to meet this obligation even with appropriate training and support from the Commission.

We also note that to an extent this right appears to overlap with Right one “You have the right to be treated with dignity and respect”.

### **Right seven:**

You have the right to complain.

#### **Obligations on the Commission:**

- a. We will inform you about the complaint procedure, and the expected timeframes for dealing with complaints.
- b. We will act in accordance with the complaint procedure.

### **Question 14:**

Will these obligations the Code sets for us support the right of insured people to complain?

- Yes  
 No  
 Maybe

### **Question 15:**

Please tell us why you gave that answer and/or any other feedback on: Right seven - You have the right to complain.

Other than our ‘Overarching comments’ at the beginning of this document which relate to the interaction with a private insurer’s complaints process, we have no further feedback on Right seven.

### **Right eight:**

You have the right to have a decision made about a breach of the Code independently reviewed.

**Obligations on the Commission:**

- a. We will inform you about the review procedure, and the expected timeframes for dealing with reviews.
- b. We will act in accordance with the review procedure.

**Question 16**

Will these obligations the Code sets for us support the right of insured people to get an independent review of a decision made about a breach of the Code?

- Yes  
 No  
 Maybe

**Question 17:**

Please tell us why you gave that answer and/or any other feedback on: Right eight- You have the right to have a decision made about a breach of the Code independently reviewed.

Right eight should be clear as to who the independent reviewer is. There is a risk that insured persons will be confused by the different processes for independent reviews and dispute resolution schemes. As we have discussed elsewhere in this submission, the Commission should provide further guidance for insured persons to address this issue.

**Right nine:**

You have the right to have certain claim disputes referred to the external dispute resolution scheme.

**Obligations on the Commission:**

- a. We will inform you about the dispute resolution scheme process.

**Question 18:**

Will these obligations the Code sets for us support the right of insured people to have certain claim disputes referred to the external dispute resolution scheme?

- Yes  
 No  
 Maybe

### Question 19:

Please tell us why you gave that answer and/or any other feedback on: Right nine - You have the right to have certain claim disputes referred to the external dispute resolution scheme.

There is a risk of confusion for customers from the existence of different processes for dealing with complaints about breaches of the Code and NHI Act claim disputes as well as the FIC and claims under a customer's private insurance. We are aware that some customers have experienced some confusion or difficulty in identifying the appropriate dispute resolution scheme for claims arising out of the recent flooding and cyclone events – i.e. whether they should approach IFSO or the Parliamentary Ombudsman. Insurers have been working with customers and the Commission to ensure that complaints are escalated appropriately and to the correct forum. Under the NHI Act, the situation will be complicated further with a new dispute scheme being implemented for NHI Act claims. This needs to be addressed in guidance from the Commission – refer to our 'Overarching comments' at the beginning of this document.

Also, to make the Code more self-contained and useful for insureds it would be appropriate to provide more information on the sorts of disputes that can be referred. This could be simply achieved by providing the relevant text from section 104 of the NHI Act and then noting what is provided for in the regulations (we acknowledge the regulations have not been finalised), i.e.:

**referable decision** means a decision made by the Commission—

- (a) under section 59 as to whether, or to what extent, a claim is valid; or
  - (b) under section 60 as to the extent to which a claim is to be, or has been, settled,—
- but not a decision of a kind specified in the regulations as not suitable for resolution under the dispute scheme.

## Overall feedback on the rights and obligations

### Question 20:

Will the rights and obligations set out in the Code support us to manage claims in a way that's timely and fair?

- Yes
- No
- Maybe

### **Question 21:**

Please tell us why you gave that answer and/or any other general feedback on the Code.

See our detailed comments on the questions above and the ‘Overarching comments’ section at the beginning of this document. Please also refer to our comments on Right 2 above relating to the requirement to respond to questions and provide accessible information in a “timely” manner.

The rights and obligations of the Code will need accompanying processes to enable management of claims in a way that is timely and fair. It is not clear from the Code what process improvements will support compliance with these obligations.

We note our earlier comments on the need for the Code to align with the FIC and NDRA.

### **Question 22:**

Are there any other rights not included in the Code which you believe should be included?

No.

## **Remedies available under this Code**

Upon finding that there has been a breach of this Code, where appropriate, the Commission may:

- a. provide a written or oral apology
- b. provide a written or oral explanation of the situation
- c. meet with the insured person to consider the insured person’s views and resolve their concerns, accompanied by the insured person’s support person(s) where requested
- d. provide information to the insured person, in an appropriate form, which explains:
  - i. any appropriate process, services and the expected timeframes
  - ii. any appropriate information about the insured person's claim
  - iii. the process to apply for an independent review of a complaint decision
  - iv. the process to file a dispute with the dispute scheme
  - v. any other information that the Commission considers relevant to resolve the complaint
- e. provide the insured person with access to their claim file

- f. ensure a response is given to questions and requests

In addition, the Commission may, at its discretion, provide other remedial actions as required.

**Question 23:**

Do you think these remedies would address a breach of the Code?

- Yes
- No
- Maybe

**Question 24:**

Please tell us why you gave your answer and/or any other feedback on the listed remedies and actions.

Part 4 (Remedies available under this Code) provides “Upon a finding that there has been a breach of the Code”. This language should be clarified. Does this cover situations where the finding has been made by the independent reviewer?

At 4c the Code provides:

“Upon finding that there has been a breach of this Code, where appropriate, the Commission may:

...

- c. meet with the insured person to consider the insured person’s views and resolve their concerns, accompanied by the insured person’s support person(s) where requested”

The use of the word “meet” may imply a physical meeting. We assume that this is not what the Commission intends and suggest it is amended to “arrange a time to discuss with the insured...”. We also recommend that the text is amended to “seek to resolve” as the Commission may not always be able to resolve an insured person’s concerns.

We suggest 4d(iii) should be amended to refer to “the process and eligibility to apply ...”. It should also be explicit that this relates to a Code complaint decision, i.e. customers can only apply for an independent review in relation to a complaint under the Code.



Customers can only escalate a complaint to the “dispute scheme” if it relates to a “Referable Decision”. We suggest 4d(iv) should be amended to “the process and eligibility to file a complaint with the dispute scheme.

At 4e the Code states that the Commission will “provide the insured person with access to their claim file”. This could be construed as providing physical access to the file, i.e. to come into the premises to review the file. The language should be clarified. Referring to “personal information” rather than “claim file” would address the issue. There may also be information that the Commission is entitled to withhold from the insured person (e.g. privileged documents). We suggest that 4e be qualified as “to the extent required by law”.

We suggest that the word “reasonable” is added to 4f, i.e. “ensure a response is given to reasonable questions and requests”.

The Commission should consider this provision’s interaction with Right four – “You have the right to have your personal information protected and respected”.

Part 4 goes on to provide “In addition, the Commission may, at its discretion, provide other remedial actions as required”. The Commission should clarify what “other remedial actions” covers. We also seek to understand, if there are costs involved, who will cover these costs. We suggest that this text is amended so that the words “as required” are deleted and replaced with “as is reasonable in the circumstances of the claim and the complaint”.

## **Purpose, identifying and addressing issues, right of review and disputes resolution scheme**

The draft Code also contains sections on purpose of the Code (as defined by the NHI Act), identifying and addressing issues, the insured person’s right of review and the dispute resolution scheme.

### **Question 25:**

Do you have any comments on the wording of these sections in the draft Code?

Please refer to the ‘Overarching comments’ section at the beginning of this document.

Part 5 (Identifying and addressing issues) only refers to the Commission’s actions. We seek to understand how insurers will be involved in and informed about any remediation. In some cases, it will be important that insurers are involved.

Part 6 (Insured person’s right of review) should cross-refer to Right 8 “You have the right to have a decision made about a breach of the Code independently reviewed.”

Part 7 (Dispute resolution) needs to be amended to clarify for insured persons what a “referable decision” is. If the Code is primarily aimed at providing rights to members of the public, then cross-referencing to legislation may not provide sufficient information. It needs to be made clear for the insured person that referable decision relates to cover for an NHI Act claim and not other parts of claim or a complaint (e.g. in relation to a claim under the private insurance or about the Code). We reiterate our concern that the existence of different dispute schemes will be difficult for insured persons to navigate and clear guidance will be required from the Commission to support them through the processes.

**Question 26:**

Do you have any further feedback or comments on the draft Code overall?

No.