

From: [REDACTED]
To: [AFCA Review](#)
Subject: GARY JACKSON SUBMISSION TO REVIEW OF AFCA
Date: Friday, 26 March 2021 3:45:32 PM
Attachments: [REDACTED]

(A copy of this letter is also attached in case of formatting problems at the server end)
25th March 2020

[REDACTED]
[REDACTED]
[REDACTED]
The Treasury NSW 2317
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Re: A Personal Plea From an Australian Financial Services Consumer for Treasury and AFCA to Assist in the Handling of "Misleading & Deceptive Behaviour" Complaints to AFCA Especially in Regard to Financial Firms Inserting Fictitious or Non-Applicable Clauses in Their Denial of Claims

This Review's Terms of Reference states that "*Legislation requires the review to consider whether AFCA has been effective in resolving complaints in a way that is fair, efficient, timely and independent. In doing so, the review will take account of feedback provided by consumers and small businesses and by financial firms.*"

And Item 1.2 of the Review's Objectives states: "*Are AFCA's processes for the identification and appropriate response to systemic issues arising from complaints effective?*"

I submit that AFCA is failing in its ability to handle a specific area of unethical behaviour by Insurers.

This specific area is the handling of Misleading and Deceptive Behaviour by insurance firms in regards to denying consumer's claims on the basis of non-existent clauses or clauses which are taken from a different section of the Policy and which does not apply to the Claim being made.

An example of this may be where an Insurer denies a claim because the Product Disclosure Statement (PDS) states that "*claims must be made within 60 days of the officer becoming aware of the claim*". However the claim has been made under the "Legal Liability" section of the PDS which has no such time limit. Or that a claimant needs to notify "*when letter of demand received....when proceedings were commenced.....when the writ was received....when Statement of Claim issued.*" And yet none of these clauses or even similar wording appears within the PDS.

I have written to the Senior Executives and CEOs of ASIC, the Insurance Council of Australia (ICA) and The Insurance Code Governance Committee (CGC) and all have stated in reply that they cannot assist but that I should refer this matter to AFCA.

However, in regard to misleading conduct, AFCA states that it can only "*investigate a claim that an insurer misled an insured and caused them to suffer loss.*"

This means that for thousands of insurance consumers within Australia who accept an insurer's denial which has used fictitious or non-applicable PDS clauses, AFCA cannot

investigate because there has been no loss!

I am speaking from personal experience with respect to the above and, as a consumer of such financial insurance services, plead to Treasury to please note this apparently systemic breach of ethics by the insurance industry in Australia and ask Treasury to please make relevant changes to AFCA's remit to assist the eradication of this egregious practice.

This Review states: "*Please provide specific examples or case studies to support your responses. These may be provided to Treasury confidentially with any personal details of complainants and case references numbers omitted.*"

However, I cannot tell whether this means I can provide all of the particular case I have submitted to AFCA or whether I need to remove complainant details and case reference numbers. So I have attached both to this and labelled each correspondingly.

Should you require further detail on this then I am most keen to assist and either provide detail or personally meet in order to show all of the examples for which I have seen this occur.

Yours faithfully

GARY JACKSON

Gary Jackson [REDACTED]
[REDACTED]

23 February 2021

Mr Gary Jackson
[REDACTED]

Dear Mr Jackson

Complainants Mr Gary Jackson & [REDACTED]
Financial firm Zurich Australian Insurance Limited (Zurich)
Case number 750475

This letter sets out:

- my understanding of the complaint and the issues I will investigate
- the information you need to send me by 4 March 2021

If you cannot send me the information I am asking for by 4 March 2021 please let me know straight away.

Because I will share the information you provide with Zurich, only give me information that is relevant to the complaint.

I believe the complaint may resolve by negotiation. I will continue discussions with you and Zurich to see if this is a possibility.

If the complaint is not resolved within 28 days, I will continue with my review of the information provided by both parties. I will then provide a preliminary assessment about the merits of the complaint. After this, if the complaint is still not resolved or if you or Zurich do not accept the preliminary assessment, we will issue a final decision.

My understanding of the complaint

The complainants are representatives of the Proprietors of Unit Plan U2000/089. They hold a Legal Liability insurance policy with Zurich (the insurer).

Proceedings were brought against the Insured on 11 February 2014 by a unit holder for the alleged failure to address underlying issues said to have resulted in damage to her property. The damage is said to have occurred between 2004 and 2005, prior to the inception of the policy with Zurich.

On 28 February 2018 the Insured lodged a claim for indemnity with Zurich under the Legal Liability policy seeking reimbursement for costs incurred as a result of the legal proceedings that were commenced against them.

The claim was rejected by Zurich.

The decision was appealed to Zurich directly and a complaint was also lodged with AFCA separately regarding Zurich's conduct (rather than the outcome of the claim). The complainant says that Zurich engaged in misleading and deceptive conduct during the processing of the claim.

Zurich and the Insured entered into a Deed ("the Deed") on 9 December 2020 regarding the outcome of the Claim.

Both Zurich and the complainant have confirmed that the Deed was only intended to resolve the decision of indemnity and the claim itself and not the subsequent issues of misleading and deceptive conduct that have been raised in this complaint.

The complainants say:

- > Zurich's conduct was misleading and deceptive in that it made reference to the timeframe applicable under the Office Bearer's Liability section of the policy, when the Proprietors wished for the claim to be considered under the Legal Liability Section of the Policy.
- > Zurich attempted to deceive by creating fictional requirements in the policy / that there is no provision in the policy containing such terms (requiring notification once court proceedings are commenced).
- > Zurich's consideration of the claim under the Office Bearer's Liability section of the Policy (when the Proprietors had referred to it as a Legal Liability claim) was deceptive.
- > Zurich unreasonably delayed the handling of the claim.
- > Zurich's lawyers dismissed the complainant's letter dated 29 April 2019

The complainants want AFCA to take action against Zurich. This includes notification to ASIC, the ICA and the CGC, and confirmation of what action they will take.

Issues we will investigate

The issues we will investigate are:

1. Has the insurer engaged in misleading and deceptive conduct?

2. Do the insurer's actions constitute a systemic issue or serious contravention of the law?
3. Has the insurer unreasonably delayed the handling of the claim?
4. What loss has stemmed from the insurer's conduct.

Our approach to some of the issues you have raised

Misleading conduct

AFCA can investigate a claim that an insurer misled an insured and caused them to suffer loss.

AFCA is not a court of law. We cannot take or test evidence on oath, or require third parties to give evidence. Instead we consider:

- available documents
- the recollections of the parties
- all relevant circumstances, including the insured's conduct.

We give more weight to written records created when the alleged conduct took place. If there are no records, we will decide what is most likely to have occurred based on the information we receive. If there are conflicting recollections and these are evenly weighted, we may find that an insured cannot establish the misleading conduct occurred.

The remedy is not to make the misrepresentation come true. However, if we find the insurer misled the insured, we will assess how much worse off they are because of the misrepresentation.

Delay in claim handling

There are no standard timeframes set down for the processing of claims. However, insurers are required to operate in accordance with the General Insurance Code of Practice.

When considering if an insurer delayed processing an insurance claim, AFCA will look at whether:

- the insurer acted fairly and promptly to resolve the claim
- there has been an unreasonable delay
- there were factors which were outside the control of the insurer or otherwise unavoidable
- the insured's actions caused or contributed to the delay.

If we decide the insurer unreasonably handled or delayed the claim, we will look at what loss (if any) stemmed from that conduct.

Our role

AFCA is a complaint resolution service offered as a free alternative to the courts. We are not a regulator of the financial services industry. We can consider individual complaints regarding loss or damage caused by an insurer's actions.

The purpose of AFCA is not to punish or impose a fine on an insurer. We do not have the power to review a general practice unless the practice breaches a specific duty or obligation, or it is not consistent with industry practice. Organisations such as the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) have a role in consumer protection and the regulation of the financial services industry.

Our Rules define the types of complaints we can consider. Our Rules can be located on our website: <http://www.afca.org.au>.

Information we need from you by 4 March 2021

To help me consider the complaint, I need more information from both you and Zurich and will need to receive it from you in 14 days.

1. Is my understanding of the complaint correct? If not, please provide reasons.
2. What loss have you suffered as a result of the insurer's actions?
3. Do you acknowledge AFCA is not an insurance regulator and cannot take the specific action against the insurer requested by you?
4. Do you acknowledge that any such action by AFCA may be notification to ASIC of a systemic issue or serious contravention if it is warranted?
5. Do you acknowledge AFCA cannot advise you what action ASIC, the ICA or CGC will take as they are separate regulatory entities?
6. Provide the responses to your letters to ASIC, the ICA and the CGC.
7. Did Zurich provide a response to your reply to its IDR letter?
8. Any further information you wish for AFCA to take into account when considering this complaint.

Any questions?

Please see the attached fact sheet on the full process your complaint will follow. You can also find our other fact sheets and policies, such as on handling personal information and resolving complaints, on our website: www.afca.org.au/publications.

If you have any questions or want more information about this complaint, please quote the case number when you:

- call: +61 3 9613 6364 or 1800 931 678
- [REDACTED]

Yours sincerely

A handwritten signature in dark ink, appearing to be 'L. G.' followed by a horizontal line.

[REDACTED]
Case Manager
Australian Financial Complaints Authority

Making complaint resolution easier

We are committed to resolving complaints as quickly as possible. This fact sheet outlines how we will consider your complaints under our process and how we will work with you.

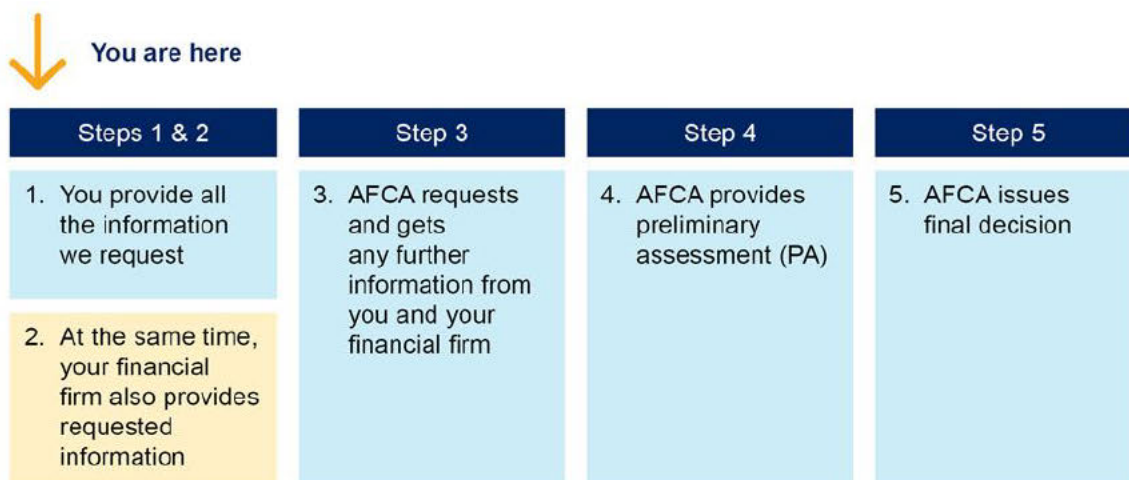
Are you ready to proceed?

Most complaints we consider are resolved within 90 days from when we receive all the information required to make a decision. Many complaints that are resolved by agreement resolve in less time. For us to do this, you will need to provide information when we request it.

We will give you time to provide information and talk to you about the complaint along the way. It is in everyone's interest that we resolve complaints as promptly as possible, so we can only allow extra time to provide information in exceptional circumstances.

We encourage you and your financial firm to work together. Resolution by agreement is an option at every stage up until a determination has been issued.

What steps will your complaint take?



Step 1 – You provide the information we request within 7 – 21 days.

Step 2 – We also obtain information from your financial firm at the same time.

Step 3 – We will let you know within three days if we need additional information. If so it must be provided within seven days.

Step 4 – We will give our preliminary assessment of the complaint after reviewing the responses. This may be in writing or in a phone call.

Step 5 – If the complaint is not resolved, the Ombudsman will issue a final decision called a determination.

What is a preliminary assessment?

If your complaint is not resolved in the first 28 days, we will usually provide our preliminary assessment. This may be over the phone or in writing. If we provide it by phone, we may call just you, or include you and your financial firm. If we provide it in writing it will usually be the form of a recommendation.

The preliminary assessment will explain:

- the issues AFCA will decide
- AFCA's approach to the issues
- our view of the complaint
- what information was relied on to form the view.

What is a determination?

A determination is our final decision. AFCA will progress to a determination when we consider this is appropriate. Our determination is binding if you accept it within 30 days. You cannot appeal a determination. If you do not accept our determination you can still pursue your complaint in another forum such as a court.

AFCA Rules

Our Rules set out the types of complaints AFCA can consider, and the methods we use to investigate and resolve complaints.

Want more information?

AFCA Rules: www.afca.org.au/rules

Operational Guidelines: www.afca.org.au/og

Publications: www.afca.org.au/publications

10th March 2021

[REDACTED]
Case Manager
Australian Financial Complaints Authority

Gary Jackson
[REDACTED]

Dear [REDACTED]

Re: Case Number 750475

Thank you for your letter of 23rd February 2021 and your subsequent email that the information is required by 10th March 2021 and not 4th March 2021.

As I stated on the phone yesterday, when the original complaint was submitted on 22 August 2020, we were still in the process of negotiating our claim with Zurich. At that stage we definitely wanted those outcomes outlined within our complaint; i.e., to take action against Zurich and notify ASIC, the ICA and CGC that his behaviour has occurred and to determine what action they would take.

Since that date, we have reached an agreed, although disappointing, outcome with Zurich and settled the matter.

However, as I outlined to both yourself and to Zurich, we did not want to drop this complaint to AFCA since our Body Corporate and I wanted to determine whether the behaviour that Zurich had exercised during the claim discussions were considered by AFCA to be misleading and deceptive behaviour or not. We wish to know this for future claim negotiations with any insurer.

The new outcome that we are looking to obtain is thus simply to know from AFCA whether or not it considers the behaviour outlined in our complaint to be misleading and deceptive behaviour or attempted misleading and deceptive behaviour or not. We are not looking for compensation. We are not looking for any punitive response against Zurich. And we are not looking for notification to any other bodies with regard to the outcome of this matter. Obviously, if AFCA sees that the behaviour does have elements of misleading and deceptive behaviour then we feel it would obviously be good if other relevant companies and bodies could be warned of this behaviour. But we will not be following up or looking to be certain that any such action has been taken by AFCA.

Therefore, to answer the questions in your letter, if I might comment on some of the information within your letter before specifically answering each of the eight points you make below?

Firstly, we are trying to determine whether AFCA sees there is any element of misleading and deceptive behaviour in the way in which Zurich has attempted to convince our Body Corporate that our claim cannot be won and thus should be dropped.

Zurich or AFCA may make the point that there were one or more reasons within Zurich's denials which were correct and that therefore our claim may still have been denied in any case. We submit that our arguments and counter-arguments did carry weight since Zurich offered to settle this matter when we obtained their first response to our claim.

The fact of whether or not our claim may or may not have been successful is not part of this submission. This submission is about the fact that every time Zurich makes such statements which are not part of the policy, it adds weight to their reasons for denial and forces the claimant to believe that their chances of success are less than what they genuinely should be. This is more likely to force the claimant to either withdraw their claim or accept a lower compensation than would otherwise be likely.

We would thus normally make the complaint to AFCA that this is a complaint of misleading and deceptive behaviour. However, of concern to us is the fact that in response to our claim of misleading and deceptive behaviour to Zurich, Zurich responded that *"The Proprietors were not misled or deceived in fact because they pointed this out in the (undated) responding correspondence sent to Zurich on 29 April 2019."* (see Item 3.7 in the attached "201008_gj response to Zurich 201007")

In other words, it appears that Zurich are making the point that because at some stage later we became aware that Zurich's references to the policy supporting their denial were either not within the policy nor applicable sections of the policy, it cannot be said that we were finally misled or deceived. Zurich appears to be making the claim that we were only misled or deceived for a time until we learned that Zurich's arguments related to non-existent or non-applicable sections of the policy and so that after we came to this realisation, we were not actually misled or deceived.

We find this very disingenuous.

It should be noted that we only later learned that these clauses put forward by Zurich as reasons for denial were not applicable because TIO agreed with our claim related to the same matter but a different time period and the policy with TIO was exactly the same underwriting policy as that for Zurich (underwritten through MGA Brokers).

If AFCA feels that Zurich is correct in its interpretation of why this is not misleading and deceptive behaviour then we obviously need to make our complaint in regard to attempted misleading and deceptive behaviour.

Does AFCA feel there has not been misleading and deceptive behaviour because we finally realised these particular clauses were not within the relevant part of the contract or that there was no consequential loss?

Such additional misleading reasons caused us at first to desist in our claim. However, even when we found that these reasons were not applicable and thus re-opened our claim, we found it exhausting to continue to fight with Zurich when such non-applicable clauses were given and Zurich's refusal to admit to such.

We feel that attempting to deny a claim by using reasons which are not within the policy or not within the applicable section of the policy should carry the same weight as actual misleading and deceptive behaviour and we hope that AFCA agrees with us on this. Otherwise, it appears that the only difference between misleading and deceptive behaviour and no misleading and deceptive behaviour is whether the claimant finds out about it or not?

We contend that whether this is considered by AFCA as attempted misleading and deceptive behaviour or actual misleading and deceptive behaviour, it is against the ethics that AFCA outlines within its Constitution (Section 2.1.h – “Foster and promote sound and ethical business practices in the Industry”) and Code of Practice.

If AFCA can only hold an insurer responsible for actual misleading and deceptive behaviour which has caused loss to the complainant and not for attempted misleading and deceptive behaviour and for which the complainant has uncovered such behaviour then please let us know. We do not wish to waste AFCA's time. However, such behaviour would seem to be against both AFCA's Constitution and its Code of Practice and we would thus be interested in ascertaining why AFCA would find that it is not considered misleading and deceptive behaviour.

In regard to your letter, our comments are in *red* below.

Note that when we refer to Zurich below it may also include the agent that Zurich appointed to handle our claim; that being [REDACTED] Refer to attached email dated 4/7/18 [REDACTED] where Zurich state: *“Please note that [REDACTED] have conduct of this matter on Zurich's behalf. Accordingly, Zurich would not provide you with separate updates in addition to contact you have with [REDACTED]”*

Also, because you have stated in your letter that *“We cannot take or test evidence on oath, or require third parties to give evidence. Instead we consider: ... available documents”*, we have attached all original documents where these documents have been referred to anywhere.

Your letter in black; our response in red.

The complainants are representatives of the Proprietors of Unit Plan U2000/089. They hold a Legal Liability insurance policy with Zurich (the insurer).

Proceedings were brought against the Insured on 11 February 2014 by a unit holder for the alleged failure to address underlying issues said to have resulted in damage to her property. The damage is said to have occurred between 2004 and 2005, prior to the inception of the policy with Zurich.

On 28 February 2018 the Insured lodged a claim for indemnity with Zurich under the Legal Liability policy seeking reimbursement for costs incurred as a result of the legal proceedings that were commenced against them.

The claim was rejected by Zurich.

The decision was appealed to Zurich directly and a complaint was also lodged with AFCA separately regarding Zurich's conduct (rather than the outcome of the claim). The complainant says that Zurich engaged in misleading and deceptive conduct during the processing of the claim.

Zurich and the Insured entered into a Deed ("the Deed") on 9 December 2020 regarding the outcome of the Claim.

Both Zurich and the complainant have confirmed that the Deed was only intended to resolve the decision of indemnity and the claim itself and not the subsequent issues of misleading and deceptive conduct that have been raised in this complaint.

The complainants say:

Zurich's conduct was misleading and deceptive in that it made reference to the timeframe applicable under the Office Bearer's Liability section of the policy, when the Proprietors wished for the claim to be considered under the Legal Liability Section of the Policy.

The main document that we provide answers to below is the "200108_gj response to Zurich 201007" document attached. This was our response to the Zurich IDR communication of 7/10/20 attached ("201007_zurich response to gj_200825_AFCA case 750475. IDR Response Letter")

We ask you to please read Section 3 of the "200108_gj response to Zurich 201007" document where Zurich makes its defence of this misleading and deceptive behaviour claim related to Office Bearer's Liability and associated timeframe and we respond.

Because AFCA requires evidence and not hearsay, we have attached all documents referred to in the "200108_gj response to Zurich 201007" document.

With regard to Item 3.1 find attached:

"190429_response to Zurich Sparke letter 190131",
"130211_ [REDACTED] notifying_received 200915",
"130205_17.33_melody to jc re legal action commencing_2",

Further we make the point that our claim specifically stated it was being submitted under the Legal Liability section of the policy. This is emphasised in our documents. Please find attached:

"180228_Zurich Liability Claim_signed",
"180228_Zurich Liability Claim_Summary", where the first sentence states: "*This claim is made under the Legal Liability section of the 2007 Millennium Strata Titles Composite Insurance PDS - see attached.*"

With regard to Item 3.2 find attached:

"140612_claim with legal liability to Zurich directly",
We make the point that Zurich are stating here that the reason they have included conditions from the OBL part of the policy is that they "*consider the application of all sections of the policy*". And yet in Item 3.6 Zurich states "*Zurich does not believe the above statement was misleading or deceptive. It was made clear that the timeframe related to the Office Bearer's section of the Policy.*" As we state in our response "*If Zurich reviews all claims with regard to all aspects of the policy, then why did your total response then not continue to discuss that the timeframes under the Legal Liability section of the policy was acceptable?*"

With regard to Item 3.7, Zurich are thus stating that misleading or deception by Zurich cannot be considered as such if such behaviour is discovered by the claimant. Refer to our discussion on this on page 2 of this document and our response to the Item 3.7.

With regard to Item 3.8 where both parties use the term OBL, find attached:

"190429_response to Zurich Sparke letter 190131",
"130205_17.33 [REDACTED] re legal action commencing_2",
"130211 [REDACTED] re attached PD6"

Item 3.8 contained our explanation and this was described in greater detail in our document of "190429_response to Zurich Sparke letter" (attached) which Zurich basically ignored.

With regard to Item 3.9 find attached:

"181115_ [REDACTED] Letter to insured 15 November 2018", where it states: "*12. The Office Bearer's Liability of the Policy provides, on page 26 of the PDS, that claims **must** be notified within 28 days of the officer becoming aware of the claim.*" [your emphasis]

We initially accepted this as a reason not to proceed with the claim. However, we finally realised Zurich's misleading and deceptive behaviour because TIO's response to our claim was positive and TIO's and Zurich's policy was exactly the same. See attached document "070430_MILLENNIUM STRATA TITLES COMPOSITE INSURANCE 2007" which was exactly the same policy document used by MGA Brokers for the underwriting by both TIO and Zurich.

Even as late as 7/10/20 Zurich is still quoting clauses from the OBL section of the policy in its arguments, stating conditions that are not requirements of a Legal Liability claim. See Item 10.2 of "201018_gj response to Zurich 201007" and page 26 clause 5 of "070430_MILLENNIUM STRATA TITLES COMPOSITE INSURANCE 2007"

Items 12.1 and 12.2 make exactly the same point as Item 10.2 described above. Zurich continues to quote sections of the OBL policy which are not applicable to a Legal Liability claim!

Zurich attempted to deceive by creating fictional requirements in the policy / that there is no provision in the policy containing such terms (requiring notification once court proceedings are commenced).

We ask you to please read Section 4 of the “200108_gj response to Zurich 201007” document where Zurich makes its defence of this misleading and deceptive behaviour claim related to deception by creating fictional terms of the policy or misleading terminology

With regard to Item 4.2 find attached:

“190131_ [REDACTED] response”

By inserting a non-existent clause in Zurich’s denial, another hurdle is established which is not applicable in the circumstances but which any normal consumer may believe is a hurdle that they had not cleared and thus raise the probability of their withdrawal of their claim.

With regard to Item 4.3 find attached:

“190131_ [REDACTED] response

“200422e_letter to ASIC- [REDACTED]

As we state in our letter to ASIC here, there is no such term or any similar term within the Policy.

In fact, Zurich’s agent, [REDACTED], had written the following to us (refer “190131_ [REDACTED] [REDACTED]”: *“It is expected that notice will be given again when a letter of demand is received (in this case on 24 February 2013) and when proceedings were commenced (in this case on 11 February 2014, again when the Writ was received and yet again in August 2015 when the Statement of Claim was issued). This is because if a claim is accepted, the policy provides that Zurich may appoint its own solicitors and handle the conduct and resolution of the proceedings. The policy is clear that no claim should be settled without obtaining Zurich’s prior written agreement (clause 5 page 26 of the policy).”*

Yet none of “notice when letter of demand” nor “notice when proceedings commenced” nor “when Writ was received” nor “when Statement of Claim was issued” are conditions of the policy and yet have been used by Zurich as expectations which we had not met.

Refer also to our answers to Items 4.8 and 4.9 below.

With regard to Item 4.4 find attached:

“190131_ [REDACTED] response”

“130211_ [REDACTED] re attached PD6”

“190429_response to Zurich [REDACTED] letter 190131”,

“130205_17.33_melody to jc re legal action commencing_2”,

As we state, Zurich’s agent [REDACTED] stated: *“whilst notification must be made as soon as possible after circumstances giving rise to a claim become known, it is also important that your insurer be advised when the claim is pursued by way of Court proceedings”*

This is a non-existent clause in the policy. Because we did not notify Zurich when the claim was pursued by way of Court proceedings, we thought that we had therefore failed a clause of the policy.

By inserting such a clause in Zurich's denial, another hurdle is established which is not applicable in the circumstances but which any normal consumer may believe is a hurdle that they had not cleared and thus raise the probability of their withdrawal of their claim.

In Item 4.4 Zurich states that its use of these multiple non-existent "terms" of the policy (outlined in item 4.2) were only being made to emphasise that *"Zurich has the right to take over conduct of the defence on behalf of insureds (where a claim is accepted), that these are the times that a claim is ordinarily notified and that Zurich could clearly only exercise its right to conduct the defence if it was in fact told that proceedings had been commenced."*

And yet as pointed out in Section 5.4 and accepted in Item 8.2, Zurich acknowledges that on 12/6/14 [REDACTED] the Property Claims Advisor of Zurich was provided with our claims information which stated within it: *"7. Other Insurances - Note that [REDACTED] has commenced legal action against the Owners Corporation for recovery of the above damages as well as rental accommodation expenses of approximately \$82,000 and legal fees of approximately \$18,500."* (See attached "140610_claim to whittles").

If this is a commencement of legal action against the Owners Corporation for recovery of the above damages and Zurich had been given notice, then why didn't Zurich respond back to us with whatever further information Zurich wanted? Or recommendations as to what to do? Or in fact all of those requirements which are within Page 13 Section 6 of the claims policy (*"On the happening of any occurrence or event, which may give rise to a claim, you must: (c) notify your intermediary or Millennium Underwriting Agencies Pty Ltd or us in writing as soon as possible"*)

Again, Zurich is using its *"claims are lodged under the Policy as a whole (and not a particular section of the Policy"* – Item 3.1)." when it suits Zurich even when it is in contradiction to its own argument *"notification was not considered to be a claim made under the Legal Liability or Office Bearer's section of the Policy, but was instead a claim for property damage"* – Item 8.3)

With regard to Item 4.5, Zurich attempts to make the point that they recognise that the policy does not explicitly contain a provision requiring notification "when proceedings are commenced" but it is a necessary implication.

As we state, if it is only a consequential implication, why does Zurich not specifically state the exact clause from the policy instead of insinuating "a consequence" is the important and necessary action which should have taken place.

Surely Zurich's legal team and claims processors would understand that a claimant may *"notify your intermediary or Millennium Underwriting or us as soon as possible"* which is a condition of the policy and which we met as explained thoroughly in our 29/4/19 document (refer "190429_response to Zurich [REDACTED] letter 190131"), and yet not notify Zurich "when proceedings are commenced".

This is exactly what happened with us because we had already notified Zurich of the legal action (see "130211_tanya to kerri corey re attached PD6")

With regard to Item 4.6 find attached:

"200422e_letter to ASIC- [REDACTED]"

"190131 [REDACTED] response"

This refers to the statement made by [REDACTED] as a reason for denial and that being *"as you will appreciate, the letter of demand had not been sent by [REDACTED] lawyers at that time and accordingly, the notice was given of a potential claim."* Again, this is not a clause within the policy.

With regard to Item 4.7 find attached:

"130124_cridlands_Unit 8 Action"

"130211 [REDACTED] re attached PD6"

The policy states that: *"you must notify your intermediary (in this case MGA)...or [Zurich] in writing as soon as possible"* and this we did (see 130211_ [REDACTED] [REDACTED] re attached PD6" attached).

Please also read our response to Items 4.8, 4.9 and 4.10 which makes salient points regarding the fact that Zurich state they never received notice and yet in Item 4.7 Note 1 state *"As we address in more detail below, Zurich did in fact receive a notification in 2014 in which reference was made to the proceedings."*

Additionally, Zurich state in Item 4.10 that there is *"no suggestion that the policy contained that particular wording"*. However, as demonstrated above, the wording that has been provided has been sufficient to cause the normal "person in the street" claimant to reason that conditions have not been met and thus that pursuing the claim would be very difficult because conditions of the policy have not been met.

Continuing to discuss fictional terms of the policy created by Zurich and deliberately misleading terminology, we ask you to please read Section 5 of the "200108_gj response to Zurich 201007" document where Zurich makes its defence of this misleading and deceptive behaviour claim related to non-existent terms and misleading terminology and we respond.

Many of these points are the same as Zurich's comments and our response in Sections 3 and 4 of this document which have been covered above.

We again make the point that Zurich states that the OBL section of the policy was referred to purely because *"claims are lodged under the Policy as a whole (and not a particular section of the Policy) and when Zurich assess a claim, they consider all sections of the Policy."*

However, as we have stated,

1. our claim (as shown in Item 3.1) above stated categorically that it was a Legal Liability claim (refer attached "180228_Zurich Liability Claim_Summary" document), and

2. if Zurich did treat the policy as a whole and would thus have “considered all sections of the Policy”, Zurich would have stated in the response what the timeframe was for a Legal Liability claim and as such would have stated the applicable timeframe clause of the policy which was on page 13 Item 6: *“On the happening of any occurrence or event, which may give rise to a claim, you must: (c) notify your intermediary or Millennium Underwriting Agencies Pty Ltd or us in writing as soon as possible,”* (See attached “070430_MILLENNIUM STRATA TITLES...” document.

In fact, this section of the policy actually continues: *“... or us in us in writing as soon as possible, but if claiming under the cover section – Office Bearer’s Liability, notification must be during the period of insurance and within 28 days after expiry;”*

If Zurich is not attempting to mislead or deceive, then it would have stated the complete part of this claims procedure on page 13 and not just the second part of the clause which only related to OBL and which Zurich stated we did not satisfy.

With regard to Item 5.3 and 5.4 please see our response in the attached “201008_gj response to Zurich 201007” document.

Item 8.3 demonstrates a further disingenuous aspect of Zurich’s response.

Zurich states that it “overlooked” the fact that we had notified Zurich of the commencement of legal proceedings correctly (refer “140610_claim to whittles” Item 7 – note that claim was sent to Zurich even though it noted TIO at the top as Zurich stated in Item 8.2 Footnote 2) because Zurich believed that notification was made under a property damage section of the policy. And yet in Items 3.2 and 5.2 Zurich states the point that *“claims are lodged under the Policy as a whole (and not a particular section of the Policy). When Zurich assess a claim, they consider all sections of the Policy.”*

We ask AFCA, surely Zurich cannot have this both ways – overlooking a notification of commencement of legal proceedings within a property claim when Zurich also states it examines all claims under all of the policy?

In Item 8.5 Zurich apologises for not noticing that we had already notified them of the commencement of legal action. And yet, prior to this date, [REDACTED], as Zurich’s agent, has told us that one of the main reasons for the claim denial is that Zurich has been “prejudiced as a result of late notification” (see “181115_[REDACTED] Letter to insured 15 November 2018” Items 9 – 17), that *“Zurich were not notified of the claim at the time it became a litigated claim (and any legal fees the Proprietors chose to incur without Zurich’s prior approval are not covered under the Policy”* and *“Zurich was prejudiced in its ability to investigate and defend the claim as a result of the failure to notify when proceedings were commenced (including because it is now unable to pursue other parties to contribute to any settlement))”* (see “190131_[REDACTED] response” Items 5c, 5d)

Zurich’s consideration of the claim under the Office Bearer’s Liability section of the Policy (when the Proprietors had referred to it as a Legal Liability claim) was deceptive.

Refer above.

Zurich unreasonably delayed the handling of the claim.

Please refer to Section 6 within the 201008_gj response to Zurich 201007” document.

Our view is that Zurich exercised misleading and deceptive behaviour by trying to extend this whole process out; by totally ignoring the documented and evidentiary points we made in our responses including that of 29/4/19 and continually refusing to acknowledge salient points we made. Perhaps there was an expectation by Zurich that Zurich would “wear us out” or if we were dissatisfied and employed legal assistance, that we would soon run out of funds in taking Zurich on in a legal battle. This is one of the reasons we finally settled with Zurich, albeit at a lesser negotiated settlement than we believed we should have received.

We thus come to AFCA to assist us in understanding such behaviour.

Zurich’s lawyers dismissed the complainant’s letter dated 29 April 2019

We do not state that Zurich’s lawyers dismissed the complainant’s letter dated 29 April 2019.

We state that Zurich themselves dismissed the whole content of that response (refer “190816_zurich 2nd denial”).

Section 7 covers “Dismissing our Document”. This refers to the document we sent to Zurich on 29/4/19. Refer attached:

“190429_response to Zurich [REDACTED] letter 190131”

“190816_zurich 2nd denial”

We have left this in the category of misleading and deceptive behaviour because in further communication with Zurich on a number of matters, Zurich simply ignored the items that we had covered within that document and by not acknowledging all of the information we had provided in that letter, forced us to go back and make all of those points again.

In Zurich’s response of 1/8/19 (refer attached “190816_zurich 2nd denial”): *“We have received your detailed letter of 29 April 2019 and do not propose to address all the issues outlined therein.”*

In fact, there was not one single point of any of the points of our 65-page document to which Zurich replied. We make the point in Item 6.5 that *“We are now a further 12 months down the track and already a number of points which Zurich have made in the initial denial of the claim have had to be withdrawn by Zurich. If Zurich had of genuinely looked at our 29/4/19 documentation, we could have bypassed a significant amount of wasted time on both sides. Hence our complaint to AFCA concerning “Dismissing Our Document””.*

In Item 6.9 Zurich states *“Zurich endeavours to process matters promptly and efficiently, however given the issues raised in the 65-page submission, it did take some time to consider the issues raised, receive advice, to determine the appropriate response and to formally respond.”* And yet in its response of *“190816_zurich 2nd denial”* you can verify that Zurich does not answer one single point which we raised in that document. In fact, Zurich’s response to the facts and evidence raised in our 65-page submission is a 1-page response stating *“We have received your detailed letter of 29 April 2019 and do not propose to address all the issues outlined therein.”* and then proceeding to not address one single point raised.

If you please read Zurich’s response (*“190816_zurich 2nd denial”*) and see the brevity of this letter as a response to our document *“190429_response to Zurich Sparke letter 190131”*, we believe that you must agree that if it is not misleading and deceptive, then it borders on the unethical.

In communication between Zurich and us following the 16/8/19 Zurich response, we have had to refer to points again and again that have been made within this 29/4/19 document which we should not have had to refer to if Zurich had of read the document and responded to it.

As an example, refer to Items 3.8, 4.4, 8.4, 8.6, 9.3, 9.4, 9.5, 9.6, 9.7, within this *“201008_gj response to Zurich 201007”* document; e.g. *“we are not claiming for the damage or consequent legal liability related to the structural defects / Main Bedroom wall.”*, a point made multiple times in the original 29/4/19 document attached.

So, to comment now that it took *“some time to consider”* when it had not addressed one single issue, and respond with a 1-page document, really does arouse an angry response from our Body Corporate.

The complainants want AFCA to take action against Zurich. This includes notification to ASIC, the ICA and the CGC, and confirmation of what action they will take.

As discussed at the commencement of this response, we no longer require this.

We have already outlined to AFCA that we simply wish to establish whether this behaviour by Zurich is considered as misleading and deceptive behaviour or not. Again, we make the distinction that this behaviour by Zurich was attempting to mislead and deceive us into accepting the Zurich decision of denial.

Our purpose in pursuing this is to determine if AFCA judges this behaviour of either misleading and deceptive behaviour or attempted misleading and deceptive behaviour as lacking ethics and to based on its determination, to ascertain what APRA may look to do to limit such misleading and deceptive behaviour in the future with all Insurers. Should AFCA determine not to let us know the answer to this, then we must accept that.

Issues we will investigate

The issues we will investigate are:

1. Has the insurer engaged in misleading and deceptive conduct?

As stated above, we contend that Zurich has attempted to mislead and deceive and that the only reason that this did not succeed was that after we had accepted the denial and were prepared to not pursue the claim further, one of our Body Corporate members pointed out that the reasons Zurich had denied our claim were not actually reasons within the policy but were either conditions/reasons created by Zurich, or reasons/conditions which were not within the actual section of the policy that we were applying under. The fact that TIO was positive in its response to our claim and yet used exactly the same underwriting policy also verified this.

2. Do the insurer's actions constitute a systemic issue or serious contravention

We believe that this behaviour is common in the Insurance Industry and certainly common in Zurich's claims negotiations.

We would hope that should AFCA consider that this behaviour is not ethical and is contrary to AFCA's Constitution and Code of Practice, that it would notify insurers that such behaviour is not acceptable. But that is our hope, not demand.

3. Has the insurer unreasonably delayed the handling of the claim?

Refer to above.

4. What loss has stemmed from the insurer's conduct.

As we have already stated in our AFCA complaint of 22 August 2020, we are not looking for compensation or return of loss.

Our approach to some of the issues you have raised

Misleading conduct

AFCA can investigate a claim that an insurer misled an insured and caused them to suffer loss.

We have already stated in our initial complaint to AFCA on 22/8/20 that we are not seeking compensation or claiming a loss. Certainly the false wording by Zurich caused us to originally cease to proceed with our claim and may have led to us accepting a lesser amount as compensation in our agreement with Zurich, but we are not looking to recover this.

We have pointed out the attempted misleading and deceptive behaviour of Zurich to ASIC, ICA and the CGC and all have referred us to AFCA on such an ethical issue.

If AFCA is now saying that it cannot pursue this case because such misleading and deceptive behaviour by Zurich did not cause any loss or was only an attempted misleading and deceptive behaviour and not actual misleading and deceptive behaviour because it was discovered by us, then please let us know immediately.

Should this be AFCA's view, it would appear to be in direct contradiction of AFCA's Constitution Section 2.1.(h) to "foster and promote sound and ethical business practices in the Industry" or its Code of Practice to "set standards of good industry practice for financial firms when dealing with people who are, or who may become, individual or small business customers in areas relating to: service provision, standards of professional conduct, practice standards, ethical behaviour."

Also, does this mean that AFCA cannot investigate a claim where the insurer has misled an insured but the insured has discovered such deception and yet still the insured does not accept that it has attempted to mislead and/or deceive and subsequently there was not financial loss suffered, only an extraordinary amount of additional time required by the insurer to pursue the case?

AFCA is not a court of law. We cannot take or test evidence on oath, or require third parties to give evidence. Instead we consider:

- available documents
- the recollections of the parties
- all relevant circumstances, including the insured's conduct.

We give more weight to written records created when the alleged conduct took place. If there are no records, we will decide what is most likely to have occurred based on the information we receive.

Because of this we have attached all original documents where they are referred to within our response.

If there are conflicting recollections and these are evenly weighted, we may find that an insured cannot establish the misleading conduct occurred.

The remedy is not to make the misrepresentation come true. However, if we find the insurer misled the insured, we will assess how much worse off they are because of the misrepresentation.

Delay in claim handling

There are no standard timeframes set down for the processing of claims. However, insurers are required to operate in accordance with the General Insurance Code of Practice.

When considering if an insurer delayed processing an insurance claim, AFCA will look at whether:

- the insurer acted fairly and promptly to resolve the claim
- there has been an unreasonable delay
- there were factors which were outside the control of the insurer or otherwise unavoidable
- the insured's actions caused or contributed to the delay.

If we decide the insurer unreasonably handled or delayed the claim, we will look at what loss (if any) stemmed from that conduct.

Our role

AFCA is a complaint resolution service offered as a free alternative to the courts. We are not a regulator of the financial services industry. We can consider individual complaints regarding loss or damage caused by an insurer's actions.

As per our points made above, we are not pursuing recovery of loss or damage. We are making a complaint to AFCA due to the actions of Zurich in our claims case being perceived as attempted misleading and deceptive behaviour.

AFCA's Code of Practice and Constitution refer to AFCA looking to uphold ethical behaviour within the Industries under its purview.

ASIC, the ACCC, the ICA and the GCR have specifically referred us to AFCA on this matter of attempted misleading and deceptive behaviour by Zurich - hence our raising this issue with AFCA now.

If this matter is not within AFCA's purview and yet AFCA does view it as an ethical issue, then please let us know which person or organisation to contact in this regard.

The purpose of AFCA is not to punish or impose a fine on an insurer. We do not have the power to review a general practice unless the practice breaches a specific duty or obligation, or it is not consistent with industry practice. Organisations such as the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) have a role in consumer protection and the regulation of the financial services industry.

Again, if this matter is not within AFCA's purview and yet AFCA does view it as an ethical issue, then please let us know which person or organisation to contact in this regard.

As stated above, ASIC has already referred us to AFCA when we wrote to them on this matter.

Our Rules define the types of complaints we can consider. Our Rules can be located on our website: <http://www.afca.org.au>.

Information we need from you by 4 March 2021

To help me consider the complaint, I need more information from both you and Zurich and will need to receive it from you in 14 days.

1. Is my understanding of the complaint correct? If not, please provide reasons.

Please see notes above.

2. What loss have you suffered as a result of the insurer's actions?

Please see notes above.

3. Do you acknowledge AFCA is not an insurance regulator and cannot take the specific action against the insurer requested by you?

In our original complaint on 22 August 2020 we stated that we thought a fair and reasonable outcome is that "AFCA agrees that this is misleading and deceptive behaviour and takes action against Zurich. Further, notification to ASIC, the ICA and CGC that this has occurred and what action they will take."

Since then, we have come to an agreement with Zurich in settling the original claim and modified what we would seek as a fair and reasonable outcome.

We have stated in the last telephone conversation with AFCA that we feel a fair outcome would be for AFCA to let us know whether they perceive this behaviour by Zurich as misleading and deceptive behaviour or attempted misleading and deceptive behaviour and that AFCA would themselves notify whatever bodies would be appropriate (that may be ASIC?, ICA?, ACCC?, CGC? or other) that this sort of behaviour is not acceptable. As we have outlined above, if it is not AFCA's role to do this then please let us know who or what organisation we should notify.

The actions I am requesting AFCA to take would thus be that this is attempted or actual misleading and deceptive behaviour and that I am notified by AFCA that AFCA agrees with me. Additionally, I would have thought it would have been good practice for AFCA to then notify Insurers that they cannot attempt to mislead and deceive claimants by knowingly quoting sections of a policy which do not apply or creating conditions which are not within the policy in order to attempt to have the claimant cease their claim. Again, if AFCA feels it is on its role to do this, then please let us know whose role it is. We have already been referred to AFCA by ASIC, the ICA and the CGC

4. Do you acknowledge that any such action by AFCA may be notification to ASIC of a systemic issue or serious contravention if it is warranted?

It appears as though you are stating that if AFCA feels this behaviour is a "one-off" misdemeanour by Zurich that there would be no need to notify ASIC of such behaviour. On the other hand, if AFCA feels this is a systemic issue or serious contravention by Zurich then ASIC would be notified?

From my dealings with Zurich and its agent in our claim, I have definitely formed the viewpoint that this is a common means that both organisations employed in order to persuade claimants into withdrawing their claim. Perhaps you can let me know whether you have any similar complaints by other claimants against any insurers where the insurer has created terms not existent in the policy or used terms within the policy that are not relevant to the type of claim being made?

I am trusting that if AFCA believes this is attempted or actual misleading and deceptive behaviour by Zurich in contravention of the ethics basis on which AFCA's Constitution and Code of Practice is based, that AFCA would notify any or all of the relevant agencies (including ASIC or ACCC etc), not with a view to enforcing any punitive judgement, but to ensure that future defences of Insurers against any claims do not use any similar strategies or actions.

5. Do you acknowledge AFCA cannot advise you what action ASIC, the ICA or CGC will take as they are separate regulatory entities?

We understand that AFCA cannot advise what action ASIC, the ICA or the CGC will take since they are separate bodies. However, we would appreciate AFCA letting us know if it has at least notified these bodies or any other bodies of such misleading and deceptive behaviour occurring.

6. Provide the responses to your letters to ASIC, the ICA and the CGC.

Please see attached. As you can verify, each of these organisations have referred me to AFCA and hence my notification to AFCA with this case.

7. Did Zurich provide a response to your reply to its IDR letter?

Please see Zurich letter dated 7/10/20 ("201007_zurich response to gj_200825_AFCA case 750475. IDR Response Letter" and my response dated 8/10/20 ("201008_gj response to zurich 201007"). Zurich did not respond to my 8/10/20 response.

8. Any further information you wish for AFCA to take into account when considering this complaint.

Please let me know if there is anything further information you require or needs clarification.

Any questions?

Please see the attached fact sheet on the full process your complaint will follow. You can also find our other fact sheets and policies, such as on handling personal information and resolving complaints, on our website: www.afca.org.au/publications.

If you have any questions or want more information about this complaint, please quote the case number when you:

- call: +61 3 9613 6364 or 1800 931 678
- [REDACTED]

Yours sincerely

[REDACTED]

Case Manager
Australian Financial Complaints Authority

Name: Proprietors Of Unit Plan 2000/89
Address: c/- Gary Jackson

[REDACTED]
[REDACTED]
[REDACTED]

Date: 7 October 2020

Dear Mr Jackson

Applicant: Mr Gary Jackson & Ms Christine Gregg

Insured: [REDACTED]

Risk Address: [REDACTED]

Financial Firm: Zurich Australian Insurance Limited

Policy No: 352983735GST

Claim No: 35 3595986

AFCA Case No: 750475

Insured Event: property damage to Unit 8 alleged to have been a result of failures on the part of the officers of the body corporate to attend to work required to common property, culminating in proceedings being issued against the Proprietors of Unit Plan 2000/89 by the Unit Holder [REDACTED]
[REDACTED]

Date of Incident: property damage the subject of proceedings occurred between 2004 and 11 February 2014
Proceedings commenced against the Proprietors for the alleged failure to address the underlying issues said to have resulted in the property damage on 11 February 2014

1. The Claim

1.1. On 28 February 2018, the Proprietors notified a claim seeking reimbursement of the settlement sum paid to Ms Kennedy and the legal fees incurred by the Proprietors in dealing with the proceedings commenced by [REDACTED] (the Claim).

Firstly, as we have already submitted within our complaint to AFCA, this complaint case number 750475 to AFCA is not regarding the outcome of the Legal Liability claim which is currently in discussions with Zurich. This complaint to AFCA is purely in relation to what we consider is Zurich's misleading and deceptive behaviour during the processing of this case in order to have our Body Corporate believe that we did not satisfy (non-applicable) terms of the policy and hence to more likely reach a conclusion that it would be futile to continue to pursue the claim.

2. Applicant's Particulars

2.1. We refer to the complaint summary emailed to Zurich on 25 August 2020.

2.2. The complaint made by you and [REDACTED] made reference to correspondence sent to ASIC, the Insurance Council of Australia and the Code Governance Committee, (but did not annex that correspondence or provide the details of the issues raised).

This was an oversight on our part. When Zurich told us that the documents had not been provided to AFCA, we contacted AFCA immediately and provided those documents to both AFCA and Zurich

2.3. On 18 September 2020, we received the correspondence written by you to ASIC and the Insurance Council of Australia, which we understand provides the complete particulars of your concerns.

As described in Item 2.2. above as well as the actual Complaint Summary which you would have received originally from AFCA. This confirmed that this complaint was not regarding the outcome of the Legal Liability claim as indicated in Item 1.1 above.

- 2.4. We refer to your letter to ASIC dated 22 April 2020 and to your letter to the Insurance Council of Australia dated 21 April 2020 which raise the following issues and allegations:
- a. “Attempting to Deceive By Stating Specific Terms Which We Have Not Met But Which Zurich Knows Are Not Applicable” (to ASIC);

“Attempting to Deceive By Stressing Specific Deadlines Which We Have Not Met But Which Are Not in the Policy” (to the Insurance Council of Australia);
 - b. “Attempting to Deceive By Stating Specific Terms Which We Have Not Met But Which Zurich Knows Are Not Applicable” (to ASIC);
You’ve already stated this in 2.4.a already?

“Attempting to Deceive By Creating Fictional Requirements of the Policy Which We Do Not Satisfy” (to the Insurance Council of Australia);
 - c. “Attempting to Deceive By Creating Fictional Terms of the Policy” (to ASIC);

“Deliberately Misleading Terminology in Respect of the Claim” (to the Insurance Council of Australia);
 - d. “Three and a Half Months to Respond” (to ASIC and the Insurance Council of Australia);
 - e. “Dismissing our document” (to the Insurance Council of Australia);
 - f. “Our Formal Notification to Zurich Which Zurich Denied And Then Zurich Refusing to Acknowledge Our Evidence To the Contrary” (to ASIC);
- 2.5. In addition to the letter to ASIC and the Insurance Council of Australia, we were also provided with an undated letter to Ms Stewart of the Code Governance Committee which appears to be in response to a letter from the Code Governance Committee to the Proprietors dated 6 July 2020 (but we do not have a copy of that response). We have therefore not addressed any issues outlined in that correspondence. We assume that the original correspondence sent to the Code Governance Committee mirrored the issues raised in the other two letters.
Apologies that there was no date on the communication with [REDACTED]. This was a copy of the email that was sent on 17/7/20
- 2.6. Before we turn to address the issues raised, we note for the sake of clarity that Sparke Helmore Lawyers were appointed by Zurich to provide advice with respect to this claim and that many of the references to ‘Zurich’s’ representations or conduct relate to correspondence with Sparke Helmore Lawyers.
We have already made the point to Zurich [REDACTED] were appointed by Zurich to act on their behalf as Zurich’s agent in responding to our claim. In fact, when I contacted Zurich to complain about the fact that [REDACTED] were not responding within agreed timeframes, I was told by [REDACTED] on 4/7/18 that “Please note that [REDACTED] have conduct of this matter on Zurich’s behalf. Accordingly, Zurich would not provide you with separate updates in addition to contact you have with [REDACTED] (see 180704_ [REDACTED] act on Zurich behalf). We therefore do not expect that Zurich will pass the blame on to [REDACTED] in these proceedings.
3. **“Attempting to Deceive By Stating Specific Terms Which We Have Not Met But Which Zurich Knows Are Not Applicable” (to ASIC);**

“Attempting to Deceive By Stressing Specific Deadlines Which We Have Not Met But Which Are Not in the Policy” (to the Insurance Council of Australia)

- 3.1. You assert that Zurich's conduct was misleading and deceptive in that it made reference to the timeframe applicable under the Office Bearer's Liability section of the Policy, when the Proprietors wished for the claim to be considered under the Legal Liability Section of the Policy.

This is a slightly misleading statement. You would know from our 29/4/19 document that at the time of originally becoming aware of the legal case actioned by ██████ against our Body Corporate, no one on our Committee knew whether our Insurance Policy would insure us against this case or not. You can see this in the past emails we have highlighted within the 29/4/19 document. If you are not aware of this, then this would support our point to AFCA regarding Zurich's "Dismissing Our Document".

The first mention of which section of the policy the legal case would come under appears to be on 11/2/13 (see "130211_█████..." attached) when, following our request on 5/2/13 (see 310205_17.33..)for ██████ to notify the insurers re legal action commencing, Whittles wrote to Zurich's intermediary MGA: "Please note that there is the possibility of a claim being lodged against the officer bearers' liability based on the attached" to which was attached the legal letter. MGA continued to use the terminology of Office Bearer's Liability (OBL). I believe it was not until TIO and TIO's lawyers worked with us in attempting to minimise the legal payout, that we were told that this claim came under the Legal Liability section of the Policy. However, when we submitted a Legal Liability claim to Zurich on a Legal Liability claim form, the OBL 28-day notification exclusions clause was used to confirm that we had not met the condition of the policy.

- 3.2. Zurich notes that claims are lodged under the Policy as a whole (and not a particular section of the Policy). When Zurich assesses a claim, they consider the application of all sections of the Policy.

This argument does not make sense. If Zurich truly examines all aspects of the policy on the receipt of any claim, then why would Sparke (as Zurich's agent) quote us a term from the OBL section of the policy which would exclude us from a successful claim and yet not state that we did meet the time limits of the Legal Liability section of the policy.

Why is it that our claim was at first denied IN TOTAL due to not meeting the 28-day deadline for the OBL component of the policy?? Zurich either examined only the OBL component of the policy and stated we could not claim due to not meeting the 28 day deadline and did not examine the applicability of the Legal Liability section of the claim OR if Zurich examines all of the elements of the policy (as did TIO with our claim) then why did it not comment at all on this component of the policy especially when there was mention of the legal liability case within the information provided?

On 12/6/14 (see "140612_claim with legal....") ██████ the Property Claims Advisor of Zurich was provided with our claims information in which we had stated:

"7. Other Insurances - Note that ██████ has commenced legal action against the Owners Corporation for recovery of the above damages as well as rental accommodation expenses of approximately \$82,000 and legal fees of approximately \$18,500." (See attached "140610_claim to ██████").

How can Zurich claim that its intermediary (MGA) or Zurich itself was not notified?

- 3.3. In response to the claim, Zurich noted the very late notification (five years after the initial letter of demand had been received by the Proprietors and four years' after the proceedings were first commenced against them).

Immaterial in relation to our complaint to AFCA re Zurich misleading and deceptive behaviour.

- 3.4. In particular, reference is made to a letter from ██████ Lawyers dated 15 November 2018, which has been quoted (in part) in the letters to ASIC and the Insurance Council of Australia. Mr Jackson says in those letters that "In its response of 15/11/18. Zurich responded: "the Policy provides, on page 26 of the PDS, that claims must be notified within 28 days of the officer becoming aware of the claim."

Agree

- 3.5. The relevant paragraph of the letter from ██████ Lawyers to the Proprietors dated 15 November 2018 in fact provided:

The Office Bearer's Liability of the Policy provides, on page 26 of the PDS, that claims must be notified within 28 days of the officer becoming aware of the claim.

[our emphasis]

Agree

- 3.6. Zurich does not believe the above statement was misleading or deceptive. It was made clear that the timeframe related to the Office Bearer's section of the Policy.

If this is the case and as you say in 3.2 above, Zurich reviews all claims with regard to all aspects of the policy, then why did your total response then not continue to discuss that the timeframes under the Legal Liability section of the policy was acceptable? As you are aware, the timeframe within the Legal Liability section of the policy is "as soon as possible" and we met this condition. Examining all sections of the policy including OBL and Legal Liability is exactly what TIO did with our submission and yet Zurich totally ignored this section.

- 3.7. The Proprietors were not misled or deceived in fact because they pointed this out in the (undated) responding correspondence sent to Zurich on 29 April 2019.
That is absolutely correct.

Our complaint to AFCA is not that Zurich successfully misled or deceived us.

Our complaint to AFCA is that Zurich *attempted* to mislead and deceive us. If we had simply accepted Zurich's statements in regard to the 28-day limit, we would have had to accept that we did not satisfy the requirements of the policy and reluctantly withdraw our claim.

And in Zurich's initial denial of the claim to us, that is exactly the tactic that Zurich () used. By stating that we had failed the OBL time limit of 28-day notification, it was only when we compared to the discussions that we had had with TIO that we realised this was not an applicable section of the policy for the Legal Liability case.

- 3.8. It is noted that in correspondence between the parties, both made reference to the Office Bearers section of the Policy (given that the allegations made by Ms () related to a failure on the part of the officers of the Proprietors to take steps to fix the common property, thereby causing additional damage to her unit) and neither side corrected the other.

We have been through this a number of times with you. In fact, we provided a great deal of detail in our letter of 29/4/19 which supports our complaint to AFCA of Zurich "Dismissing our Document".

We have emphasised in our correspondence that this is one of the main items of misleading behaviour.

Yes, in the initial stages of attempting to ascertain from Zurich's intermediary MGA which sections of the policy were applicable for the legal case which was arising with () we were told it was the OBL section of the policy.

When we initially lodged notification that there was a potential Legal claim against the Owners Corporation, Zurich's Intermediary MGA accepted this as an Office Bearers Liability claim and not a Legal Liability claim. (See attached "130205_17.33_melody to jc" and "130211_ ()"). Even though the full legal letter was attached to that email, Zurich's intermediary MGA never corrected the nomenclature by referring to the Legal Liability section instead of the OBL section. We accepted what we were being told by MGA that the relevant section of the policy was OBL.

- 3.9. There was no attempt to deceive the Proprietors and they were not misled.

Absolutely false. If this was the case then why would Zurich's agent () use the OBL 28-day time limit as a reason for denial in their letter of 15/11/18 (see "181115_ ()" attached); Item 12 of page 2 stating:

"12. The Office Bearer's Liability of the Policy provides, on page 26 of the PDS, that claims must be notified within 28 days of the officer becoming aware of the claim."

[your emphasis]

Fortunately, we were not misled because we had seen TIO's response to our claim and noted that TIO's policy and Zurich's policies were identical.

Our complaint to AFCA is not that we were misled or deceived. Our complaint is the fact that Zurich attempted to mislead and deceive.

Your statement here *"There was no attempt to deceive"* is totally false.

4. "Attempting to Deceive By Creating Fictional Terms of the Policy" (to ASIC);

"Deliberately Misleading Terminology in Respect of the Claim" (to the Insurance Council of Australia);

4.1. You assert that Zurich attempted to deceive by creating fictional requirements in the Policy.

Agree

4.2. In particular, you refer to the letter from [REDACTED] Lawyers to the Proprietors dated 31 January 2019 which said:

As you will appreciate, whilst notification must be made as soon as possible after circumstances giving rise to a claim become known, it is also important that your insurer be advised when the claim is pursued by way of Court proceedings. As the policy makes clear, it will then be up to Zurich to appoint solicitors to either defend or seek to resolve the claim (or to provide advice to Zurich as to whether another party should be joined to the proceedings).

[REDACTED] are using this as an argument to deny the claim.

If a normal consumer looked at that statement: *"is also important that your insurer be advised when the claim is pursued by way of Court proceedings"* they would not be blamed for assuming that they have not met a condition of the policy if they did not notify when the claim is pursued by way of Court proceedings.

If this is not the case, then why would you include this statement in your reasons for denial?

If Zurich was being honest and open about this and looking to examine all aspects of the policy whenever a claim is submitted as you purport in Item 3.2 above, would you not state: *"refer to the policy at page 13 Section 6 where it states: "you must notify your intermediary or Millennium Underwriting or us as soon as possible"?*

By inserting this clause in your denial, you are establishing another hurdle which is not applicable in the circumstances but which any normal consumer may believe is a hurdle that they had not cleared and thus raise the probability of their withdrawal of their claim.

It appears as though Zurich's strategy is to place as many of these "false hurdles" as is possible in their denial in the hope that the poor consumer will simply accept that he has not met the condition.

4.3. You point out in your letter to ASIC dated 22 April 2020 that there is no provision in the policy containing such terms (requiring notification once court proceedings are commenced).

Agree

4.4. The point that was being made in the paragraph quoted above was that Zurich has the right to take over conduct of the defence on behalf of insureds (where a claim is accepted), that these are the times that a claim is ordinarily notified and that Zurich could clearly only exercise its right to conduct the defence if it was in fact told that proceedings had been commenced.

Zurich does not need to "be advised when the claim is pursued by way of Court proceedings" in order to "take over conduct of the defence...".

If Zurich has already been notified of legal proceedings prior to the conducting of a defence, then would not Zurich be wanting to step in and guide the Body Corporate through the legal liability case?

If Zurich or its intermediary is notified at any time of the potential for an upcoming legal case to be taken against its insured, would not Zurich or its intermediary have a set of standard procedures which would then be communicated to the insured so that there is the minimum of "slip-ups".

We communicated with Zurich's intermediary MGA a number of times with regard to this case. If MGA, as Zurich's intermediary, was aware of the legal liability case, then surely there would normally be communication between MGA as Zurich's intermediary and the Body Corporate to ensure that the legal liability is minimised? If Zurich doesn't provide these procedures itself then surely it would have provided its intermediary MGA with these procedures to set in motion once notice of a legal liability case arose??

Note that we now understand that although MGA were notified of the Legal Liability case a number of times (eg email "130211_ [REDACTED]" and other occasions as provided in correspondence including 29/4/19 document), MGA didn't notified Zurich of this fact until the information was passed through on 12/6/14. MGA only recently confirmed with us that Zurich was not notified of the legal case when we notified MGA on 5/2/13. This still does not stop the fact that the policy states that we are to notify the intermediary (MGA) or Zurich "as soon as possible", which we did (to MGA).

- 4.5. There is no suggestion that the policy explicitly contains a provision requiring notification when proceedings are commenced. However, that is a necessary implication of Zurich's right to conduct the defence on the part of the insured.

Yes, it is true that the policy does not explicitly contain a provision requiring notification when proceedings are commenced. THAT is exactly the point that we have made in 4.2 above. However, the statement has been used in order to attempt to convince the insured that they have failed a condition of the policy and thus increase the probability that the insured will withdraw the claim.

As noted in Item xxx, if Zurich was already aware of the legal claim, what actions did Zurich take to reach out to our Body Corporate?

- 4.6. You also say in your letter to ASIC dated 22 April 2020 "Yet when we notified Zurich PRIOR to the actual Legal Liability case commencing, Zurich stated in response that our prior notification of a claim to Zurich was only "notice given of a potential claim" and therefore did not satisfy the terms of the PDS!!".

Correct

- 4.7. We assume that this is a reference to the demand letter sent to the Proprietors by [REDACTED] lawyers dated 24 January 2013. To be clear, Zurich does not admit that it was given notice of this letter. In Mr Jackson's (undated) letter to Zurich provided on 29 April 2019, he says (on page 56 in the third paragraph) that he notified MGA Insurance brokers (ie, the Proprietors agent) on 11 February 2013.¹

The policy does not require that we give notice *to Zurich* "as soon as possible". The policy states that: "you must notify your intermediary (in this case MGA)...or [Zurich] in writing as soon as possible" and this we did.

This notification was done (see "130211 [REDACTED]" Attached)

¹ As we address in more detail below, Zurich did in fact receive a notification in 2014 in which reference was made to the proceedings.

- 4.8. The letter to ASIC dated 22 April 2020 goes on to say: "Zurich then stated: "it is expected that notice will be given again when a letter of demand is received and when proceedings were commenced, again when the Writ was received and yet again when the Statement of Claim was issued." [underlines our emphasis]. Zurich used the above exact words to state why our claim was denied under the terms of the PDS."

Again, these are conditions that are not within the policy but are conditions which, if the insured did not satisfy, would further them to believe that they could not be successful in their claim and give a greater probability that the claimant would not proceed with the claim.

As stated in 4.4 above, surely Zurich or its intermediary (MGA in this case), if aware of the legal liability claim occurring, would step in and assist with the case or at least provide initial guidelines or processes which must be met. If Zurich was aware of the case (as it states in sub-note (1) of section 4.7 above, then why did Zurich not then make contact with the Body Corporate??

- 4.9. For the sake of clarity, the above was intended to address the issue of late notification (which might have caused prejudice to Zurich if the policy had responded to the claim).

It is purely a misleading set of statements to make in response to a claim and has the effect, whether purposefully or not, of coercing the claimant into believing that they have failed the conditions of the policy thus giving to Zurich a greater probability that the insured will withdraw their claim.

Further, if the above points are made to address the issue of late notification, why would they be used in a Sparke response in November 2018 when Zurich was aware of the claim in 2014? If Zurich was aware in 2014, this was when the proceedings were commenced! So why would Zurich or its agent █████ insert these items as bona fide reasons for the denial?

- 4.10. There was no suggestion that the policy contained that particular wording.
As per all items above, that is not the point. You have provided that wording as reasons for the denial in a response to the claim in order to attempt to deceive the claimant into believing that they have not satisfied a (fictional) term of the policy.

5. **“Attempting to Deceive By Creating Fictional Terms of the Policy” (to ASIC);**

“Deliberately Misleading Terminology in Respect of the Claim” (to the Insurance Council of Australia)

Aren't these two headings exactly the same as Heading (4) above?

- 5.1. You assert that Zurich's consideration of the claim under the Office Bearer's Liability section of the Policy (when the Proprietors had referred to it as a Legal Liability claim) was deceptive.

Agreed. See Item 3.9 above.

- 5.2. As noted above, claims are lodged under the Policy as a whole (and not a particular section of the Policy). When Zurich assess a claim, they consider all sections of the Policy.

Refer 3.2 above, especially the point that Zurich (or agent Sparke) conveniently examined the 28-day limit exclusion of the OBL section of the policy but conveniently forgot to mention the Legal Liability section of the policy which has no such limit but: *“as soon as possible”* which is a condition that we had satisfied.

- 5.3. Zurich did consider the claim under the Legal Liability section of the Policy and concluded that that claim was not covered (irrespective of when the claim was notified).

That is exactly our point. Zurich did not consider the Legal Liability section of the policy even though the claim was submitted on a form entitled “Liability Claim Form” (28/2/18 attached)

There was no discussion at all within the Zurich denial of the timeframes of the Legal Liability section of the policy. The only time frame used by Zurich was the 28-day exclusion which Zurich said did apply.

And if it is actually true that Zurich did conclude that the claim was not covered irrespective of when the claim was notified, then why would Zurich (Sparke) insert the OBL 28-day limit in the first place? If you say it is because it is an additional item of denial, then why would you also not indicate the timeframe for the Legal Liability section of the policy.

- 5.4. Zurich was not intending to mislead the Proprietors but was considering the claim under all applicable sections of the Policy, as is its practice.

Absolutely false. See Items 3.2, 3.9

You have repeated the question so we will repeat the answer.

If Zurich truly examines all aspects of the policy on the receipt of any claim, then why would █████ (as Zurich's agent) quote us a term from the OBL section of the policy which would exclude us from a successful claim and yet not state that we did meet the time limits of the Legal Liability section of the policy.

Why is it that our claim was at first denied IN TOTAL due to not meeting the 28-day deadline for the OBL component of the policy?? Zurich either examined only the OBL component of the policy and stated we could not claim due to not meeting the 28 day deadline and did not examine the applicability of the Legal Liability section of the claim OR if Zurich examines all of the elements of the policy (as did TIO with our claim) then why did it not comment at all on this component of the policy especially when there was mention of the legal liability case within the information provided and Zurich was aware in 2014?

And why would it be the case that we lodged the claim with MGA (Zurich's intermediary) with the incorrect Building & Contents Claim form and yet even with the description of the legal case within it, Zurich does

not consider the Legal Liability section? If what you say is true and Zurich considers any claim under all sections of the policy, why is it that Zurich or MGA did not come back to the Body Corporate in regard to the Legal Liability case. How did Zurich miss this?

On 12/6/14 [REDACTED] the Property Claims Advisor of Zurich was provided with our claims information in which we had stated:

"7. Other Insurances - Note that [REDACTED] has commenced legal action against the Owners Corporation for recovery of the above damages as well as rental accommodation expenses of approximately \$82,000 and legal fees of approximately \$18,500." (See attached 140610_claim to whittles").

How can Zurich claim that its intermediary (MGA) or Zurich itself was not notified?

6. "Three and a Half Months to Respond"

6.1. You assert that a detailed response was provided to Zurich on 29 April 2019 and that no response was received to the that letter until four months later on 26 August 2019.

Correct

6.2. However, it is not the case that there was no communication during that period.

We have never said there was no communication. Again, you are misleading what we state. We stated that we did not receive a response to that letter until four months later on 26 August 2019 as per item 6.1 above.

6.3. [REDACTED] Lawyers wrote to you on 31 January 2019. You provided a 65-page response to that letter on 29 April 2019.

Correct

6.4. [REDACTED] Lawyers acknowledged receipt of the letter from you on 1 May 2019.

Correct. That was after we wrote to ask if they had received it.

6.5. On 8 July 2019, you sought an update and Sparke Helmore advised you by email that the solicitor you had been corresponding with was on leave.

On 2/7/19 I sought an update and was told by [REDACTED] on 3/7/19 that [REDACTED] would contact me soon. [REDACTED] emailed me on 8/7/19 stating she was reviewing the matter and a response would be provided shortly. (see "190816_gj to lc jk..." for these and following emails)

On 30/7/19 I wrote to all of [REDACTED] stating:

"We have responses from [REDACTED] on 26th June (auto reply stating on holidays) and [REDACTED] on 3rd July (stating information will be forwarded on to Julie) and [REDACTED] on 8th July (stating " I have the conduct of the matter in her absence. I am reviewing the matter and a response will be provided shortly." and we still have not received any response."

On 9/8/19 I again wrote to all three of the above asking: "Can I please get a response to my last three unanswered emails?" That day, 9/8/19, I received a return email stating [REDACTED] had left and to talk to [REDACTED].

I emailed [REDACTED] on 9/8/19 and did not receive a response.

Later that day 9/8/19, [REDACTED] wrote stating:

"I have sought instructions from Zurich and hope to get back to you early next week. Feel free to give me a call on Monday when I will be back in the office if you would like to discuss this matter "

to which I responded that same day:

"no use me calling you if you are still obtaining instructions or talking to Zurich. so can you please just give me a call or email when there is something relevant to pass on"

I would not consider this correspondence to be a response to my letter of 29/4/19. It is communication regarding a Zurich response which is at least three months from the time the original 29/4/19 letter was written.

On 16/8/19 I emailed to all of [REDACTED] stating I still had not received a response even though I had been requesting such since 30th July. (see attached "190816_gj to [REDACTED] re status).

I received a response on 16/8/19 from [REDACTED] of Zurich. (see "190816_zurich 2nd denial)

After waiting from 29/4/19 until 16/8/19 for a response to our comprehensive 65-page document which sought to honestly and openly present all of the facts and rebuttals to Zurich's initial denial, we received a dismissive one-page response stating:

"We have received your detailed letter of 29 April 2019 and do not propose to address all the issues outlined therein."

In fact, there was not one single point of any of the points of our 65-page document to which Zurich replied.

We are now a further 12 months down the track and already a number of points which Zurich have made in the initial denial of the claim have had to be withdrawn by Zurich. If Zurich had of genuinely looked at our 29/4/19 documentation, we could have bypassed a significant amount of wasted time on both sides.

Hence our complaint to AFCA concerning "Dismissing Our Document".

- 6.6. On 30 July 2019 and 9 August 2019, you emailed Sparke Helmore to follow up. On 9 August 2019, [REDACTED] Lawyers wrote to you to advise that they had sought instructions. You were invited to have a telephone discussion in the meantime to which you replied that you were content to wait until Sparke Helmore had received instructions.

Refer Item 6.5 above, especially my 9/8/19 response "no use me calling you if you are still obtaining instructions or talking to Zurich. so can you please just give me a call or email when there is something relevant to pass on"

- 6.7. A response was provided to the Proprietors directly from Zurich on 16 August 2019.
Correct. A one-page response with not one single comment or rebuttal to our 65-page open document with our reasons for not denying the claim.
- 6.8. You suggest that the above timeframes amount to unconscionable behaviour.
Correct.

The statement we made to ASIC was:

"we provided a detailed response to Zurich on 29/4/19 and did not receive any response to this communication until four months later on 26/8/19. This was despite us chasing Zurich in writing seven times within that period to obtain a response and not receiving a single reply.

The General Insurance Code of Practice states at 7.13 "We will keep you informed about the progress of your claim at least every 20 business days." and at 7.14 "We will respond to routine requests made by you about your claim within ten business days."

Can I ask ASIC how the above behaviour can be seen by ASIC as satisfying the ASIC Act especially in terms of unconscionable behaviour?"

if you consider that an email from [REDACTED] simply stating:

"I am currently on annual leave" (26/7/19)

I forward this information on... she will be in contact with you soon.(3/7/19)

"I have the conduct of the matter in her absence. I am reviewing the matter and a response will be provided shortly." (8/7/19)

can be considered as a response, then I don't think the ICA or AFCA would agree that this meets the spirit of the Code.

We stated to ASIC that Section 12CB states: "A person must not, in trade or commerce, in connection with the supply of financial services to a person engage in conduct that is, in all the circumstances, unconscionable." and asked how Zurich's attempt to use the 28-day time limit of the OBL section of the policy in response to a Legal Liability claim can satisfy that Section.

- 6.9. Zurich endeavours to process matters promptly and efficiently, however given the issues raised in the 65 page submission, it did take some time to consider the issues raised, receive advice, to determine the appropriate response and to formally respond.
I honestly wish there was a better way to respond to this claim by Zurich than to say something so crude as "rubbish" (sincere apologies but I would like you to honestly look at what you are saying here) but I find it difficult to come up with an alternate comment on this statement.

You took more than 3 months to go through all of the issues raised in the 65-page submission, taking time to consider the issues raised, taking the time to receive advice and taking the time to determine the appropriate response and time to make a formal response.

What was the result?

The result was one page. And on this single page the only response to our 65-page document was:

"We have received your detailed letter of 29 April 2019 and do not propose to address all the issues outlined therein. Ultimately the issues raised in your letter do not cause Zurich to alter its position."

The remainder of that one page was address details, name of claim, and generic wording regarding accessing information.

Us: 65 pages of thoroughly researched material stating our claim with reasons and clarity.

Zurich: 36 words which took over three months to provide.

7. Dismissing our document

- 7.1. Your letter to the Insurance Council of Australia dated 21 April 2020, takes issue with the fact that in its response dated 16 August 2019, Zurich said *"we do not propose to address all of the issues outlined therein."*
Correct
- 7.2. It is said that this was a 'dismissal' of the document.
Correct, as you must agree from Items 6.5 and 6.9 above.
- 7.3. In the letter of 16 August 2019, Zurich replied to the pertinent issues raised in the 65 page letter. Given the considerable length of those submissions, it did not appear the most efficient or helpful approach to respond to that document line-by-line.
Zurich did not make any such reply of pertinent issues. Perhaps you are reading the wrong document? I have attached it here (see 190816_zurich 2nd denial)
- 7.4. This does not mean that Zurich did not give due consideration to the issues raised in the submission.
That is absolutely not evidenced in your 16/8/19 response.
8. "Our Formal Notification to Zurich Which Zurich Denied And Then Zurich Refusing to Acknowledge Our Evidence To the Contrary" (to ASIC):

"Us Notifying Zurich and Zurich then stating that we did not notify them" (to the Insurance Council of Australia)

Refer attached 11/2/13 email confirming Zurich's intermediary was notified.

Refer 12/6/14 claim to Zurich including detail of commencement of legal action.
Yet Zurich has refused to acknowledge the former (noting that the policy requires us to contact either MGA or Zurich and we had contacted MGA – see 11/2/13 email).

- 8.1. Zurich has asked Millenium to provide any relevant claim forms.
- 8.2. On review of that material, Zurich acknowledges that within the enclosed claim form² relating to damage said to have been caused to Unit 8 by Cyclone Carlos (which was sent to Zurich in 2014), the proceedings commenced by Ms [REDACTED] against the Proprietors are in fact mentioned in passing on page three of that document. No other information is provided about the proceedings.

² The Claim form and annexures refer to a "TIO claim form" but the document was provided to Zurich.

On 12/6/14 [REDACTED] the Property Claims Advisor of Zurich was provided with our claims information which stated within it: "**7. Other Insurances** - Note that [REDACTED] has commenced legal action against the Owners Corporation for recovery of the above damages as well as rental accommodation expenses of approximately \$82,000 and legal fees of approximately \$18,500." (See attached 140610_claim to whittles").

If "no other information is provided about the proceedings" and this is a commencement of legal action against the Owners Corporation for recovery of the above damages as well as rental accommodation expenses of approximately \$82,000 and legal fees of approximately \$18,500, then why did not Zurich respond back to us with whatever further information Zurich wanted, or recommendations as to what to do, or in fact all of those requirements which are within Page 13 Section 6 of the claims policy related to "supply Millennium Underwriting Agencies Pty Ltd or us with all information we require to investigate, settle or defend the claim;?"

- 8.3. Zurich can only assume that the reference on page three of the document to the proceedings was overlooked in considering that claim and that the notification was not considered to be a claim made under the Legal Liability or Office Bearer's section of the Policy, but was instead a claim for property damage arising from Cyclone Carlos.

An important question if you would??

How do you reconcile your statement 8.3 here with your previous statements in Item 3.2?

Your Section 3.2. above states: "Zurich notes that claims are lodged under the Policy as a whole (and not a particular section of the Policy). When Zurich assesses a claim, they consider the application of all sections of the Policy."

Can you let us know if Zurich does or does not consider the application of all sections of the policy when Zurich receives a claim?

The bottom line is that we have stated that Zurich has been notified and Zurich has stated that it has not been notified and refused to take notice of the material we sent on this matter.

- 8.4. The Proprietors had made a number of different claims relating to water percolation through walls at Unit 8 (including the claim the subject of the FOS decision 455923 which concluded that the policy did not respond to the claim) and it was not clear that the Proprietors sought the appointment of defence lawyers or that the reference in passing to the proceedings was intended to be a separate notification.

If you look at the claims and documentation that we have provided it has been a clear point from the beginning that the Body Corporate has not made a claim on either damage from the structural defect causing water percolation through the Main Bedroom wall of Unit 8 or for the subsequent Legal Liability related to that structural defect / Main Bedroom wall. We even provided plans and drawings to emphasise this within our documentation of 29/4/19 but it is obvious that Zurich has ignored this.

Even within the claim outlined above (12/6/14 to Zurich direct) which includes detail of the legal liability being brought against the Body Corporate, we are at pains to point out the difference (please read that document supplied).

Our understanding at the time was that the two were related – the Legal Liability claim would not be successful because of prior damage not being rectified, but even within this 12/6/14 claim we are pointing out exactly the same points we have made to Zurich within our Legal Liability claim submission and all communications including the 29/4/19 letter; i.e. we are not claiming for the damage or consequent legal liability related to the structural defects / Main Bedroom wall.

You mention the previous FOS decision; note that the Building policy did not respond to the damage caused by the structural defect since structural defects is an exclusion within the policy. However, structural defects are not an exclusion within the Legal Liability section of the policy (although as we have stated, we note that any failure to maintain the wall is).

Given the notifications that we have made to MGA (Zurich's intermediary) and to Zurich directly in the 12/6/14 claim, we feel that it is Zurich or MGA who should be directing us in terms of appointment of defence lawyers. As we have stated above, we had notified MGA and Zurich re this legal liability case and have been provided with no advice, process nor recommendations at all.

- 8.5. Zurich apologises for this oversight and for not formally responding to that aspect of the claim.
Thank you for this but we are not seeking an apology.

Within this formal complaint to AFCA we are seeking AFCA's agreement of Zurich's misleading and deceptive behaviour and outside of this AFCA complaint, a reasonable ex-gratia payment of the Legal Liability claim.

- 8.6. Ultimately, had the claim for indemnity with respect to any award of damages against the body corporate made in favour of [REDACTED] (and any defence costs) been assessed in 2014, that claim would have been declined for the reasons outlined in previous correspondence, being:
Immaterial to this AFCA complaint concerning misleading and deceptive behaviour.

- a. The damage occurred prior to the policy inception (on 30 September 2007) ³

³ The claimant's letter of demand says that the water ingress problems were first experienced in 2004 – 2005. The chronology document provided by the Proprietors records that on 25 January 2006: Tenants have reported today that water has leaked through the wall again, into the main bedroom walk-in-robe. Plumbers were sent on 30 January 2006, and suggested that the place needs to be water-proofed and a builder may need to inspect. Water seeped through the wall again on 23 March 2006 and yet again on 15 March 2007 (all prior to Zurich being on risk).

This is immaterial to this complaint to AFCA of Zurich misleading and deceptive behaviour.

However, we will comment on this. We feel that this demonstrates that Zurich does not read the material that we provide. Since the commencement of the claim (and even the 12/6/14 claim) we are not claiming any damages or legal liability from the structural problems and resultant damage to that section of the property which is predominantly the main bedroom. Please read any of the material that we have already written on this??

- b. Structural issues with the building which contributed to the claim dating back to 2000 (and possibly 1975)

This is immaterial to this complaint to AFCA of Zurich misleading and deceptive behaviour.

- c. Prejudice as a result of late notification
Immaterial.

- d. TIO payment
Immaterial.

- e. Legal fees are not covered
Immaterial.

8.7. We briefly address those reasons as follows.

9. Damage occurred prior to the policy inception

9.1. Zurich came on risk on 30 September 2007. Prior to that date, TIO insured the Proprietors.
Agree but immaterial to this AFCA complaint.

9.2. Clause 5 on page 13 of the PDS provides:

...Should any damage have occurred prior to commencement of the insurance and such damage has not been repaired or made good, we shall not be liable for such damage or any consequential loss, destruction or damage.

Agree but immaterial to this AFCA complaint.

9.3. In the Statement of Claim filed by Ms Kennedy, it was pleaded:

[3] Since approximately January 2006, water has been leaking into Unit 8, through an external wall forming part of the boundary of Unit 8, which wall forms part of the common property owned by the defendant.

[4] Since approximately January 2007, water has been leaking into Unit 8 through the roof to Unit 8, which roof forms part of the common property owned by the defendant.

[5] On each occasion that water leaked into Unit 8 it was reported to the defendant via the defendant's strata title manager [REDACTED] Real Estate now known as [REDACTED] Body Corporate Management [REDACTED]

These are all statements which were filed within the Statement of Claim.

However, this does demonstrate to AFCA our complaint stating: "Dismissing Our Document" since the points raised above are exactly those which we have raised within our 29/4/19 letter and which are noted in Items 8.4 and 8.6.a above.

9.4. In the chronology document provided by the Proprietors entitled "60 East Point Road – Information", it is noted that a report was received from NT Tap and Drain on 30 January 2006 (prior to Zurich policy inception) which provided:

Looks like water seeping through what appears to be a retainer wall in out to bedroom wall and floor. Need to somehow possibly water proof, may need builder to inspect.

As per items 8.4, 8.6.a this confirms that Zurich continues to deliberately not acknowledge our point regarding the separate events and locations within the unit for which we are and for which we are not claiming.

Confirmation of "Dismissing Our Document"

9.5. It appears that that did not occur because in the chronology document provided by the Proprietors entitled "60 East Point Road – Information", it is noted on 23 March 2006 "Water [is] coming through the wall, pls check and fix" and on 15 March 2007 "Unit 8 has flooded again = water seems to have leaked in at the floor level from outside."

Confirms our complaint to AFCA regarding "Dismissing Our Document"

9.6. It is clear that the issues giving rise to the water ingress continued for a number of years after the policy inception.

Confirms our complaint to AFCA regarding "Dismissing Our Document"

9.7. In the circumstances, Zurich has declined indemnity due to the exclusion with respect to 'damage or any consequential loss, destruction or damage' which has not been 'repaired or made good' prior to the policy inception.

Confirms our complaint to AFCA regarding "Dismissing Our Document"

10. Prejudice as a result of late notification

10.1. The Policy provides, at clause 6 on page 14:

We have the right to negotiate, defend or settle in your name and on your behalf any claim and will have full discretion in the conduct of any proceedings or in the settlement of any claim.

Noted

10.2. Further, the policy provides at clause 5 on page 26 that:

The officer must not admit liability, settle any claim or incur any costs without our prior written agreement.

Why is Zurich quoting here a term of the policy which is specific to the OBL section and not within either the Legal Liability or General Section of the policy??

This is exactly the point we have made above numerous times regarding Zurich quoting terms of the policy which do not apply to our claim

Confirms our complaint to AFCA re using policy terms which are not applicable.

10.3. You assert that section 41 of the Insurance Contracts Act 1984 (Cth) (the Act) prevents a claim being denied in these circumstances.

Immaterial to our complaint to AFCA regarding Zurich's misleading and deceptive behaviour.

10.4. Respectfully, your submission regarding section 41 of the Act is predicated upon (a) a claim having been notified and (b) that the only reason that Zurich has declined the claim is because the Proprietors breached the contract by settling the claim without Zurich's authority.

Immaterial to this claim.

10.5. That is not the case.

Immaterial to this claim.

10.6. Zurich accept that they were notified of the proceedings within the property damage claim form sent in 2014. Zurich has not denied the claim because the claim was settled without Zurich's authority (see the reasons listed above at 8.6 (a) – (e).

Immaterial to this claim.

10.7. Zurich has referred to the prejudice caused (in terms of Zurich's ability to investigate, defend and, if the policy covered the claim, to settle the claim for a lesser sum) merely to demonstrate the problem with notifying a claim many years after the proceedings have been settled.

And yet Zurich now acknowledges that it did receive notice of the legal liability case in June of 2014?

10.8. Ultimately, the claim would have been declined irrespective of this issue.

Immaterial to this claim but disagree for reasons stated above.

11. TIO payment

11.1. We understand that the Proprietor's former insurer, TIO, have made payment to the Proprietors with respect to the same claim made on the TIO policy of insurance of \$35,000.

Immaterial to this claim.

11.2. We do not know the basis upon which the payment was made or why the Proprietors accepted less than their full claim from TIO. However, this serves to demonstrate that the damage the subject of [REDACTED] claim occurred prior to the Zurich policy inception.

Immaterial to this claim.

12. Legal Fees are not covered

12.1. The Policy provides that the “loss” covered by the Office Bearer’s Liability section of the policy includes (3) costs and expenses an officer incurs with our prior written consent in the investigation, defence or settlement of any claim or a circumstance that may give rise to a claim under this policy (see page 26 of the Policy).

As per Item 10.2 above, why is Zurich quoting here a term of the policy which is specific to the OBL section and not within either the Legal Liability or General Section of the policy??

Confirms our complaint to AFCA re Deception by Using Terms Within the Policy Which are Not Applicable.

12.2. Accordingly, the legal fees incurred by the Proprietors are excluded.

Not applicable as per Item 12.1 above.

12.3. Defence costs are not mentioned in the Legal Liability section of the policy (but clause 6 of the General Conditions provides that “We have the right to negotiate, defend or settle in your name and on your behalf any claim and will have full discretion in the conduct of any proceedings or in the settlement of any claim.”

Immaterial to this claim.

However, we would comment that we have never stopped Zurich or its agent from exercising that right. If Zurich was aware of this legal liability action being taken in June 2014, why did neither Zurich nor MGA contact us to do such direct negotiation, defence and assist in the settlement. We comment that this is exactly what TIO did but Zurich failed to do. TIO and their lawyers contacted us and we did not take any action or agree to any settlement or condition without their approval. We only make this comment to point out that if only Zurich would have also contacted us, we would have done exactly the same thing.

13. Conclusion

We trust that the above submission addresses the issues raised.

Yours sincerely



Dispute Resolution Leader
Governance – Claims & Operations
GI Claims

Zurich Australian Insurance Ltd
Level 2, 5 Blue Street
North Sydney, NSW 2059

Enc 2014 claim form

Gary Jackson

Sent: [REDACTED] M
To: [REDACTED]
Subject: Report of misconduct CAS-48366-Y2D1V3 [SEC=OFFICIAL]

CAS-48366-Y2D1V3

Mr Gary Jackson
Proprietors of Unit Plan 2000/89
[REDACTED]

Dear Mr Jackson

ZURICH AUSTRALIAN INSURANCE LIMITED
ACN 000 296 640

I refer to your correspondence of 22 April 2020 addressed to [REDACTED] of ASIC, concerning the conduct of Zurich Australian Insurance Limited (Zurich) over the denial of an insurance claim for legal liability. Your correspondence has been registered and allocated to an Analyst for assessment of the regulatory concerns.

ASIC Executive Officers and Analysts do not normally meet with members of the public in relation to reports of misconduct and accordingly we will not be making an appointment to meet with you.

What you should do

ASIC believes that these types of disputes are best resolved through internal dispute resolution (IDR), external dispute resolution (EDR) and the benefit of legal advice; not with formal intervention by ASIC.

Please follow links to [Information Sheet 174 Disputes with financial firms](#), and [Information Sheet 176 What to do if you are dissatisfied with a decision by the Australian Financial Complaints Authority](#), which includes details of what to do in cases such as this.

ASIC and disputes with financial firms

ASIC does not offer EDR services like the Australian Financial Complaints Authority (AFCA). Our role does not extend to taking action against financial firms on behalf of individuals in relation to their private disputes.

As part of the AFCA Rules and obligations, AFCA reports identified systemic issues to ASIC under the Corporations Act 2001 and ASIC Regulatory Guide 267.

Reports such as yours provide us with useful intelligence. We will assess the issues you raised to determine whether regulatory intervention is warranted, however this will likely not assist you to resolve the dispute with the financial firm. The steps outlined in Information Sheet 174 are the best way to resolve your dispute.

If you require any further information on our role as a regulator, or enforcement action taken by us, please visit our [website](#) and our current [enforcement update](#), released in April 2020. Also included is, [20-086MR](#) which, details changes to ASIC regulatory work and priorities in light of COVID-19 and our recent [ASIC letters](#) to general and life insurers in the current COVID-19 environment, for your information.

We will record the information you have provided on our internal database to assist us in regulating financial firms and in overseeing AFCA, and do not require further information from you.

Please note that you should not expect further communications from us in relation to this report.

Thank you for taking the time to report your concerns to ASIC.

Yours sincerely

[REDACTED]
[REDACTED]
Australian Securities and Investments Commission
[REDACTED]
[REDACTED]



ASIC

Please note: I'm available Monday to Thursday.

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Gary Jackson

Sent: [REDACTED] Monday, 11 May 2020 2:07 PM
To: garyjjackson@bigpond.com
Subject: Your letter to ASIC dated 22 April 2020 [SEC=OFFICIAL]

Dear Mr Jackson,

Thank you for your letter dated 22 April 2020 addressed to my colleague, [REDACTED]

We note that you have contacted ASIC on behalf of the body corporate of unit plan 2000/89 and have made several allegations of misconduct against Zurich based on the body corporate's dealing with Zurich.

We do not generally act for individual consumers. We understand that you have contacted or will also contact the Insurance Council of Australia and the Australian Financial Complaint's Authority in relation to the body corporate's interactions with Zurich.

Please be advised that we will be sending your correspondence to our colleagues in the Misconduct and Breach Reporting team who record and assess reports of misconduct against financial institutions. Your correspondence will be recorded in our national database and will help inform us about the issues faced by consumers and guide us on potential future work.

We appreciate you taking the time to put together the information contained in your letter.

Kind regards,

[REDACTED]

Australian Securities and Investments Commission

[REDACTED]




Please consider the environment before printing this document.

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21st April 2020


Insurance Council of Australia
PO Box R1832
Royal Exchange
Sydney NSW 1225

Proprietors of Unit Plan 2000/89
C/- Gary Jackson



Dear Sir

Re: Misleading and Deceptive Behaviour by Zurich Insurance

I wish to inform the Insurance Council of Australia (ICA) of the misleading behaviour of Zurich in the process of negotiating a claim lodged and to ask if this practice is now becoming widespread within the General Insurance industry of Australia.

This communication is in regards to the conduct of Zurich insurance and how it is in contradiction to the I.C.A. Code of Practice, the Royal Commission's Financial Services Recommendations and the Regulatory Guides under the ASIC Act 2001.

We are writing to all three entities.

With regard to the I.C.A., the Insurance Code of Practice states in Section 7.2: *"We will conduct claims handling in an honest, fair, transparent and timely manner, in accordance with this section."*
7.13 *We will keep you informed about the progress of your claim at least every 20 business days."*

In regard to ASIC, under the ASIC Act 2001, general insurers are prohibited from partaking in misleading or deceptive conduct, unconscionable conduct, and from providing false or misleading representations; Regulatory Guide 234: *"contains good practice guidance to help promoters of financial services comply with their legal obligations to ensure they do not make false or misleading statements or engage in misleading or deceptive conduct."*

Section 12DA of the ASIC Act states: *"A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive."*

The Financial Services Royal Commission - Reforms to General & Life Insurance states at Item 65: *"The General Insurance Code of Practice sets out standards that general insurers must meet when providing services to their customers. Insurers must provide services to their customers in an 'open, fair and honest' way."*

This communication to you, the Insurance Council of Australia, is not in relation to compensation sought, for which we will be applying to AFCA, but in relation to Zurich's conduct which is in contradiction of your Code of Practice.

Zurich has not abided by the above in relation to our Claim and we wish to find out what is the Insurance Council of Australia's view is of these tactics used by Zurich.

Attempting to Deceive By Stressing Specific Deadlines Which We Have Not Met But Which Are Not in the Policy:

Our Body Corporate submitted a claim on 28/2/18 to Zurich which in its first sentence stated: "*This claim is made under the Legal Liability section of the 2007 Millennium Strata Titles Composite Insurance PDS - see attached.*"

In its response of 15/11/18, Zurich responded: "*the Policy provides, on page 26 of the PDS, that claims must be notified within 28 days of the officer becoming aware of the claim.*"

There is never a requirement within the Legal Liability section of the Policy "to notify Zurich within 28 days"

The only section which states anything to do with a deadline of 28 days is within the Office Bearer's Liability section of the Policy which is not the section of the policy for which we claimed.

Attempting to Deceive By Creating Fictional Requirements of the Policy Which We Do Not Satisfy:

On 31/1/19, Zurich wrote: "*whilst notification must be made as soon as possible after circumstances giving rise to a claim become known, it is also important that your insurer be advised when the claim is pursued by way of Court proceeding*".

There is no such term nor any similar term within the Policy. The Policy states: "*notify us in writing as soon as possible*". (which, by the way, we had done).

And yet Zurich states in response that our prior notification of a claim to Zurich was only "*notice given of a potential claim*" and therefore did not satisfy the terms of the PDS!

In other words, we notified Zurich before the claim so Zurich were telling us that they could not accept it.

To the I.C.A., do you consider this an ethical response by one of your members?

Zurich then states that : "*it is expected that notice will be given again when a letter of demand is received and when proceedings were commenced, again when the Writ was received and yet again when the Statement of Claim was issued.*" [underlines our emphasis].

Zurich used the above exact words to state why our claim did not satisfy the terms of the PDS.

There are no such terms or similar terms within the Policy.

The policy simply states: "*notify us in writing as soon as possible*" which we provided evidence to Zurich of having been done.

Deliberately Misleading Terminology in Respect of the Claim:

When we initially lodged notification on 5/2/13 that there was a potential Legal Liability claim on the Owners Corporation, Zurich spoke of this as an Office Bearers Liability claim and not a Legal Liability claim. This was indeed a deception.

Because of this, our understanding from that time on and the language used on both sides for Zurich's applicable section of the policy for this Legal Liability case was "Office Bearer Liability".

Zurich never attempted to correct this even though our communication was always in regards to the "legal action" being taken against us.

It is now apparent to us that the reason that Zurich did not want this corrected is that the Office Bearer's Liability section of the Policy has much stricter timeframes applicable than other sections including the Legal Liability section for which we had made the claim.

And Zurich used this tactic when they wrote: "*claims must be notified within 28 days of the officer becoming aware of the claim*". This tactic was used by Zurich from February of 2013 and continued for over six years until April 2019.

Three and a Half Months to Respond:

The I.C.A. would be aware under their I.C.A. code that Insurers have time limits in which to respond to claimants - routine requests 10 business days; progress of claim every 20 business days.

We provided a detailed response to Zurich on 29/4/19 and did not receive any response to this communication until over three and a half months later on 26/8/19. This was despite following up seven times in that period to obtain a response.

Dismissing Our Document

When we did receive a response, it stated: "*We have received your detailed letter of 29 April 2019 and do not propose to address all the issues outlined therein.*"

So Zurich chose to not answer any of the points we made in our response, including Zurich's deceit involving "Officer Bearer's Liability" with "Legal Liability".

Again, is this the normal ethical behaviour of the I.C.A.'s members??

Us Notifying Zurich and Zurich then Stating That We Did Not Notify Them

Section 41 of Insurance Contracts Act states that if there is a term in the contract which states that the contract would be breached if the claimant settles a claim without the consent of the Insurer, AND the insurer does not within a reasonable amount of time inform the claimant of either admission of legal liability or that they will negotiate the legal proceedings, then the Insurer may not refuse payment of the claim and the amount payable in respect of the claim is not reduced.

The above has occurred within this claim and Zurich refuses to acknowledge this.

We notified Zurich in writing 24 times between 11/2/13 and 5/11/14 of this Legal Liability arising and we provided extensive evidence of this within our letter of 29 April 2019.

Zurich have completely ignored this by simply responding to this evidence by stating: "*We have received your detailed letter of 29 April 2019 and do not propose to address all the issues outlined therein.*"

Is this an example of the ethical approach required by I.C.A., APRA and the Royal Commission?

Are These Tactics Now Standard Practice By Australian General Insurance Providers?

To the Insurance Council of Australia, is this the "honest, efficient, fair and transparent manner" that Insurers are asked to provide as per your Code of Practice Standards at Section 6.2?

Or Section 7.2 in relation to Claims where it states: "*We will conduct claims handling in an honest, fair, transparent and timely manner.*"

Or Section 10.4 stating: "*We will conduct Complaints handling in a fair, transparent and timely manner*" and yet not communicating with us for three and a half months despite following up seven times.

And then simply dismissing all of the information that we had provided in transparency by simply stating: "*We have received your detailed letter of 29 April 2019 and do not propose to address all the issues outlined therein.*"

Or Item 65 of the Royal Commission into Misconduct - General & Life Insurance: "*Insurers must provide services to their customers in an 'open, fair and honest' way.*"

Given that we consider this a serious matter, we would appreciate being able to meet with you to discuss in full the information we have included here along with the documents and communication from which these have been taken, and listen to your viewpoint on this.

There are further examples of such misleading and deceptive tactics taken by Zurich to try and have us believe that our Claim does not even meet the terms of the PDS, but rather than writing these here, we would prefer to discuss with you.

Can we please organise a time to meet?

Yours faithfully

Gary Jackson
For BODY CORPORATE UNIT PLAN U2000/089

Gary Jackson

[REDACTED]

21 August 2020 12:54 PM

To:
Subject:

Gary Jackson
RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Dear Mr Jackson,

Thank you for your email.

The CGC's role is not to provide advice, or speculate on hypothetical possible future outcomes, as each matter turns on its facts. In relation to your enquiry, we cannot comment on ASIC or the ICA. However, AFCA also has a Systemic Issues monitoring function and obligations to report definite Systemic Issues and serious contraventions to the regulator (ASIC), see <https://www.afca.org.au/about-afca/systemic-issues>

AFCA also publishes its determinations, see <https://www.afca.org.au/what-to-expect/search-published-decisions> and may also report concerns about conduct giving rise to a possible Code breach to the CGC.

As noted previously, all information received by the CGC, including that provided by AFCA, is taken into account when determining what steps it undertakes in relation to its monitoring activities.

We trust this answers your enquiry.

Yours sincerely,

[REDACTED]

[REDACTED]

On behalf of the General Insurance Code Governance Committee

[REDACTED]

www.insurancecode.org.au



From: Gary Jackson <[REDACTED]>

Sent: Wednesday, 19 August 2020 10:44 AM

[REDACTED]

Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Hi [REDACTED]

Thank you for taking the time to respond; it is very much appreciated.

As I stated in the last email, it just seems incongruous that the CGC does not want to investigate a claim of misleading and deceptive behaviour which I would have thought is a core tenet of what the Insurance Code and CGC is aiming for - "honesty, transparency, openness and fairness". And yet the CGC wants to investigate something so trivial as an Insurance company missing a deadline on what it considers a complicated case?

It appears the CGC is not interested in any major deviations from the code but is interested when there is a trivial variation related to timing which is of little consequence to the consumer.

However, I can only take your word that the misleading and deceptive behaviour is something not of interest to CGC but should be submitted to AFCA.

As this is what you and the CGC have suggested, this is what I will thus do.

However, one question if you would?

AFCA will come back with one of two possible outcomes on this submission.

It will either state that Zurich has not behaved in a misleading and deceptive manner.

Or it will state that it has.

Since I am not pursuing compensation with AFCA for this matter, what does the CGC and the ICA and ASIC then do with the resultant decision?

I would have thought that it is a major blemish for an organisation to be called out as implementing misleading and deceptive behaviour in an attempt to persuade a claimant not to pursue a claim (or for any reason for that matter!).

Under AFCA's remit, AFCA has no ability to take action on such an outcome.

What action would the CGC, or ICA or ASIC take if AFCA's outcome is that Zurich have been guilty of this behaviour, given that the CGC and ICA are meant to be guardians of the Insurance Code which touts " honesty, transparency, openness and fairness" as its core values? (I realise that you may not be able to talk on behalf of ASIC but I have included this since we have submitted these claims to ASIC as well and perhaps you may know from experience what the result may be?)

[REDACTED]

Gary

Gary Jackson [REDACTED]
[REDACTED]

[REDACTED]

Sent: Monday, 17 August 2020 6:00 PM

To: [REDACTED]

Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Dear Mr Jackson

Thank you for your email.

The Code Governance Committee (CGC) has a discretion as to whether to conduct an investigation into a reported concern. The CGC exercises this discretion to ensure that resources and time are allocated most effectively to fulfil the CGC's purpose to drive better Code compliance, helping the insurance industry improve its service to consumers.

The CGC fulfils its purpose not only through individual investigations but also through targeted monitoring work, such as own motion inquiries, and annual data collection. All information, including that provided by

you to date, contributes to the CGC's work, even where an individual investigation of every concern raised does not occur.

As communicated previously, the appropriate forum to assess your allegations against Zurich in relation to misleading and deceptive conduct is AFCA or a court of law.

In relation to the concerns you have raised regarding claims and complaints handling we require the information we requested on 13 August 2020 to assess whether it is appropriate to investigate those concerns.

We trust that our position has been made clear to you, however, if this is not the case then the Investigations Manager and I can discuss the above with you by telephone. Otherwise we look forward to receiving your response to our request, dated 13 August 2020, by 28 August 2020.

Kind regards

[REDACTED]
[REDACTED]
[REDACTED]
On behalf of the General Insurance Code Governance Committee

[REDACTED]
[REDACTED]

www.insurancecode.org.au



From: [REDACTED]

Sent: Friday, 14 August 2020 2:46 PM

[REDACTED]

Subject: FW: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Hello [REDACTED]

Thanks for the fast response.

Tracie, as we have already stated, we are not looking for a right or entitlement or compensation.

The ICA Code states

"the terms of this Code require us to be open, fair and honest in our dealings with you" and "We will conduct claims handling in an honest, fair, transparent and timely manner, in accordance with this section."

In regard to the time delays for which you have requested further detail, we cannot see how Zurich has not been open, fair and honest in its dealings with us when looking only at Zurich's not meeting timelines outlined in the ICA Code. It is simply the case that it has missed deadlines which are committed to in the Code. We do not see this as Zurich being dishonest, unfair or not being open.

However, the procedures taken by Zurich in the handling of our claim whereby Zurich states that we have not met terms and conditions within the Policy and yet those terms do not exist within the Policy, we absolutely see as being dishonest, unfair, not transparent and not being open. Zurich has purposefully stated terms and conditions in an attempt to cause us to withdraw our claim and yet the terms and conditions that they have used to do this do not exist within the Policy. We state that this thus fails the central tenet of the Insurance Code of Conduct.

In our view, these are much more serious transgressions than simply not meeting particular deadlines. If Zurich had of not attempted to persuade our Body Corporate to not proceed with the claim by utilising such misleading and

deceptive methods regarding terms and conditions which were not present in the Policy, we would certainly not be reporting Zurich to the ICA for simply not meeting particular deadlines.

In regard to you stating that we should take this up with AFCA, AFCA states in its Operational Guidelines that

“Our role is to assist parties to reach agreement about how to resolve the complaint.”

We are not looking to reach an agreement with Zurich regarding the misleading and deceptive behaviour that it has demonstrated. These misleading actions by Zurich have already been committed and there is no agreement or compensation between our Body Corporate and Zurich that can replace the actions which have already taken place.

If we are wrong in our understanding of what you have written today, perhaps you could clarify with us what you have stated on the basis of what we have written above, especially in regard to your comment *“the CGC would be making decisions in relation to the rights and entitlements between the Body Corporate and Zurich if it proceeds with an investigation of these concerns.”*. is this stating that because our claims of Zurich’s misleading and deceptive behaviour are so serious that a positive CGC result in recognising this may mean that our Body Corporate gains additional rights and entitlements when this is pursued further??

As I said, we are not looking to gain rights or entitlements. We are simply reporting to the ICA and the CGC actions taken by Zurich which are against the core tenets of the Insurance Code and which under the Code Governance Committee Charter, the General Insurance Code Governance Committee is meant to *“monitor and enforce Code compliance... and ... Code Subscribers’ adherence”*.

[REDACTED]

Gary

[REDACTED]

Sent: Friday, 14 August 2020 12:45 PM

To: [REDACTED]

Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Dear Mr Jackson

Thank you for your email.

The General Insurance Code Governance Committee (CGC) is guided by a number of factors in determining whether to utilise its discretion to proceed with a Code investigation including whether a matter may be more appropriately dealt with by the Australian Financial Complaints Authority (AFCA) or a court of law.

While you have stated that you are not seeking an individual outcome in relation to your allegations against Zurich concerning misleading and deceptive conduct, the CGC would be making decisions in relation to the rights and entitlements between the Body Corporate and Zurich if it proceeds with an investigation of these concerns. As communicated previously, this is not the purpose of the CGC’s function and the appropriate forum to determine such rights and entitlements is AFCA or a court of law.

On this basis and to further assess whether we are in a position to proceed with an investigation of the remainder of your concerns, the CGC requires further information in relation to the claims handling and complaints handling subsections specified in our letter dated 13 August 2020 only. Should we be in a position to proceed with a Code investigation, this would be on the basis of your response to our request for further information in relation to those subsections only.

Please do not hesitate to contact me should you have any questions or require any further information.

Kind regards

[REDACTED]
[REDACTED]
On behalf of the General Insurance Code Governance Committee
[REDACTED]
[REDACTED]

www.insurancecode.org.au



From: [REDACTED]
Sent: Thursday, 13 August 2020 5:03 PM
[REDACTED]
Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Hi [REDACTED]

Just taking a read of the document you have sent today.

The main parts of our 17th July correspondence for which the CGC has asked for additional information is to do with the timings of Zurich's responses.

However, these areas were not the major area of misleading and deceptive behaviour which we noted within our correspondence to you.

Do you also not want detail of the dates for when Zurich attempted to have us believe that we did not satisfy the terms of the policy even though those terms do not exist within that policy?

Surely such behaviour would be within the remit of the CGC? – as you yourself have stated *“that insurers have adopted the Code to ensure they are meeting their obligations”* related to the fact that the Code itself states *“the terms of this Code require us to be open, fair and honest in our dealings with you”* and *“We will conduct claims handling in an honest, fair, transparent and timely manner, in accordance with this section.”*

Are you thus not also interested in the detail of where Zurich did not act in a fair and honest manner with our claim by attempting to have us believe we did not satisfy terms of the policy which were not actually terms in the policy at all??

Gary

Sent: Thursday, 13 August 2020 4:40 PM
To: Gary Jackson [REDACTED]
Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Dear Mr Jackson

Please see **attached** correspondence in relation to CX7001.

Kind regards

[REDACTED]
[REDACTED]
On behalf of the General Insurance Code Governance Committee

[REDACTED]
www.insurancecode.org.au



From: Gary Jackson [REDACTED]
Sent: Wednesday, 12 August 2020 9:10 AM
[REDACTED]
Subject: FW: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Hello [REDACTED]

Can you please let me know if you or the CGC intend to respond to this note below that I sent on 17th July 2020?

Many thanks

Gary

Gary Jackson [REDACTED] outlook
Email: [REDACTED]

From: [REDACTED]
Sent: Friday, 17 July 2020 12:39 PM
[REDACTED]
Subject: FW: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Hello [REDACTED]

Thank you for your response of 6/7/20.

Please see our response attached.

Many thanks

Gary Jackson

[REDACTED]
Sent: Monday, 6 July 2020 4:23 PM
To: [REDACTED]
Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Dear Mr Jackson

Please see **attached** correspondence in relation to your Code complaint lodged with the Code Governance Committee (CGC) on 1 June 2020.

Please do not hesitate to contact me should you have any questions or require any further information.

Kind regards

[Redacted]

On behalf of the General Insurance Code Governance Committee

[Redacted]

www.insurancecode.org.au



From: Gary Jackson <garyjackson@bigpond.com>

Sent: Monday, 29 June 2020 3:12 PM

[Redacted]

Subject: Re: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Thank you [Redacted] for the update

Our Body Corporate keenly awaits your response

Gary for BC 2000/89

[Redacted]
Email: [Redacted]

On 29 Jun 2020, at 12:52 pm, [Redacted] wrote:

Dear Gary

I apologise for the delay with our response in relation to this matter.

Your matter remains under review by our investigations manager and I will update you as soon as possible.

Please do not hesitate to contact me should you have any questions or require any further information in the interim.

Kind regards

[Redacted]

On behalf of the General Insurance Code Governance Committee

[Redacted]

www.insurancecode.org.au

<image001.png>

From: Gary Jackson [REDACTED]
Sent: Tuesday, 16 June 2020 10:36 AM
[REDACTED]
Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Thank you [REDACTED]

Regards

Gary

Gary Jackson [REDACTED]
Email: [REDACTED]

[REDACTED]
Sent: Tuesday, 16 June 2020 10:25 AM
To: [REDACTED]
Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Dear Gary

By way of update, I have forwarded your matter to our manager for her review in relation to jurisdiction.

As she has just returned from leave, there is a small back log and she has advised that she will be able to advise on this on Monday 22/06. I expect to be in contact early next week.

Please do not hesitate to contact me should you have any questions or require any further information in the interim.

Kind regards

[REDACTED]
[REDACTED]
[REDACTED]
On behalf of the General Insurance Code Governance Committee
[REDACTED]
[REDACTED]
www.insurancecode.org.au

<image001.png>

From: [REDACTED]
Sent: Friday, 12 June 2020 4:39 PM
[REDACTED]
Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Thanks [REDACTED]

[REDACTED]
Sent: Friday, 12 June 2020 4:27 PM

To: [REDACTED]

Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Dear Gary

Thanks very much for providing the below.

I will get back to you early next week to confirm jurisdiction and we'll go from there.

Kind regards

[REDACTED]
[REDACTED]
[REDACTED]
On behalf of the General Insurance Code Governance Committee

[REDACTED]
[REDACTED]
www.insurancecode.org.au

<image001.png>

From: [REDACTED]

Sent: Friday, 12 June 2020 3:09 PM

[REDACTED]
[REDACTED]

Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Hi [REDACTED]

Thanks for your time just spent on the phone.

As requested, please find

1. Applicable PDS
2. Claim form signed
3. Summary of Claim which was submitted with the Claim form

The summary makes reference to documents which were sent along with this claim to Zurich and I have included those documents here.

Please let me know what other documents you would like.

[REDACTED]

Gary Jackson

[REDACTED]
Sent: Thursday, 11 June 2020 1:04 PM

To: [REDACTED]

Subject: RE: [EXTERNAL] Concern reported via CGC website: Gary Jackson

Dear Gary

Thank you for your email to the Code Governance Committee (CGC).

Prior to commencing a potential investigation of your concerns, I require some further information from you in order to determine the CGC's jurisdiction to investigate your complaint.

Could you please confirm your best contact number and your availability for a quick call?

Kind regards

[Redacted signature]

On behalf of the General Insurance Code Governance Committee

[Redacted signature]

www.insurancecode.org.au

<image001.png>

From: CGC website <forms@insurancecode.org.au>
Sent: Monday, 1 June 2020 9:37 PM
To: garyjjackson@bigpond.com
Subject: [EXTERNAL] Concern reported via CGC website: Gary Jackson

[EXTERNAL]

Dear Gary,

Thank you for reporting your concern to us.
We will review the information provided and respond to you shortly.

| |
|---|
| Name |
| Gary Jackson |
| Email |
| [Redacted] |
| Phone |
| [Redacted] |
| Message |
| I have written to the Insurance Council of Australia the below letter and it was recommended by the ICA that i pass this on to yourselves. it outlines the areas of misleading and deceptive behaviour by Zurich Insurance and its agent in a number of areas which are contrary to the Code of Practice specifically Section 7. Our Body Corporate has all of the evidence of this and it is available to you if requested. Many thanks Gary Jackson for Body Corporate Unit Plan U2000/089 |
| 21st April 2020 |
| [Redacted] Executive Director & CEO C/- Gary Jackson Insurance Council of Australia 1/24 Tryon Avenue PO Box R1832 Wollstonecraft NSW 2065 Roval Exchange Ph: 0418 988 922 |

Dear Sir

Re: Misleading and Deceptive Behaviour by Zurich Insurance

I wish to inform the Insurance Council of Australia (ICA) of the misleading behaviour of Zurich in the process of negotiating a claim lodged and to ask if this practice is now becoming widespread within the General Insurance industry of Australia.

This communication is in regards to the conduct of Zurich insurance and how it is in contradiction to the I.C.A. Code of Practice, the Royal Commission's Financial Services Recommendations and the Regulatory Guides under the ASIC Act 2001.

We are writing to all three entities.

With regard to the I.C.A., the Insurance Code of Practice states in Section 7.2: "We will conduct claims handling in an honest, fair, transparent and timely manner, in accordance with this section."

7.13 We will keep you informed about the progress of your claim at least every 20 business days."

In regard to ASIC, under the ASIC Act 2001, general insurers are prohibited from partaking in misleading or deceptive conduct, unconscionable conduct, and from providing false or misleading representations; Regulatory Guide 234: "contains good practice guidance to help promoters of financial services comply with their legal obligations to ensure they do not make false or misleading statements or engage in misleading or deceptive conduct."

Section 12DA of the ASIC Act states: "A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive."

The Financial Services Royal Commission - Reforms to General & Life Insurance states at Item 65: "The General Insurance Code of Practice sets out standards that general insurers must meet when providing services to their customers. Insurers must provide services to their customers in an 'open, fair and honest' way."

This communication to you, the Insurance Council of Australia, is not in relation to compensation sought, for which we will be applying to AFCA, but in relation to Zurich's conduct which is in contradiction of your Code of Practice.

Zurich has not abided by the above in relation to our Claim and we wish to find out what is the Insurance Council of Australia's view is of these tactics used by Zurich.

Attempting to Deceive By Stressing Specific Deadlines Which We Have Not Met But Which Are Not in the Policy:

Our Body Corporate submitted a claim on 28/2/18 to Zurich which in its first sentence stated: "This claim is made under the Legal Liability section of the 2007 Millennium Strata Titles Composite Insurance PDS - see attached."

In its response of 15/11/18, Zurich responded: "the Policy provides, on page 26 of the PDS, that claims must be notified within 28 days of the officer becoming aware of the claim."

There is never a requirement within the Legal Liability section of the Policy "to notify Zurich within 28 days"

The only section which states anything to do with a deadline of 28 days is within the Office Bearer's Liability section of the Policy which is not the section of the policy for which we claimed.

Attempting to Deceive By Creating Fictional Requirements of the Policy Which We Do Not Satisfy:

On 31/1/19, Zurich wrote: "whilst notification must be made as soon as possible after circumstances giving rise to a claim become known, it is also important that your insurer be advised when the claim is pursued by way of Court proceeding".

There is no such term nor any similar term within the Policy. The Policy states: "notify us in writing as soon as possible". (which, by the way, we had done).

And yet Zurich states in response that our prior notification of a claim to Zurich was only "notice given of a potential claim" and therefore did not satisfy the terms of the PDS!

In other words, we notified Zurich before the claim so Zurich were telling us that they could not accept it.

To the I.C.A., do you consider this an ethical response by one of your members?

Zurich then states that : "it is expected that notice will be given again when a letter of demand is received and when

proceedings were commenced, again when the Writ was received and yet again when the Statement of Claim was issued." [underlines our emphasis].

Zurich used the above exact words to state why our claim did not satisfy the terms of the PDS.

There are no such terms or similar terms within the Policy.

The policy simply states: " notify us in writing as soon as possible" which we provided evidence to Zurich of having been done.

Deliberately Misleading Terminology in Respect of the Claim:

When we initially lodged notification on 5/2/13 that there was a potential Legal Liability claim on the Owners Corporation, Zurich spoke of this as an Office Bearers Liability claim and not a Legal Liability claim. This was indeed a deception.

Because of this, our understanding from that time on and the language used on both sides for Zurich's applicable section of the policy for this Legal Liability case was "Office Bearer Liability".

Zurich never attempted to correct this even though our communication was always in regards to the "legal action" being taken against us.

It is now apparent to us that the reason that Zurich did not want this corrected is that the Office Bearer's Liability section of the Policy has much stricter timeframes applicable than other sections including the Legal Liability section for which we had made the claim.

And Zurich used this tactic when they wrote: " claims must be notified within 28 days of the officer becoming aware of the claim". This tactic was used by Zurich from February of 2013 and continued for over six years until April 2019.

Three and a Half Months to Respond:

The I.C.A. would be aware under their I.C.A. code that Insurers have time limits in which to respond to claimants - routine requests 10 business days; progress of claim every 20 business days.

We provided a detailed response to Zurich on 29/4/19 and did not receive any response to this communication until over three and a half months later on 26/8/19. This was despite following up seven times in that period to obtain a response.

Dismissing Our Document

When we did receive a response, it stated: "We have received your detailed letter of 29 April 2019 and do not propose to address all the issues outlined therein."

So Zurich chose to not answer any of the points we made in our response, including Zurich's deceit involving "Officer Bearer's Liability" with "Legal Liability".

Again, is this the normal ethical behaviour of the I.C.A.'s members??

Us Notifying Zurich and Zurich then Stating That We Did Not Notify Them

Section 41 of Insurance Contracts Act states that if there is a term in the contract which states that the contract would be breached if the claimant settles a claim without the consent of the Insurer, AND the insurer does not within a reasonable amount of time inform the claimant of either admission of legal liability or that they will negotiate the legal proceedings, then the Insurer may not refuse payment of the claim and the amount payable in respect of the claim is not reduced.

The above has occurred within this claim and Zurich refuses to acknowledge this.

We notified Zurich in writing 24 times between 11/2/13 and 5/11/14 of this Legal Liability arising and we provided extensive evidence of this within our letter of 29 April 2019.

Zurich have completely ignored this by simply responding to this evidence by stating: "We have received your detailed letter of 29 April 2019 and do not propose to address all the issues outlined therein."

Is this an example of the ethical approach required by I.C.A., APRA and the Royal Commission?

Are These Tactics Now Standard Practice By Australian General Insurance Providers?

To the Insurance Council of Australia, is this the "honest, efficient, fair and transparent manner " that Insurers are asked to provide as per your Code of Practice Standards at Section 6.2?

Or Section 7.2 in relation to Claims where it states: "We will conduct claims handling in an honest, fair, transparent and timely manner."

Or Section 10.4 stating: "We will conduct Complaints handling in a fair, transparent and timely manner" and yet not communicating with us for three and a half months despite following up seven times.

And then simply dismissing all of the information that we had provided in transparency by simply stating: "We have received your detailed letter of 29 April 2019 and do not propose to address all the issues outlined therein".

Or Item 65 of the Royal Commission into Misconduct - General & Life Insurance: " Insurers must provide services to their customers in an 'open, fair and honest' way".

Given that we consider this a serious matter, we would appreciate being able to meet with you to discuss in full the information we have included here along with the documents and communication from which these have been taken, and listen to your viewpoint on this.

There are further examples of such misleading and deceptive tactics taken by Zurich to try and have us believe that our Claim does not even meet the terms of the PDS, but rather than writing these here, we would prefer to discuss with you.

Can we please organise a time to meet?

Yours faithfully

Gary Jackson
For BODY CORPORATE UNIT PLAN U2000/089

Privacy authority

Privacy consent*

- I agree

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25th March 2020

Director
AFCA Review Secretariat
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Gary Jackson



Dear Sir/Madam

Re: A Personal Plea From an Australian Financial Services Consumer for Treasury and AFCA to Assist in the Handling of "Misleading & Deceptive Behaviour" Complaints to AFCA Especially in Regard to Financial Firms Inserting Fictitious or Non-Applicable Clauses in Their Denial of Claims

This Review's Terms of Reference states that *"Legislation requires the review to consider whether AFCA has been effective in resolving complaints in a way that is fair, efficient, timely and independent. In doing so, the review will take account of feedback provided by consumers and small businesses and by financial firms."*

And Item 1.2 of the Review's Objectives states: *" Are AFCA's processes for the identification and appropriate response to systemic issues arising from complaints effective?"*

I submit that AFCA is failing in its ability to handle a specific area of unethical behaviour by Insurers.

This specific area is the handling of Misleading and Deceptive Behaviour by insurance firms in regards to denying consumer's claims on the basis of non-existent clauses or clauses which are taken from a different section of the Policy and which does not apply to the Claim being made.

An example of this may be where an Insurer denies a claim because the Product Disclosure Statement (PDS) states that *"claims must be made within 60 days of the officer becoming aware of the claim"*. However the claim has been made under the "Legal Liability" section of the PDS which has no such time limit. Or that a claimant needs to notify *"when letter of demand received....when proceedings were commenced.....when the writ was received....when Statement of Claim issued."* And yet none of these clauses or even similar wording appears within the PDS.

I have written to the Senior Executives and CEOs of ASIC, the Insurance Council of Australia (ICA) and The Insurance Code Governance Committee (CGC) and all have stated in reply that they cannot assist but that I should refer this matter to AFCA.

However, in regard to misleading conduct, AFCA states that it can only *"investigate a claim that an insurer misled an insured and caused them to suffer loss."*

This means that for thousands of insurance consumers within Australia who accept an insurer's denial which has used fictitious or non-applicable PDS clauses, AFCA cannot investigate because there has been no loss!

I am speaking from personal experience with respect to the above and, as a consumer of such financial insurance services, plead to Treasury to please note this apparently systemic breach of

ethics by the insurance industry in Australia and ask Treasury to please make relevant changes to AFCA's remit to assist the eradication of this egregious practice.

This Review states: "*Please provide specific examples or case studies to support your responses. These may be provided to Treasury confidentially with any personal details of complainants and case references numbers omitted.*"

However, I cannot tell whether this means I can provide all of the particular case I have submitted to AFCA or whether I need to remove complainant details and case reference numbers. So I have attached both to this and labelled each correspondingly.

Should you require further detail on this then I am most keen to assist and either provide detail or personally meet in order to show all of the examples for which I have seen this occur.

Yours faithfully

GARY JACKSON