

# **ASIC updates to guidance for industry codes of conduct**

Submission by Legal Aid Queensland

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# ASIC updates to guidance for industry codes of conduct

## Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to ASIC's consultation on its approach to general insurance claims handling.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day-to-day application of the law in courts, tribunals, and Ombudsman schemes. LAQ believes that this experience provides LAQ lawyers with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavors to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ's Consumer Protection lawyers provide advice to clients as well as other lawyers and financial counsellors throughout Queensland in relation to mortgage stress, insurance, housing repossession, debt, contracts, loans, telecommunications, and unsolicited consumer agreements.

LAQ has assisted and represented clients who have legal problems interacting with the financial system and who have trouble providing standard identification. This submission is informed by that knowledge and experience.

## Submission

LAQ welcomes the opportunity to respond to the proposed updates to the ASIC Regulatory Guide 183 *Approval of financial services sector codes of conduct* (RG 183).

LAQ's submission is informed by its direct experience dealing with industries that have self-regulating industry codes.

Based on the direct experience of LAQ's Consumer Protection lawyers in dealing with industries that have self-regulating industry codes, LAQ seeks to make the following general comments:

1. To be effective, industry codes need to be independent and appropriately resourced to allow them to be monitored and enforced and contain specific commitments that reflect existing protections or add to the protections provided to consumers.
2. Effective industry codes need to be supported by a Code Monitoring Committee with powers that allow them the ability to work with the industry to remedy a breach. A Code Monitoring Committee also provides enforcement powers, which acts as a deterrent against breaches of the relevant industry code.
3. To improve consumer outcomes, the Code Monitoring Committee must have the willingness to exercise sanction powers where appropriate.
4. Industry codes should avoid general commitments or exclusively principle based commitments, which are, in LAQ's experience, difficult to enforce.
5. Industry codes should require that industry participants have appropriate compliance systems in place to ensure compliance with the relevant code.
6. Industry codes reflect a general community expectation that consumers should be protected.

LAQ seeks to make the following specific comments about RG 183:

1. Section 183.3 states: *"However, where approval by ASIC is sought and obtained, it is a signal to consumers that this is a code they can have confidence in."* In LAQ's view, this section should be amended to add that, as well as being able to rely on the code, consumers should also be able to enforce their rights under the code.
2. Section 183.5 should be amended to require an industry code to meet all three requirements rather than *"at least one"*. That is, in LAQ's view, the expectation should be that an effective code does the following:
  - a. Addresses specific industry issues and consumer problems not covered by legislation.
  - b. Elaborates on legislation to deliver additional benefits to consumers.
  - c. Clarifies what needs to be done from the perspective of a particular industry practice or product to comply with legislation.
3. RG 183 should, in LAQ's view, address ASIC's role in regulating mandatory industry codes in addition to voluntary codes.
4. Regarding section 183.20, LAQ considers it to be vitally important that, when ASIC is considering giving code approval, there should always be public consultation on the draft terms of the code.

5. To be truly effective for consumers in protecting their rights, all parts of a code should be contractually enforceable between the consumer and an industry member. LAQ considers that RG 183 should be amended to reflect this.
6. In LAQ's view, section 183.52 should require that a Code Monitor be given all relevant remedies and sanctions to enforce compliance, rather than potentially restricting the enforcement options available to the consumer. Restricting the enforcement options available to a Code Monitor weakens the effectiveness of an industry code.
7. LAQ considers that the concept of "*core rules*" in Table 5 needs to be clarified. In LAQ's view, all sections of an industry code are important to consumers and their rights.
8. LAQ suggests that the reference to "*plain language*" in Table 5 should be clarified. It is possible for vague terms such as "timely" and "reasonable" to be considered "plain language", but they are unclear to consumers and do not provide consumers with clear and specific rights.
9. Any amendments to an industry code should not result in a reduction of consumer rights. This critical point for consumer rights should be more clearly affirmed in RG183.
10. Section 183.81 requires that there should be an independent review of an industry code every five years. LAQ suggests that this section should be clarified to make it clear that the entire process of reviewing and approving a new industry code should be completed in a maximum of five years.
11. LAQ considers that sections 183.82-87 are confusing, and that it is not clear what ASIC is trying to achieve by these provisions.
12. Finally, LAQ considers it vitally important to amend section 183.95 to require that appropriate resourcing is provided to a Code Monitor to monitor and enforce the industry code.

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