

## INSURANCE: VULNERABLE CUSTOMER, FAMILY VIOLENCE AND FINANCIAL HARDSHIP POLICY

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### 1. APPLICATION

- 1.1 This Policy applies to all Principals, employees and contractors of McCabes (**MC**) involved in the provision of specialist legal advice and support to insurers and other insurance industry participants in relation to the management of their retail insurance claims (**MC Insurance Staff**).

### 2. BACKGROUND AND PURPOSE

- 2.1 MC provides specialist legal advice and support to insurers and other insurance industry participants in relation to the management of their insurance claims.
- 2.2 Most insurers have adopted the General Insurance Code of Practice (the **Code**). A revised version of the Code, which was released on 1 January 2020 and is due to be adopted by insurers by 1 July 2021, includes provisions relating to supporting those experiencing vulnerability and financial hardship, which the industry has committed to implementing by 1 July 2020. Those provisions apply to:
- (a) individual insurer customers and third-party beneficiaries under retail insurance products<sup>1</sup>; and
  - (b) individuals from whom insurers are seeking recoveries in relation to retail insurance products (together, the **Insurer Customers**).
- 2.3 As a legal adviser to insurers and those appointed by them to manage claims, MC is committed to assisting insurers to comply with the revised Code requirements, by meeting those that are relevant to MC's role.
- 2.4 The purpose of this Policy is to set out MC's approach, in that context, to:
- (a) supporting Insurer Customers experiencing vulnerability; and
  - (b) financial hardship.

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<sup>1</sup> Retail insurance products are those general insurance products referred to in *Corporations Regulations* 7.1.11 to 7.1.17 which are provided to individuals or small business

### **3. VULNERABLE CUSTOMERS**

#### **3.1 Policy**

- (a) MC comes into contact with the Insurer Customers of its insurer clients in the course of carrying out its role as legal adviser to insurers and those appointed by them to manage claims.
- (b) MC is committed to taking extra care with Insurer Customers who experience vulnerability in accordance with the Code requirements and any directions from insurer clients.

#### **3.2 Identifying vulnerability**

- (a) MC Insurance Staff will encourage Insurer Customers to disclose to them any vulnerability so that MC or its insurer client can arrange appropriate support.
- (b) MC recognises that an Insurer Customer's vulnerability may be due to a range of factors, including but not limited to:
  - (i) age;
  - (ii) disability;
  - (iii) mental health conditions (refer to paragraph 3.5 below);
  - (iv) physical health conditions;
  - (v) family violence (refer to paragraph 3.6 below);
  - (vi) language barriers;
  - (vii) literacy barriers;
  - (viii) cultural background;
  - (ix) Aboriginal or Torres Strait Islander status;
  - (x) remote location; or
  - (xi) financial distress.

#### **3.3 Notification requirements**

- (a) When an MC Insurance Staff member is told of or identifies an Insurer Customer's vulnerability, they will:
  - (i) create a detailed file note recording relevant information regarding what they have been told or identified and saving that onto MC's relevant legal file in iManage;
  - (ii) promptly advise the Principal responsible for the matter;
  - (iii) flag the matter by recording key details onto MC's Insurance Compliance Register, including the date, insurer, insurer matter number, MC legal file number, type of vulnerability and the Principal responsible for the file; and
  - (iv) promptly contact the instructing claims adviser or other appropriate representative of the relevant insurer client to notify them of the vulnerability

and provide written details to them of the following (with the notation "*Urgent: Vulnerable Customer*"):

- (A) the date the vulnerability was disclosed or discovered;
  - (B) how the vulnerability was disclosed or discovered;
  - (C) the type of vulnerability;
  - (D) details of any support or special requirements requested by the Insurer Customer; and
  - (E) any recommendations MC has in relation to responding to the Insurer Customer.
- (b) MC Insurance Staff will have regard to directions from the insurer client in determining their approach to dealing with Insurer Customer with a vulnerability.

### **3.4 Vulnerable customer support measures**

- (a) Where an MC Insurance Staff member is told of or identifies an Insurer Customer's vulnerability:
- (i) MC Insurance Staff will take account of that vulnerability in their dealings with the Insurer Customer; and
  - (ii) MC Insurance Staff will engage with the Insurer Customer with sensitivity, dignity, respect and compassion.
- (b) When an Insurer Customer with a vulnerability tells MC Insurance Staff, or MC Insurance Staff identify, that an Insurer Customer needs additional support, the MC Insurance Staff will:
- (i) notify the Principal responsible for the matter and the instructing claims adviser or other appropriate representative of the relevant insurer client, and have regard to their directions;
  - (ii) work with the Insurer Customer to find a suitable, sensitive and compassionate way to proceed as early as practicable, while protecting their right to privacy; and
  - (iii) if that additional support is from someone external to MC, such as a lawyer, consumer representative, interpreter, friend, financial counsellor or community support service:
    - (A) recognise this and allow for it in reasonable ways; and
    - (B) apply MC's processes in a flexible manner so as to recognise the authority of the support person; and
  - (iv) if that additional support relates to meeting identification requirements, take reasonable measures to assist the Insurer Customer in that regard, particularly if they are from a non-English speaking background or an Aboriginal or Torres Strait Islander community.
- (c) When an Insurer Customer with a vulnerability tells MC Insurance Staff, or MC Insurance Staff identify, that they need an interpreter, the MC Insurance Staff will:

- (i) notify the Principal responsible for the matter and the instructing claims adviser or other appropriate representative of the relevant insurer client, and have regard to their directions;
  - (ii) refer the Insurer Customer to the website of the relevant insurer, if that contains information on interpreting services, teletypewriter services, information on the insurer's products which has been translated into other languages or any other information for people with language barriers which is likely to be of assistance;
  - (iii) assist with providing access to an interpreter where it is practicable to do so and in accordance with the insurer's directions; and
  - (iv) record if an interpreter is used or if there are reasons MC is unable to arrange one.
- (d) If an Insurer Customer is distressed, say that they are not coping or suggest they may harm themselves, then the MC Insurance Staff should take the following actions:
- (i) if the customer is in immediate danger call Emergency Services (000 in Australia);
  - (ii) notify the Principal responsible for the matter and the instructing claims adviser or other appropriate representative of the relevant insurer client, and have regard to their directions;
  - (iii) provide the Insurer Customer with information regarding how to contact a counselling service or other support organisation in accordance with directions from the insurer client; and/or
  - (iv) suggest the Insurer Customer appoints a support person to assist in the management of their claim.

### **3.5 Mental health**

- (a) MC Insurance Staff will treat Insurer Customers with a past or current mental health condition fairly and adopt a respectful and positive approach in their dealings with them.
- (b) Claims by Insurer Customers with mental health conditions will be:
  - (i) processed sensitively having regard to the Insurer Customer's ongoing medical treatment needs, using the least intrusive methods of investigation in accordance with the claims investigation requirements of the Code; and
  - (ii) treated in the same way as for any other medical condition, including by having regard to prognostic data and documented rates of prevalence, morbidity and mortality.
- (c) Insurer Customer mental health conditions will be categorised according to commonly accepted professional standards, such as the International Classification of Disease (ICD) and Diagnostic and Statistics Manual (DSM).
- (d) MC recognises that its insurer clients are:
  - (i) required to design and sell their products and apply their product terms in compliance with the requirements of the *Disability Discrimination Act (Cth) 1992* and/or any relevant State or Territory anti-discrimination requirements;

- (ii) are subject to Code guidance that claims should not be denied on the basis of a pre-existing mental health condition where the covered event does not relate to the pre-existing mental health condition.

### **3.6 Family Violence**

- (a) MC recognises that, while family violence may involve "*violent, threatening or other behaviour by a person that coerces or controls a member of the person's family ... or causes the family member to be fearful*"<sup>2</sup>, it can also include emotional abuse, psychological abuse, sexual abuse, financial or economic abuse and damage to property.
- (b) MC Insurance Staff will be alert to the possibility that Insurer Customers are experiencing family violence with a view to recognising it early. Where a possibility exists, MC Insurance Staff will deal with the Insurer Customer in a way to facilitate, rather than to act as a barrier, to identifying family violence. Indicators of family violence may include where the Insurer Customer:
  - (i) appears, or sounds, distressed or scared;
  - (ii) is seen, or heard, to be taking instructions from their partner;
  - (iii) remains silent while another party does all the talking;
  - (iv) does not understand, or is not aware, that cover has been taken out in their name or covering their property;
  - (v) asks questions about a joint policyholder's behaviour or activities;
  - (vi) has concerns about protecting their personal privacy or safety, or the security of their policies;
  - (vii) is reluctant to involve the other joint policyholder when making a claim or seeking Financial Hardship help;
  - (viii) changes their address frequently;
  - (ix) does not want their physical address recorded;
  - (x) has been consistently late with premium payments; or
  - (xi) discloses the existence of any past or present family violence, or an intervention order or its equivalent (though MC Insurance Staff will not ask for an intervention order to be provided).
- (c) Where an MC Insurance Staff member is told of or identifies that an Insurer Customer may be experiencing family violence, they will:
  - (i) notify the Principal responsible for the matter and the instructing claims adviser or other appropriate representative of the relevant insurer client, and have regard to their directions;
  - (ii) give paramount priority to the safety of the Insurer Customer and their family;

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<sup>2</sup> *Family Law Act 1975 (Cth)* section 4AB

- (iii) deal with the Insurer Customer in an appropriate and sensitive way;
- (iv) protect the private, confidential and personal information of Insurer Customers affected by family violence against any risk of deliberate or inadvertent disclosure, including by:
  - (A) applying password protected security to the MC legal file; and
  - (B) ensuring that the entry into MC's Insurance Compliance Register, required by clause 3.3(a)(iii) above, does not contain any such private, confidential or personal information;
- (v) minimise the number of times Insurer Customers affected by family violence need to disclose information about family violence;
- (vi) discuss safe ways to communicate with the Insurer Customer and record the plan on the MC legal file, for example by asking them:
  - (A) whether it is a good time to talk; or
  - (B) if it's safe to leave phone messages;
- (vii) ensure that arrangements to collect debts from Insurer Customers affected by family violence are handled sensitively;
- (viii) ask the Insurer Customer if they are experiencing financial hardship and arrange access to Financial Hardship help where appropriate;
- (ix) provide the Insurer Customer with information regarding how to obtain assistance or access specialist services in relation to family violence in accordance with directions from the insurer client; and
- (x) not disclose their own details, if they have to contact a perpetrator of family violence.

#### **4. FINANCIAL HARDSHIP**

##### **4.1 *Individuals entitled to support***

- (a) Financial Hardship can arise when an Insurer Customer has difficulty meeting their financial obligations to the insurer.
- (b) Insurer Customers who are experiencing Financial Hardship may be entitled to support if they are:
  - (i) an individual insurer customer or third-party beneficiary who owes the insurer money, including an excess, under an insurance policy; or
  - (ii) an individual who the insurer is seeking to recover money from because they caused damage or loss to an insurer customer or third-party beneficiary.
- (c) That support does not include support with paying premiums under an insurance policy.

##### **4.2 *Identifying people experiencing Financial Hardship***

- (a) MC Insurance Staff will encourage Insurer Customers to disclose to them if they are experiencing Financial Hardship.

### **4.3 Notification requirements**

- (a) When an MC Insurance Staff member is told of or identifies an Insurer Customer's Financial Hardship, they will:
  - (i) create a detailed file note recording relevant information regarding what they have been told or identified and saving that onto MC's relevant legal file in iManage;
  - (ii) promptly advise the Principal responsible for the matter;
  - (iii) flag the matter by recording key details onto MC's Insurance Compliance Register, including the date, insurer, insurer matter number, MC legal file number and the Principal responsible for the file; and
  - (iv) promptly contact the instructing claims adviser or other appropriate representative of the relevant insurer client to notify them of the Financial Hardship and provide written details to them of the following (with the notation "*Urgent: Financial Hardship*"):
    - (A) the date the Financial Hardship was disclosed or discovered;
    - (B) how the Financial Hardship was disclosed or discovered;
    - (C) the type of Financial Hardship;
    - (D) details of any support requested by the Insurer Customer; and
    - (E) any recommendations MC has in relation to responding to the Insurer Customer.
- (b) MC Insurance Staff will have regard to directions from the insurer client in determining their approach to dealing with the Insurer Customer's Financial Hardship.

### **4.4 Financial Hardship support measures**

- (a) Subject to directions from the insurer client, when an MC Insurance Staff member is told of or identifies an Insurer Customer's Financial Hardship, they will give them:
  - (i) a form which meets the relevant insurer client's requirements for them to apply for Financial Hardship support; and
  - (ii) contact details for the National Debt Helpline: 1800 007 007.
- (b) MC will support the insurer client in its handling of applications for Financial Hardship support and recognises that, in dealing with an Insurer Customer's application, the insurer client:
  - (i) will keep the Insurer Customer updated about the status of their application;
  - (ii) will consider all reasonable evidence relating to the application, such as evidence of illness, disability, Centrelink Statements, or unemployment;
  - (iii) if it needs further information from the Insurer Customer:
    - (A) only request information that is reasonably necessary for it to assess the application;
    - (B) be specific about the information needed; and

- (C) request the information as early as possible;
    - (D) allow the Insurer customer 21 days to provide the information, unless a different timeframe is agreed;
  - (iv) may put recovery of an amount from the Insurer Customer on hold pending a decision on the Financial Hardship application;
  - (v) will advise the Insurer Customer in writing of its decision whether to give them Financial Hardship support:
    - (A) within 21 days of receiving their application or of further information requested; or
    - (B) if the Insurer Customer does not provide all further information requested within 21 days, or a later date agreed to, within 7 days of that deadline passing;
  - (vi) if it decides the Insurer Customer is entitled to Financial Hardship support, it will:
    - (A) work with the Insurer Customer to implement an arrangement that could include any one or more of the following:
      - (1) delaying the date on which a payment must be made;
      - (2) paying the insurer client in instalments;
      - (3) paying a reduced lump sum amount;
      - (4) delaying one or more instalment payments for an agreed period;
      - (5) deducting the excess from the claim amount the insurer client is due to pay them;
    - (B) confirm the agreed arrangement with the Insurer Customer;
    - (C) if agreement cannot be reached on how the Insurer Customer is to be supported, tell the Insurer Customer in writing about its complaints process;
  - (vii) may decide to fast-track an insurance claim;
  - (viii) may agree to release, discharge, or waive a debt or obligation owed by the Insurer Customer, which it will confirm in writing;
  - (ix) if it decides the Insurer Customer is not entitled to Financial Hardship support, will tell them the reasons for their decision and about their complaints process; and
- (c) MC will comply with the *Debt collection guideline: for collectors and creditors*, jointly published by the ACCC and ASIC in relation to any collection of money from an Insurer Customer.

## **5. TRAINING**

### **5.1 *Frequency of training***

MC will provide vulnerable customer and financial hardship training to MC Insurance Staff as follows:

- (a) for all MC Insurance Staff by 30 June 2020;
- (b) for new MC Insurance Staff commencing after 30 June 2020, as part of their onboarding; and
- (c) annual refresher training for all MC Insurance Staff thereafter.

### **5.2 *Vulnerable customer training***

MC's vulnerable customer training will include:

- (a) details of the operation of this Policy;
- (b) methods for identifying and assisting vulnerable Insurer Customers;
- (c) common causes, signs and symptoms of mental health conditions;
- (d) guidance on how to identify, support, deal appropriately and sensitively with and avoid harm to Insurer Customers affected by family violence;
- (e) the operation of the *Disability Discrimination Act (Cth) 1992* in relation to the coverage and exclusion of mental health conditions in insurance; and
- (f) details regarding the arrangement of interpreters for those MC Insurance Staff who are likely to be involved in communications requiring an interpreter.

### **5.3 *Family violence training***

Training relating to family violence should including helping MC Insurance Staff:

- (a) be more aware of the prevalence and practical effects of family violence;
- (b) recognise potential or early signs of violence that may lead to future violence;
- (c) have careful and sensitive conversations with an Insurer Customer affected by family violence, without disclosing to the perpetrator of such violence that the MC Insurance Staff is aware of the family violence;
- (d) appropriately triage matters involving family violence, including in relation to claims for Financial Hardship and the need for escalation;
- (e) refer the Insurer Customer affected by family violence to specialist services that can give further guidance;
- (f) understand the impact of trauma on an Insurer Customer affected by family violence; in particular, how trauma may affect the way they appear and present;
- (g) enable MC Insurance Staff to engage with Insurer Customers in a supportive manner;
- (h) understand the potential impact (sometimes positive and sometimes negative) that an insurer's actions can have on a customer experiencing family violence;

- (i) understand the need for strict confidentiality and privacy in relation to a Insurer Customer affected by family violence;
- (j) understand the significant and heightened safety risks for women and children during and after a relationship separation;
- (k) understand that perpetrators of family violence:
  - (i) may be Insurer Customers whose needs have to be managed appropriately; and
  - (ii) may attempt to convince MC Insurance Staff to disbelieve or dismiss someone affected by family violence;
- (l) understand the need for flexible arrangements for, and responses to, Insurer Customers affected by family violence;
- (m) understand the legal and procedural implications of court-issued family and domestic violence orders to the extent that they impact a claim or the Insurer Customer experience;
- (n) know about local referral pathways and contacts for local support services; and
- (o) understand, and keep in mind, that a female customer affected by family violence may prefer to speak to a female employee.

#### **5.4 Financial Hardship training**

MC's financial hardship training will include:

- (a) details of the operation of this Policy;
- (b) methods for identifying and assisting vulnerable Insurer Customers;

#### **5.5 Training records**

MC will keep a record of all vulnerable customer training provided to MC Insurance Staff.

#### **5.6 Reviews of training**

MC will review and refresh its vulnerable customer training at least every three years.

## Appendix 1

## Document Control

### Ownership and responsibility

Document Owner	Paul Garnon
Service Owner	Paul Garnon
Contact for Amendments	Paul Garnon

### Amendment history

Date Issued	Issued by	Reason for Change
16 June 2020	Paul Garnon	Original Policy
10 September 2021		Update name

### Distribution List

This document has been issued to the following people for information (I) and/or review (R):

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### Approval

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