



**Submission by the
Financial Rights Legal Centre**

ACCC

Northern Australia Insurance Inquiry, First interim
report

April 2019

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters. Financial Rights took close to 25,000 calls for advice or assistance during the 2017/2018 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

For Financial Rights Legal Centre submissions and publications go to www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

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National Debt Helpline 1800 007 007
Insurance Law Service 1300 663 464
Mob Strong Debt Help 1800 808 488

Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on Northern Australia Insurance Inquiry. The Financial Rights Legal Centre (**Financial Rights**) has submitted written comments to many of the previous consultations in this space including:

- 2014 Treasury consultation into Addressing the high cost of home and strata title insurance in North Queensland;
- 2014 reviewed and commented on a draft form of the North Queensland Home Insurance website;
- 2015 Inquiry conducted by the Northern Australia Insurance Premiums Taskforce and
- 2017's first call for submission to the Australian Competition and Consumer Commission's (**ACCC's**) Northern Australia Insurance Inquiry.

Response to Recommendations

Recommendation 1: Abolish stamp duty on home, contents and strata insurance products

and

Recommendation 2: Re-base stamp duty, use stamp duty revenue and mitigation

Financial Rights supports the governments of Western Australia, the Northern Territory and Queensland abolishing stamp duties on home, contents and strata insurance products, or in the alternative reducing stamp duties for home, contents and strata insurance in higher risk areas with reference to the sum insured value, rather than the premium level, and directing a portion of stamp duty revenue on insurance products towards measures to improve affordability for low income consumers or to fund mitigation works.

Recommendation 3: Insurers to report their brands and where they are writing new business

Financial Rights supports amending the *Insurance Contracts Act* to require insurers to report regularly to ASIC on the brands that they underwrite, and in which postcodes new business has been written for home, contents and strata insurance products.

Recommendation 4: Standardise definitions of prescribed events

Financial Rights agrees with the ACCC that the Treasury's review of the standard cover regime should develop a proposal to standardise the definitions of prescribed events to enable greater certainty for consumers and comparability of products.

Inconsistent definitions risk misleading consumers into thinking they have cover for certain events when in fact they do not. Nuanced differences in each and every term have material impacts upon their coverage. PDSs are long, complex and confusing documents and it is almost impossible for a consumer to appreciate these nuances and their impact and take them into consideration in their purchase decision. Consumer can subsequently find themselves paying for illusory insurance – insurance they believe they have when in reality they do not have it.

Case study

Randy lived next door to Arnold. There was a severe storm and their dividing fence collapsed. Both were insured, Randy with Insurer A and Arnold with Insurer B. Randy claimed with his insurer and within 10 days was cash settled the 50% repair cost. Randy

rang Arnold to see how he was going. Arnold's insurer was refusing his claim. Insurer B accepted there was a storm and that his fence was damaged, but they applied an exclusion in the storm insured event his policy:

what you are not covered for:

- *loss or damage caused by flood unless you have selected and we have agreed to provide this optional cover.*
- *loss or damage caused by rain, hail, wind or dust due to:*
- *a design fault, structural defect or faulty workmanship*
 - *lack of maintenance (a defect that you knew about or should reasonably have known about and did not fix)*
 - *an opening that was not created by the storm*
 - *building additions, renovation or alteration work.*
- *loss or damage to:*
 - *fences and gates that are not structurally sound or well maintained*
 - *artificial grass or turf*
 - *garden retaining walls*
 - *garden borders, driveways, paths or gardens*
 - *.... (list continues)*

Unbeknownst to Arnold the fence was not structurally sound when the storm hit. The fence was very old, but he had no idea that it wasn't structurally sound. The insurer agrees that it fell because of the storm.

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Financial Rights has captured some of the variance in standard definitions in its report *Overwhelmed, An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making, September 2018*, available at [Appendix A](#).

To add to the examples of variance ACCC has identified in its Interim Report we provide the following two examples:

For example, Fire and Explosions

Taking a look at 28 definitions, while there may be some superficial similarities there are a large number of nuances (subtle or otherwise) that would all become material in a claim and/or dispute. To demonstrate the variety:

- One insurer refers to the presence of "mineral spirits": Woolworth
- Three refer to the use of "irons": Only Coles, QBE and Woolworths
- Seven refer to exclusions arising from the use of heaters: Apia, ANZ, Coles, QBE,

RAA, Suncorp and Woolworths

- Five refer to “arcing”: Apia, ANZ, Coles, QBE, RAA, Suncorp and Woolworths
- Four refer to “grassfires”: Allianz, Budget Direct, CGU and ING
- Twelve insurers refer variously to cigarettes and/or cigars: AAMI, Allianz, Apia, Budget Direct, GIO, ING, RAA, RACT, Suncorp, Virgin Money, Woolworths.
- While underwritten by the same insurer (IAG) and having substantially the same terms, NRMA states that the policyholder is not covered for: “loss or damage which results from scorching or melting where there was no flame” while SGIO and SGIC state that the policyholder is not covered for “damage which results from scorching or melting when your home or contents did not catch fire.” Both of these seem on the surface to end up at the same result but have arguably different applications if deemed material at claims time.

For full details: see [Appendix A](#)

For example, Escape of Liquid

Financial Rights examined the definition of “Escape of Liquid” in 28 insurance PDSs and KFSs. We found that “Escape of liquid” was referred to in a multitude of ways including “Water or other liquid damage” (Allianz), “Water or liquid damage” (ANZ), “Sudden and unexpected escape of liquid at the insured address ...” (Budget Direct, ING, Virgin) “Bursting, leaking or overflowing” (Coles), “Water and Oil leaks” (NRMA, SGIO), “Water or other liquid” (QBE), “Bursting, leaking, discharging or overflowing of water or liquid” (RAA) “Liquid or water damage” (TIO) and “Escaping water” (Youi).

Once figuring this out a consumer then needs to examine the definitions to find what is covered and find that most insurers refer to a number of listed items. For example, AAMI provides an extensive definition of the items in which it will cover where there is any loss or damage to the building caused by liquid leaking, overflowing or bursting. It specifically refers, among things, to baths, sinks, toilets and basins, washing machines, refrigerators and waterbeds.

On the other hand, Allianz also refers to, among other things, washing machines and waterbeds but it makes no reference to the other items provided for in AAMI definition. Those items are also not specifically excluded.

Further, for those insurers who seek to clarify what is covered under the policy for the Insured Event by listing items, there is no indication to the consumer as to whether those

lists should be construed as exhaustive. The effect of this discrepancy means there is no meaningful way for a consumer to compare policies.

Beyond this there are significant discrepancies between insurers coverage of “exploratory costs,” “seepage of water” exclusions and even what the concept of liquid refers to – is it water and/or oil or any other liquid?

For full details: see [Appendix A](#)

Standard definitions must meet common sense, community expectations of coverage and exclusion. To this end, we strongly support the ACCC’s position that new standard definitions should be drafted in a way that removes potential gaps in coverage between prescribed events, avoids the introduction of ambiguous concepts.

Standard definitions must not be defined so narrowly as to exclude most claims nor should they subvert generally understood concepts. Standard definitions must be developed in line with the principles of risk pooling to ensure the costs of natural and non-natural perils are spread amongst all policyholder so that the claims of the few can be paid out of the premiums of the many.

In responding to the Treasury consultation paper Financial Rights has argued that all key terms under Part 3 of the *Insurance Contracts Regulations 2017* for five domestic insurances should be subject to standardisation, otherwise the problems currently faced by consumers due to inconsistency will remain, or at the very least shift to those areas that are left to be defined by insurers. Those terms relating to natural hazard/peril claims – ie Storm (including storm surge and run off), Fire & Explosion, Lightning, Actions of the sea, Escape of liquid – as well as those relating closely to the impact of natural hazards - ie Removal of debris, Alternative accommodation, wear and tear, rust or corrosion etc – could be prioritised to ensure that the issues facing Northern Australia are addressed sooner, if a staged development of definitions is recommended.

Definition of flood

Finally Financial Rights wishes to raise with the ACCC two issues relating to the definition of flood.

Firstly, following the standardising of the definition of flood, flood cover is now included in home and contents insurance policies but consumers have the choice to “opt out”. Many consumers *are* opting out of flood cover for financial reasons, or simply finding it impossible to find cover at an affordable price. This means at flood time, the content of discussions with affected consumers has not been about a consumer thinking they were covered when they were not, as was the case in in the aftermath of the Brisbane floods where consumers were unaware they were not covered for flood or had significant restrictions, such as a sub limit. The conversations in other disasters now focus on the cause of the damage. For those who opted out of flood cover for cost – this is critical since whether an event was related to flood water or

an insured event such as storm surge or storm water run-off is central to the policyholder receiving cover.

Second, apropos of the above, we note that the NRMA have recently changed the wording of its home contents policy so that it now says that they will automatically cover flood, rainwater run-off and storm surge.¹ However if a person opts out of flood cover, they are also automatically opting out of rainwater run-off and storm surge as well. The three are grouped in together.

You may be eligible to remove flood cover, and if you do so, you will also remove cover for rainwater run-off and storm surge.

This means that NRMA have undertaken a form of arbitrage to ensure that the definition of flood in practice includes storm surge and rainwater run-off. This is confusing, will disadvantage many unsuspecting consumers and not in the spirit of the law.

It is this sort of game-playing that frustrates consumers and can only be solved by instituting a range of range of reforms including standardizing definitions and introducing a genuinely effective standard cover regime.

We understand that there are some argument against standardising definitions that financially vulnerable consumers may not have insurance offered to them. Financial Rights is of the view that financially vulnerably consumers should not be disadvantaged by having lesser valued products issued to them, and equally, consumers purchasing “cheaper products” should not be disadvantaged because they did not comprehend that there is a difference in cover.

Recommendation 5: Review and mandate standard cover

Financial Rights notes that the ACCC have raised the possibility of developing an alternative standard cover regime that includes the following elements:

- Common exclusions and limitations would be incorporated to result in a more affordable mandated standard cover product.
- Insurers will be able to offer other products with additional or fewer features in addition to this standard cover product. Where insurers chose to offer other products that deviate from standard cover, they could be required to:
 - explicitly state what features are in addition to or derogate from standard cover
 - the price difference between choosing standard cover and the alternative product.
- Standard excess will be included (the national average is generally around \$780 for home insurance and \$400 for contents insurance);

¹ NRMA Home Contents Insurance, 25 January 2018

- Sum insured cover will be included rather than total replacement cover as the option more commonly taken out by consumers;
- The specific product inclusions and exclusions of standard cover would be set with reference to prevailing market offerings, with a view to making standard cover provide an acceptable level of coverage for the majority of the population.
- Consumers would be made aware when they select an alternative product that in doing so they are adding or opting out of certain events and the relevant premium implications.

Financial Rights generally supports the idea of developing a standard cover product that all insurers offer and that includes the features described above. This would be a sensible incremental reform that will benefit many consumers. We note that the ICA is currently undertaking significant work on developing a Core Cover default product to make it easier to compare policies and limiting variation to above the basic core coverage. This would assist in developing the specific product inclusions and exclusions of standard cover of a standard cover product to align with providing an acceptable level of coverage for the majority of the population.

However, Financial Rights believes that confusion will continue to exist in the market with respect to the other products developed in the market. We would also expect insurers to develop products and market and distribute them in such a way that they will drown out and benefits created by developing one standard product offering. We expect this because that is what insurers already do with respect to undermining the intent of the current standard cover regime.

Financial Rights has put forward a proposal for a standard cover regime to Treasury current review that differs in a number of key respects to the ACCC proposal.²

Financial Rights supports the introduction of a genuine standard cover regime that includes the following characteristics:

- a minimum set of basic default standards that meet community expectations below which insurers cannot fall;
- a complete set of standard definitions for every standard risk inclusion, exclusion and commonly used term;
- a limited number of clearly defined levels of cover above basic, default standard cover which insurers can compete on, for example: basic default cover, premium cover and deluxe cover;

² For further details of our proposal see: Submission by the Financial Rights Legal Centre Treasury Disclosure in General Insurance: Improving Consumer Understanding, Discussion Paper, February 2019 https://financialrights.org.au/wp-content/uploads/2019/03/190308_DisclosureReview_Submission_FINAL.pdf and Professor Justin Malbon, Professor Harmen Oppewal, *(In)effective Disclosure: An experimental study of consumers purchasing home contents insurance*, September 2018 <https://australiancentre.com.au/publication/ineffectivedisclosure>

- an ability to cover specific risks in addition to that included in basic, premium or deluxe standards to ensure unique individual risks are insurable, if not available under standard cover;
- minimum amounts for claims;
- a limit to the number of excesses able to be imposed; and
- applied to all forms of general insurance; and
- legislated in accessible, plain English.

One of the key problems with variations made from the current set of standard terms is the ability to vary an insurance contract to remove a standard prescribed event – an event that would be expected to be included by the community.

Ensuring that insurers cannot vary out of a set of prescribed events will adhere to the principle of risk pooling and prevent consumers being surprised when they find that they are not covered for an event that they thought they were covered for or having a set of exclusions imposed which effectively render the coverage useless.

It will mean that insurers will only have to highlight and compete on variances above proscribed levels.

We note that the private health insurance has been reformed to introduce four tiers of hospital products – Gold, Silver, Bronze and Basic.³ The requirements for each product tier are minimum standards. Insurers will be able to offer additional coverage in Basic, Bronze and Silver tiers. If insurers already provide additional coverage in low and mid-level products, the new categories do not require insurers to reduce that coverage

A similar restricted/community rating approach needs to be introduced to the home and contents insurance. Given the nature of what is being protected – people’s homes – one of the basic needs – we believe that such an approach is justified.

Recommendation 6: Unfair contract term protections should apply to insurance

Financial Rights supports recommendation 6 and supports ACCC’s submission to Treasury’s unfair contract terms proposal paper.

As the ACCC would be aware Commissioner Hayne has made the following recommendation in the Final Report of Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry:

Recommendation 4.7 – Application of unfair contract terms provisions to insurance contracts

³ Health.gov.au, Private health insurance reforms: Gold/Silver/Bronze/Basic product tiers [http://www.health.gov.au/internet/main/publishing.nsf/Content/89DCC17F86C24B4ACA2581BA007A2DC7/\\$File/20181010%20-%20GSBB%20fact%20sheet%20w%20tiers%20table.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/89DCC17F86C24B4ACA2581BA007A2DC7/$File/20181010%20-%20GSBB%20fact%20sheet%20w%20tiers%20table.pdf)

The unfair contract terms provisions now set out in the ASIC Act should apply to insurance contracts regulated by the Insurance Contracts Act. The provisions should be amended to provide a definition of the 'main subject matter' of an insurance contract as the terms of the contract that describe what is being insured.

The duty of utmost good faith contained in section 13 of the Insurance Contracts Act should operate independently of the unfair contract terms provisions.

The Government has also agreed with this recommendation.

We particularly note the Commissioner's explicit recommendation that the definition of 'main subject matter' adhere to Treasury's original June 2018 proposal – that is the 'main subject matter' describes what is being insured. In putting forward this recommendation the commissioner states that:

The purpose of extending the UCT regime to insurance contracts would be undermined if the broader definition endorsed by industry were adopted.⁴

This must be implemented by Treasury UCT laws are to have any impact upon insurance contracts.

Recommendation 7: A link to MoneySmart should be on new quotes and renewal notices

Financial Rights supports mandating link to the ASIC's MoneySmart website on renewal notices to assist the engaged consumers who require further information.

We are not aware of the figures of how many consumers have opted into electronic communication, and the cost of embedding links ought to be negligible in the systems. Any assertions to the contrary should not be taken at face value. Full cost estimates and supporting documents should be provided to back any assertions of this kind from the insurance sector.

We note there is no one size fits all solution in relation to this issue, and this may assist consumers who are seeking reliable third party advice which Money Smart can provide. We believe there should be many pathways for consumers to engage and obtain information, including ASIC Money Smart, the insurer's own information and clear, consistent information on renewal notices.

⁴ Page 307, Final Report, Volume 1, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Recommendation 8: Better understand information that falls within ‘general financial advice’

Financial Rights supports the recommendation that the Insurance Council of Australia engage with ASIC to gain a clearer understanding about the nature and type of information insurers can give to consumers within the meaning of providing general financial advice.

We would however reverse the onus here to ensure that ASIC proactively engage with insurers and provide regulatory guidance, and where necessary relief, to support the provision of advice to consumers purchasing general insurance products.⁵

We continue to hold the view that the ‘no advice’ model does not allow for meaningful engagement with consumers by their insurance companies because of the fear that providing too much information assistance will cross over into providing financial advice.

Financial Rights notes that the Treasury is currently consulting on removing the insurance claims handling exemption under Regulation 7.1.33 of the *Corporations Regulations 2001*.⁶ One key issue that the removal of the exemption raises is the impact upon the provision of advice by insurers. The implementation of this reform therefore provides ASIC an opportunity to develop appropriate guidance with respect to the provision of general and personal advice in the insurance context.

Recommendation 9: Disclose costs that count towards ‘sum insured’

Disclosing costs that count towards ‘sum insured’ is appropriate given there is significant obscurity with respect to the calculation of a sum insured.

Observations by the ESLIM with respect to the sum insured reflect some of the issues raised by the ACCC and sum insured variability described in the Interim Report. The NSW ESLIM has found that sum-insured valuations were increasing every year in home building policies at a rate higher than what would appropriately be required rather than merely reflecting increasing building and other costs.⁷ This leads to over-insurance. We would also be concerned if sum insured rates weren’t rising enough leading to under-insurance.

There is consequently a significant need to build greater trust in the use of sum insured calculators and the need for accuracy in these calculators.

⁵ Too Long; Didn’t Read Enhancing General Insurance Disclosure Report of the Effective Disclosure Taskforce to Insurance Council Board October 2015 (pg 46), available at: <http://www.insurancecouncil.com.au/assets/Effective%20Disclosure%20Report.pdf>

⁶ Treasury, Insurance Claims Handling, Taking action on recommendation 4.8 of the Banking, Superannuation & Financial Services Royal Commission, Consultation paper <https://treasury.gov.au/consultation/c2019-t364638>

⁷ NSW Emergency Services Levy Monitor, Pricing Differences: New vs existing customers, Discussion Paper, November 2018, https://www.eslinsurancemonitor.nsw.gov.au/sites/default/files/DiscussionPaper_Pricing_New%26Renewals_FINAL.pdf

Financial Rights has argued in other fora – including the recent review of the General Insurance Code of Practice – that insurers should commit to regular reviews and independent auditing of the sum insured calculators. Where an error is identified with a calculator, insurers should commit to correcting the calculator and any affected consumers.

Another significant issue that is a headache for consumers (and regulators) in the use of sum insured calculators is the fact that the calculators do not provide an audit trail. Consumers regularly report that they cannot recall if they put in the incorrect information into the calculator (generating the wrong figure) or if a calculator provided them with an incorrect figure on correct information. To our knowledge calculators on insurers' websites or third party websites, generally do not currently allow for any recording of the information submitted or resulting, due to the perceived risk of the liability.

If an insurer has a calculator to be used by a consumer to determine their sum insured it should be entrenched into the sales process and the insurer should take some responsibility for any errors if an error is identified in the calculator (for example, outdated building estimates). If a sum calculator is used in the sales process, this information should be recorded and kept on a policyholder's file.

We believe transparency of premiums on renewal notices, component pricing and sum insured calculators all go hand in hand in shining a light on insurance practices and to improve consumer literacy and understanding.

Insurers should:

- provide access to an accurate and informative sum insured calculator as part of the home building insurance application process: see further at Draft recommendation 1 below;
- engage independent experts to undertake regularly reviews and audits of the sum insured calculators and where an error is identified with a calculator that the insurer commits to correcting the calculator and informing any affected consumers;
- record all information used in a sum calculator during the sales process and keep this information on a policyholder's file;
- standardise how extras such as removal of debris relate to the sum insured for greater ease of price comparison.
- disclose sum insured on a premium notice.

Recommendation 10: Disclose the premium, sum insured and excess on a renewal notice

Financial Rights supports amending the Insurance Contracts Regulations and/or the product disclosure regime in the *Corporations Act* to require insurers to disclose the previous year's premium on insurance renewal notices. This however must include the following elements:

- the price of the new policy if the consumer renews (inclusive of taxes and charges);

- any difference between the new price and the previous year's price;
- every annual price charged presented in ways similar to that found on utility bills in visual/graphical form;
- the reasons for any change from the previous year;
- any substantial change to coverage.

Insurers must provide an explanation for premium increases automatically, *not* simply when a request is received from a policyholder.

Further the Government must establish a standardised design and consumer testing of the design must be undertaken to ensure the effectiveness of the measure.

While being mindful of information overload, the inclusion of both the sum insured and the excess level along with the previous year's premium would better serve consumer interests. It would enable consumers to compare apples with apples.

Consumers set a sum insured at the beginning and then often forget these figures moving into the future until claims time. Consumers are also regularly confused about the differences between sum insured, market value, agreed value and their impact upon a claim. It is important to ensure consumers are not caught out at the time of a claim being underinsured, or significantly over-insured and feeling taken advantage of by an insurer. This can lead to perverse outcomes including future underinsurance.

Excesses are generally disclosed on premium renewal notices. The difficulty though is the insurance market has witnessed a proliferation of the number of excesses payable in general insurance. Financial Rights is aware of at least 29 different forms of excesses being applied across home and building contents insurance:

- additional excesses based specifically on a risk assessed by the insurer (e.g. AAMI, GIO, Suncorp)
- extra cover excess, (e.g. AAMI)
- unoccupied excesses (e.g. AAMI, GIO)
- excesses for earthquake and/or tsunami claims (e.g. Allianz, ANZ, Bank of Melbourne, CGU, GIO, Suncorp, QBE, RAA, TIO)
- imposed excess (e.g. ANZ, QBE, TIO)
- personal valuables excess (e.g. APIA)
- accidental loss or damage (e.g. Bank of Melbourne, QBE, RAA)
- domestic workers compensation (e.g. CGU, CommInsure)
- voluntary excess (e.g. Coles, RAA, TIO)
- special excess (e.g. Coles, NRMA)
- cover outside your home excess (e.g. Coles, Youi)
- portable contents excess/portable valuables excess (e.g. CommInsure, GIO, Suncorp, QBE, Woolworths)
- legal liability insured event excess (e.g. CommInsure, TIO)
- motor burnout excess (e.g. GIO, Woolworths, Youi)
- injury to pet dogs and cats excess (e.g. GIO, Suncorp, RAA, Youi)
- contents in storage cover excess (e.g. QBE)

- student accommodation contents excess (e.g. QBE)
- cycle cover excess (e.g. QBE)
- additional carbon fibre excess (e.g. QBE)
- fixtures and lighting excess (e.g. RAA)
- non-removable endorsed excess (e.g. RAA)
- food spoilage excess (e.g. Woolworths, Youi)
- malicious acts and theft by tenants excess (e.g. Woolworths)
- rent default and legal expenses excess (e.g. Woolworths)
- business Item excess (e.g. Youi)
- landlord's furnishing excess (e.g. Youi)
- lock and keys excess (e.g. Youi)
- temporary accommodation: emergency evacuation excess (e.g. Youi)
- escaping water excess (e.g. Youi)⁸

There is a significant lack of transparency in excess pricing. The excess payable is not usually one single excess: it is made up of multiple, complex excesses at different rates, so that it is not clear what the total quantum of excess is upfront because this will vary according to the claims scenario and which excesses are enlivened.

Our recommendation is that the basic excess should appear on a premium notice for any year on year comparison. We believe that consideration also needs to be given to limiting the large number of excesses and establishing consistent and transparent definitions for these excesses.

Recommendation 11: Extend the ban on conflicted remuneration to insurance brokers

While the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry did not specifically recommend or even address a need to remove the conflicted remuneration structures of insurance brokers, this is a result of the limited time provided to investigate the issues of insurance brokers and the need to investigate a panopoly of other matters in the financial services sector. The lack of any recommendation should not be read in any way as a free pass or stamp of approval.

The same issues that are found in conflicted remuneration structures of financial advisors, frontline banking staff, mortgage brokers and all other distributors of financial services products apply to insurance brokers. The Interim Report outlines these issues.

We note Commissioner Haynes broad recommendation^{7.3} that

As far as possible, exceptions and qualifications to generally applicable norms of conduct in legislation governing financial services entities should be eliminated.

⁸ Page 7, *Overwhelmed: An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making.*

Consequently Financial Rights strongly supports amending the Corporations Regulations to remove the exemption for general insurance retail products from the conflicted remuneration provisions as they apply to insurance brokers.

Recommendation 12: Better information for consumers lodging a claim

The claims handling process can be frustrating and impossible to navigate, leaving many to withdraw their claim. More specific information is required to better inform consumers. Financial Rights agrees that the proposal by the ICA to improve information about the claims process does not go far enough. We support the General Insurance Code of Practice being amended to require that at the time a consumer lodges a claim, an insurer or its agent must clearly inform the consumer of the insurer's claim handling policy, and expressly refer to:

- how the insurer will assess the validity of the consumer's claim
- the insurer's preferred repairer policy and in what circumstances a consumer can use their preferred repairer
- how decisions are made on cash settlements
- who will be managing the claim (for example, the name and contact details of a contracted claims company if relevant)
- the fact that the loss adjuster is acting on behalf of the insurer and not the consumer
- the consumer's right to make a complaint to the insurer and the Australian Financial Complaints Authority.

We would also support greater commitments to more on the ground action following natural disasters. We have heard positive feedback from consumers regarding community for a established following the Townsville floods where customers of Suncorp Insurance, AAMI, Apia, GIO, Shannons, Vero, and Bingle were able to visit the insurance group's customer-support teams to lodge their claim and speak face-to-face with claims representatives.

Recommendation 13: ASIC approval for the General Insurance Code of Practice

Financial Rights supports the recommendation that the ICA work with ASIC to obtain its approval for the General Insurance Code of Practice and that the Code is enforceable as a part of the contract with consumers. This is in line with recommendations 1.15, 4.9 and 4.10 of the Royal Commission.

Recommendation 14: Public mitigation works and expected premium reductions

Financial Rights supports the insurance industry proactively working with governments to identify specific public mitigation works (e.g. flood levees) that could be undertaken and insurers should provide estimates of the premium reductions they anticipate should the works

proceed. Actual premium reductions following such works should also be publicly reported by insurers, measured against their estimates.

Recommendation 15: Building code changes to better protect interiors and contents

Financial Rights supports the Australian Building Codes Board expressly considering measures that better protect the interiors and contents of residential buildings from damage caused by natural hazard risk (such as, wind-driven water ingress around doors and windows during and following storm).

Response to Draft Recommendations

Draft recommendation 1: Insurers should estimate a sum insured for customers

Financial Rights supports amending the *Insurance Contracts Regulations* to require insurers to estimate an updated sum insured for their home insurance customers and advise them of this estimate on their renewal notice.

We would however extend this recommendation to ensure that it is not simply applied to an update of a sum insured.

What challenges would an insurer face in calculating these estimates?

Ensuring accuracy is critical. We recommend amending the *Insurance Contracts Regulations* to require insurers to provide access to an accurate and informative sum insured calculator as part of the home building insurance application process where a sum insured policy is available. The regulations should also be amended to:

- engage independent experts to undertake regularly reviews and audits of the sum insured calculators and where an error is identified with a calculator that the insurer commits to correcting the calculator and informing any affected consumers;
- record all information used in a sum calculator during the sales process and keep this information on a policyholder's file;
- standardise how extras such as removal of debris relate to the sum insured for greater ease of price comparison.
- disclose sum insured on a premium notice.

How much higher should a sum insured estimate be before a warning to the consumer is required?

A warning should be provided where there the difference is higher than the excess payable on the policy.

What would be the implications if a consumer elected to disregard such a warning?

A consumer could be willing to take the risk and could be doing so in a fully informed way but more likely it that the consumer will disregard the warning in an uninformed fashion. The warning provided should be clear and direct the policyholder to consider risk mapping. The implications should be spelt out clearly to the consumer.

Draft recommendation 2: Prominently publish PDSs and KFSs online with product offerings

Financial Rights strongly supports amending the *Insurance Contracts Regulations* to require insurers to publish key facts sheets and product disclosure statements online in a prominent manner and alongside the relevant products.

Do insurers face any challenges in implementing this? How could these be addressed?

No comment except that cost challenges raised by insurers should not be accepted at face value and a cost analysis should be provided.

How prescriptive should such a requirement be in terms of proximity and prominence?

Financial Rights believes the requirement needs to be specific and highly prescriptive.

Consumers are faced with huge difficulties in finding Product Disclosure Statements (**PDSs**) and (**Key Fact Sheets**) KFSs in the first place. Financial Rights examined 28 insurers KFSs in a research report titled: *Overwhelmed: An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making.*⁹ The report found significant variability with respect to where KFS's and PDS's are found on websites. Finding a KFS is particularly difficult and is subject to a multitude of website designs, link designs, and different placements on website pages

Finding and accessing a PDS or KFS can take a number of clicks through an insurer's website. Some websites bundle the policy documents together on one page, others provide links on the policy's webpage that open up a new browser tab. Some links download the KFS into a download folder.

The links to KFSs and PDSs vary vastly. These can include simple coloured hyperlinks in large, bolded, underlined print, or very small, buttons, bars, lists or side bars.¹⁰

Some websites highlight the PDS and/or KFS link somewhere in the middle of the page. Many others place the link to the PDS or KFS down the bottom of the page in fine print. Others still require a google search because they are so hard to find. For example, there is no reference to KFSs on Woolworths home building and contents web page. Many web pages link directly to a PDS or KFS .pdf. Others send the user to a separate page that bundle all the policy documents for the insurer together in a long list.

Many KFS links are visually secondary to the PDS by only appearing in fine print. Some websites do not even feature a link to a KFS, eg SGIC and Woolworths.¹¹

⁹ https://financialrights.org.au/wp-content/uploads/2018/09/180904_Overwhelmed_FINAL.pdf

¹⁰ see Table 2, Overwhelmed.

Some links download the documents to a user's download folder (eg RACQ), most other links create a new web page. Again – this variability does not assist comparability and usability.

We also note that the Financial Ombudsman Service have found that such disclosures are insufficient to meet the requirement under the Act to 'clearly inform' an insured.

FOS determination Case Number 4093316, 28 March 2018

"Section 22 of the *Insurance Contracts Act 1984* (the Act) states before a contract is entered into, an insurer must clearly inform the insured of the general nature and effect of the duty of disclosure. If the FSP does not comply with this statutory obligation, it cannot rely on non-disclosure to deny a claim.

The FSP says before proceeding with the insurance application, the applicant was advised of the nature and effect of the duty of disclosure. It says this important information was located at the footer of the page in hyperlinks.

Screenshots of the FSP's online quotation process shows the applicant was directed to a hyperlink to the duty of disclosure at the foot of each page of the application process, along with links to other information. The information provided says:

'Before you go ahead with your insurance application we draw your attention to the important documentation and information in the footer of this page.'

At the footer of each page were hyperlinks to the information including hyperlinks to the Duty of Disclosure and the Product Disclosure Statement (PDS).

This is insufficient to meet the requirement under the Act to 'clearly inform' the applicant of the duty of disclosure. This is because a mere direction to a link at the foot of the page along with links to other information does not sufficiently clearly inform a prospective insured of the nature of and effect of the duty of disclosure."

FOS determination Case Number 4093845, 9 May 2018

"The FSP says it informed the applicant of his duty of disclosure via its online application process. Screen shots of the FSP's online quotation and application system, show the applicant was presented with a link to the duty of disclosure.

¹¹ see Table 2. Overwhelmed. St George includes a link to the Contents KFS however this incorrectly downloads the Building KFS. SGIC has an incorrectly labelled KFS, and could only be found via a google search.

The manner in which the link to the duty was presented, however, is insufficient to have clearly informed the applicant of his duty of disclosure. This is because:

- it was presented in small print at the top of the relevant page
- it did not explain the consequences of not complying with the duty
- it did not highlight the importance of the duty
- the duty was displayed with links to other items and could be easily missed

Financial Rights recommends that the placement, presentation and delivery of KFS and PDSs on insurer websites need to be regulated in a prescriptive in order to:

- ensure consistency,
- assist comparability
- avoid arbitrage and avoidance.

Words like prominently are subjective and in the eye of the beholder –one insurer may see a large button as prominent, another may see a text hyperlink as meeting the definition. This will simply embed confusion and inconsistency.

Each of the elements identified in our research need to be prescribed and addressed including:

- the design and look of links,
- the placement of PDS and KFS links on website pages;
- where PDS and KFSs are stored, accessed and how they are downloaded.

Consumer testing is critical to ensure that the correct approach is taken.

Is an alternative proposal more appropriate to encourage consumer access and understanding?

While Financial Rights supports innovative approaches in delivering PDSs and KFSs that are more effective than current approaches, we do not support leaving this solely up to the market to develop these approaches as it will simply maintain inconsistency and its negative impact on comparability. ACCC could work with insurers who wish to innovate, undertake consumer testing and decide on the best way.

Draft recommendation 3: Disclose premium impacts of optional inclusions or exclusions

Financial Rights supports amending the *Insurance Contracts Regulations* to require that insurers disclose the premium costs or saving for each optional inclusion or exclusion they offer to a consumer. Insurers should also indicate the premium cost or saving associated with

incremental changes in excess levels and sums insured. This information should be provided to a consumer with a quote for a policy and upon its renewal.

Such a reform goes directly to the principles behind mandating a component pricing regime as currently being considered by Treasury.

Financial Rights has recommended the establishment of a framework to provide component pricing of premiums to policy-holders upon them taking out or renewing an insurance policy. The components should include information regarding:

- controllable risks
- non-controllable risks
- acquisition and retention costs
- statutory charges

Such a scheme would be more comprehensive than the current ACCC recommendation since it would apply not simply to the impact of optional inclusions or exclusion – although this is important information to include in a component pricing regime.

Developing an effective component pricing regime will:

- remove significant information asymmetries between insured and insurer;
- provide consumers with increased understanding about what effect mitigation strategies may have on reducing insurance premiums or what behaviours or conditions might increase premiums;
- potentially alert consumers to changes in the insurer's perception of their risk;
- increase the possibility for a genuine risk mitigation partnership between the insured and the insurer;
- benefit society as a whole from increased risk mitigation and decreased risk taking; and
- allow consumers opportunities to correct errors or misperceptions.

Consumers should be empowered to purchase insurance products on the basis of genuine risk mitigation partnerships with insurers. Component pricing would assist in the development of such a partnership by providing a signal to consumers of the risk factors taken into account when premiums are set.

Knowing what makes up the price of a premium – particularly the risk components of a premium - will better inform consumers about that risk and what effect mitigation strategies may have on reducing insurance premiums or what behaviours or conditions might increase premiums.

The signal would be particularly helpful in parts of Australia that face natural hazards and severe weather risks. Knowing that a large portion of your premium is made up of the cost of a fire, flood or storm risk is incredibly valuable information to a homeowner or prospective homeowner.

Insurance consumers are currently told very little if anything at all about the risks that they are insuring against. There are some risk mapping services available, for example the NRMA's Safer Homes initiative¹² and Insurance Council of Australia's Building Resilience Rating Tool¹³. It is however unclear the extent to which these tools are currently used by consumers. It is clear though that insurance companies are not currently required to make this information available to consumers even when it applies directly to their premium price. It is also not clear how accurate and independent these services are and results can be contested if the rating doesn't take into account individual mitigation and resilience factor. Even if they are used, consumers are left in the dark with respect to how those risks identified impact upon the actual premium price they are charged. They are also largely not made aware of what actions they should or could take to lower these risks.

The Productivity Commission¹⁴ identified two forms of information asymmetry that impact upon a consumer's ability to make efficient and appropriate choices to their insurance. These were where:

- consumers have access to relevant information, but it is not in a usable format (e.g. it is too complex) or;
- consumers cannot access the information they need (e.g. insurers not providing information).

The former arguably applies to the provision of the risk mapping services that are currently in the marketplace, PDSs and other material provided by insurers.

The latter however relates directly to the issues at the heart of our component pricing ideas, that is, consumers are not provided with the information that insurers know about the specific (and general) risks the policyholder or a prospective policyholder faces.

The Actuaries Institute (**AI**) put forward the following definition for a fair premium:

A premium that reflects all that is known about a risk, together with an appropriate amount for costs and profit, can be said to be a "fair" premium.

The AI then ask whether this is in fact desirable since some will be paying higher or lower premiums because of increased information known about them. They ultimately argue that a premium may be considered fair if it reflects controllable risks and uncontrollable risks.

Some risks are controllable and premiums can be reduced or cover provided if appropriate mitigation action is taken. A reckless driver can take more care and reduce speeding; a sedentary office worker can exercise more often. If the customer responds appropriately to the right risk signals they can reduce risk and premiums. For controllable risks, there is a benefit for all of society from understanding big data trends and pricing at the individual

¹² saferhomes.nrma.com.au

¹³ <https://www.resilient.property/>

¹⁴ Productivity Commission, *Natural Disaster Funding Arrangements—Inquiry Report*, Vol. 2, December 2014, p. 434.

level. Customers benefit from what they are learning from the insurers. Community benefits from less risky behaviour of these individuals could include fewer road accidents and lower health and welfare costs.

If society is therefore to benefit from the mitigation of controllable risks, consumers must know what those risks are to be able to act on them. Consumers are generally not made aware.

Ideally, component pricing will therefore identify and highlight those risks that can be controlled and mitigated and encourage consumers to act accordingly.

For full disclosure and addressing issues of information asymmetry, all the components of a premium should be provided to consumers in some form. Notwithstanding this, the following components are likely to be the most useful for consumers:

Controllable risks: The most important component that needs to be highlighted to consumers are those controllable risks that consumers have the potential to mitigate through action.

Uncontrollable risks: It is important for consumers to understand the components of their premium that they have no control over but that still make up their premium. Financial Rights regularly hear from consumers on the Insurance Law Service seeking information about their premium level and why it is so high. Inevitably, uncontrollable natural perils will make a large proportion of the risk component of a premium.

Expenses: The key elements for a consumer would wish to know are the

- acquisition costs (including commission costs, new customer discounts, online discounts etc) and
- retention costs (including loyalty discounts, no claims bonus, multiple product discounts)

The rest including claims handling expenses, administrative and overhead expenses, price moderation and competition and the cost of capital are less important. The difference is that acquisition and retention costs are direct price signals attracting consumers to a product, the others are simply the basic cost of doing business – something which most consumers understand implicitly.

Profit: It is important for people to understand that profit makes up a part of every premium however the exact figures or percentage are not necessarily required.

Statutory charges: This may be useful for transparency and accountability to ensure that consumers are not being overcharged. Presentation of these charges should be consistent across brands.

What challenges do insurers face in implementing this? What are the risks and implications for insurers?

It is commonly argued by the industry that insurers' premium pricing information is "commercially sensitive" and if pricing is known it would somehow detrimentally affect their ability to compete. This guarded approach has led to consumer suspicion, misunderstanding

and sensitivity to price change. It undermines the insurance industry's credibility in being consumer-focused and drives the perception of gouging.

The insurance industry should not be able to shield relevant information on the grounds that they are using "commercially sensitive" rating factors and weightings. Consumers should have access to such information if they have a legitimate dispute about the reasons behind a premium or excess price or changes to their insurance policy conditions.

Even if "commercial sensitivity" is accepted to be an issue, Financial Rights does not believe that it is an insurmountable one and asserts that there are simple and creative ways to ensure such information is sufficiently obscured without denying homeowners the right to basic information about their insurance. For example, the component pricing could use percentage figures that are heavily rounded up or even display information using graphics and images only. The number of solutions available is, in our opinion, limited only by the willingness and creativity of the sector to develop solutions statisticians use every day.

"Commercial sensitivity" must no longer be used as an excuse to continue to keep homeowners in the dark about an essential and important product and should not be wielded as some sort of trump card to prevent any and all changes aimed at improving information asymmetry in the insurance market.

What are the risks and implications for consumers? Is this too much information that will confuse consumers?

While this proposal and a broader component pricing regime run the risk of information overload (particularly by including prior year sum insured and excess figures) or potential misunderstandings (with consumers confusing last year's figure for this year's) we do not believe that these issues are insurmountable if designed and presented in a manner that is simple, straightforward and clear.

What increments for sum insured options should be costed?

We note that the presentation of incremental excesses can be straightforward increases of \$250 each step to the maximum of usually between \$1500 and \$2000. Others are a lot smaller.

We do not have a view as to which approach is better but we believe that insurers would be able to institute any incremental approach required, as they currently do with excess.

We recommend that marketing research and consumer testing may be able to assist it developing the right approach.

Should insurers be required to indicate the cost implications for all standard excess options they offer, or only some?

We support insurers being required to indicate the cost implications for all standard excess options. We see no reason why insurers should provide the cost implications for some excess options and not others.

Draft recommendation 4: National home insurance comparison website

We believe that the only way to solve the comparability problem is to introduce an effective standard cover as recommended above, with concomitant standardised definitions.

Once it an effective standard cover regime is introduced, comparison websites may be more useful than they currently are.

Until then we do not support a national home insurance comparison website.

What would be the key advantages and disadvantages of a national independent home insurance comparison website?

Financial Rights remains skeptical about the benefits of a comparison website due to:

- an inability to genuinely compare specific features– since there are no standard definitions
- an inability to genuinely compare products – since each product varies wildly from standard cover both downwards and upwards for almost each and every event;
- the bias towards focussing on price rather than risks; and
- in the case of residents in northern Australia, the website will simply tell people what they already know – that home insurance is either incredibly expensive, limited to one provider or non-existent at all.

In the event a national independent home insurance comparison website could overcome the challenges above (which would involve at a minimum a standard cover and standard definitions regime) the advantages could potentially include:

- independence – independent of commercial interests, and
- a mandated focus on features, covers and risk rather than price.

Should the website be limited to home insurance, or should consideration also be given to including contents insurance? What would be the benefits and limitations of a contents insurance comparison website?

Both would have to be included to provide the full picture to the consumer.

To be effective, is it necessary for the website to provide “live” quotes? That is, does it need to show the consumer the actual quote that they can then automatically proceed with? What would be the benefits and limitations of live quoting? What would be the benefits and limitations of an alternative, such as indicative pricing which could then be tailored to the consumer at the purchase stage?

Live quoting must take place – otherwise consumers will be sceptical of the worth of the site and be frustrated and annoyed when the indicative price does not match the actual price. It will also add to the work the consumer needs to do to purchase a suitable product. It will likely fail if only an indicative price is provided.

We suspect consumer testing would show this to be the case, but if there are any doubts, ACCC should consumer test this.

Are there any alternate approaches to enabling comparisons between insurance products, for example a rating system?

We have recommended a basic default cover, premium cover and deluxe/gold silver bronze cover standard cover regime above. We would however not be averse to consideration of an effective rating system.

Would individual websites developed by state and territory governments be a more effective alternative to a national website?

No. Individual websites developed by state and territory governments would lead to confusion and increased complexity. They will also likely change over time at different rates leading to different approaches across the country.

Draft recommendation 5: Renewal notices should give 28 days notice

Financial Rights strongly agrees with the ACCC that the *Insurance Contracts Act* should be amended to require insurers to provide renewal notices for home, contents and strata insurance no less than 28 days before the expiration of their insurance coverage. 14 days is too short a time to effectively shop around given the difficulties identified in this report.

Is 28 days a sufficient amount of time? Would an alternative timeframe be more appropriate?

We believe that consumers should be given as long a lead time as possible. 28 days is suitable.

Do insurers foresee any difficulties or concerns in providing 28 days?

No.

Is there a risk that extending this period will increase the chance of a consumer forgetting to renew a policy? What could be done to avoid this risk?

Extending the time too far out will increase the chance of a consumer forgetting to renew. We therefore believe 28 days is a suitable timeframe.

Draft recommendation 6: Disclosure where premium increases are capped

Financial Rights supports amending the *Insurance Contracts Act* to require insurers that have capped premium increases for particular risks (to slow the rate of adjustment to a higher technical price or other pricing objective), to disclose this to an affected policy holder and provide an estimate of the timing and extent of premium increases that the insurer intends to apply in future.

We support this measure to assist in building a genuine risk mitigation partnership between consumers and insurers.

What challenges would insurers face in implementing this measure?

No comment

Should this incorporate prescribed wording to ensure consumer comprehension and consistency across all insurers?

Yes – simple, plain English wording should be prescribed in order to enhance understanding. Insurers should not be left to develop different explanations as this will lead to confusion and maintain complexity.

If an insurer adjusts their anticipated technical price, or the timeline for reaching it, how should this be communicated to consumers and at what stage?

This should be communicated to consumers via at least two means of communication they have nominated. It should also be communicated as soon as it is known by the insurer and at renewal time.

Is there a danger that this information could allow insurers to signal their pricing intentions?

No because these price signals should already be available to new customers, since this is an initiative mainly directed at existing customers.

Draft recommendation 7: Consider likely insurance costs before purchasing real estate

Financial Rights support states and territories implementing measures to prompt consumers to investigate insurance costs when they are considering purchasing real estate including providing a statement in a statutory information disclosure for a real estate transaction advising any potential purchaser to obtain an insurance estimate as part of their due diligence.

What guidance, if any, should be provided on the level of cover that should be used to obtain an insurance estimate (where mandatory standard cover has not been implemented)?

If mandatory standard cover is not in place, consumers should be provided with what would look like the elements of a standard cover product would look like. That is consumers should be made aware of:

- the common inclusions, exclusions and limitations that they would need to consider;
- the average standard excess (as the ACCC reports: the national average is generally around \$780 for home insurance and \$400 for contents insurance);

- an explanation of the difference between sum insured cover and total replacement cover and information regarding the fact that sum insured is more commonly taken out by consumers and likely to be more appropriate;
- consumers should be made aware when they select a product that in doing so they are adding or opting out of certain events and that these have premium implications;
- information regarding natural hazards/perils that may apply to the property and access to mapping tools that may assist them.

Are there any unanticipated costs or benefits of this recommendation being implemented

No comment

Draft recommendation 8: Requesting personal information held by insurers

Financial Rights supports amending the *Insurance Contracts Regulations* to require insurers provide clear notice to consumers that they can obtain a copy of the information that the insurer holds about them, and contact details for doing so. This notice should be provided on a certificate of insurance and any renewal notices.

We would wish to extend this to access the information held on an Insurance Reference Service Insurance Report, for free. As we have previously submitted the information held in an insurance report has the potential to be very prejudicial to a consumer in obtaining insurance or in making a claim. The lack of specific regulation in insurance reporting is in stark contrast with credit reports where there is extensive regulation about what information can be held, how consumers can get access and correction procedures.¹⁵ Fraud is a serious allegation and the reporting of fraud on an insurance report is potentially defamatory and needs to be tightly regulated.

Should insurers be obliged to update consumers about any changes in the information that is held about them? For example, if this information changes after a consumer makes a claim against their policy?

Yes. Consumers should be informed of any changes to the information that an insurer holds on a policyholder.

Should the information be provided automatically to the consumer (instead of on request only)?

Yes the information should be provided automatically.

With respect to any changes in their information: how is a customer supposed to know that their information has changed.

¹⁵ Part IIIA of the *Privacy Act 1988 (Cth)* regulates consumer credit reporting in Australia and is supported by the *Privacy Regulation 2013 (Cth)* and the *Privacy (Credit Reporting) Code 2014 (Cth)*.

With respect to the information held by insurers more generally – consumers should be provided ongoing access to records about them automatically via a toolbox or app similar to that being conceived under the Consumer Data Rules.

Insurers will raise the spectre of alerting consumers to sensitive information regarding a fraud investigation. We do not agree with this. If an insurer suspects, for example a fraudulent claim, consumers have a right to know this.

Is there an alternative proposal that may be more appropriate?

No comment.

Draft recommendation 9: Strata managers to be remunerated by body corporate only

Financial Rights supports state and territory legislation governing strata managers be amended to prohibit strata managers from accepting payments in relation to arranging strata insurance other than those agreed to, and made by, their body corporate. The incentive to establish higher premiums borne of a fundamental conflict of interest must be eliminated.

What are the potential implications for body corporates or strata managers for this change?

They will need to establish new arrangements as is appropriate and the intent of the change.

Should existing contracts be exempt from any changes?

No – there should be no grandfathering of conflicted arrangements.

Is there an imbalance in negotiating power between body corporate committees and strata managers? Will the overall cost of obtaining strata insurance for bodies corporate be reduced?

No comment

Draft recommendation 10: Clear disclosure of products considered and remuneration

For the sake of full transparency, Financial Rights supports amending the *Corporations Regulations* to require comparison websites and insurance brokers to disclose a complete list of what home, contents, or strata insurance products they will consider when making a comparison or providing a recommendation to a consumer; and requiring comparison websites to disclose the amount of commission and other remuneration.

When in the insurance process should this disclosure be provided to consumers?

Consumer should be informed at a number of stages:

There should be a general statement on the insurance comparison web page detailing what products are included and, more importantly what are not, as well as a statement or visual indication of what products are they being remunerated and what the commissions are.

When a search is undertaken, the site needs to highlight which products they will receive remuneration for and how much they will be provided. Consumers should be informed too that they could receive a different price if they contacted the insurer directly.

Finally once a product is selected – and that product happens to be one where there is a deal in place - the full details of remuneration and commission should be provided to the consumer.

Should the wording of the disclosure be left of the comparison website/broker, or be prescribed?

No. The information that needs to be provided should be prescribed and it should detail:

- the form and of remuneration
- the size of commission
- the fact that a consumer could receive a lower/different price if they were to go direct to the insurer;
- any non-commission/non-financial benefits the website receives
- any ownership or related company information;
- any lower than standard cover elements in the product being offered.

For comparison websites, should the disclosure require the actual amount of commissions and other remuneration arrangements? If not, what is an acceptable level of detail?

Yes comparison websites should the disclosure the actual amount of commissions and other remuneration arrangements. The industry will claim that this is commercial-in-confidence but commissions are detailed in other sectors like financial advice and the same should apply to comparison websites.

Should comparison websites also be required to disclose a list of which insurers they will not be considering? Should this be conditional on the adoption of recommendation 3 (for insurers to report their brands to ASIC)?

Yes comparison websites should be required to disclose a list of which insurers they will not be considering. This could empower some more motivated consumers to seek out further comparison information. Otherwise it is impossible for a consumer to know or figure out that there may be other options available.

This recommendation should not be conditional on the adoption of recommendation 3 but it would assist the process of oversight.

Draft recommendation 11: Giving consumers more control over how claims are settled

Problems with cash settlement practices have been well documented – the most recent of which is the exploration of the issue by the Banking, Superannuation & Financial Services Royal Commission in the TAL and AAI case studies in Module 6.

Currently, the handling and settlement of insurance claims, or potential insurance claims, is now carved out from the definition of ‘financial service’ by regulation 7.1.33 of the *Corporations Regulations and Corporations Act s 766A(2)*. Treasury is currently consultation on implementing recommendation 4.8 of the Royal Commission, to remove that exclusion, the consequence of which would enable ASIC to have greater oversight and intervene in claims handling and settlement processes.

This is likely to bring greater spotlight on cash settlement processes and bring greater fairness to the process. However greater certainty is required to ensure that consumers have a legislated right to choose whether their home insurance claim is settled through a cash settlement or by proceeding with a repair/rebuild managed by the insurer.

We support draft recommendation 11 as long as consumers are fully informed of the implications of choosing cash settlement option.

What are the risks and implications of this recommendations for consumers? For insurers?

Placing the choice to cash settle or repair/re-build is a positive one as long as consumer are informed of the risks and benefits of both options. The risks for consumers include:

- cash settlement offers can be very low due to the fact that insurers can engage builders to repair the property at a lower price (due to their scale) than what homeowners could obtain by approaching builders directly in the market;
- consumers will lose insurer guarantees regarding the quality of repairs
- engaging builders after a natural disaster may take some time due to the high demand;
- cash settlements can cause problems for mortgage owners since the mortgage lender is entitled to approve repairs on the property – which can lead to disputes;
- managing repairs can be complex, difficult, inefficient and a time strain for most homeowners.

If a property is subject to a mortgage, does this raise any additional concerns?

Yes. As indicated above a mortgagee lender has the entitlement to receive the insurance payout and approve any repairs completed on a property. This can lead to disputes between the owner and the mortgagee – for example, over the quality of work or the use of unqualified repairers (including the home owners themselves, in an attempt to save money).

What measure should be used to determine the cash settlement amount? Would it be appropriate for the amount to be equivalent to the insurer’s preferred quote?

Any measure used to determine the cash settlement amount needs to be independent of the insurer and based on actual market rates. As outlined above, cash settlement offers from

insurers can be very low due to the fact that insurers can engage builders to repair the property at a much lower price due to economies of scale.

Should a consumer be required to obtain independent advice before exercising this option?

Encouraging the seeking out of independent advice is always a positive thing to do. Requiring obtaining independent advice may assist better decision making. This could create a strain on free and independent services such as our own Insurance Law Service, for example, or state based Legal Aid commissions. People may not be able to afford private advice, particularly during the aftermath of a natural disaster.

Should the consumer be required to obtain their own quotes for the building repair or replacements?

We regularly recommend that the consumer obtain their own quotes. Whether this should be a requirement given some of the difficulties in obtaining such quotes after a natural disaster, is another question. However there would be some value in requiring a consumer to obtain a quote before making a decision on cash settlement in order to better inform their decision.

What time limit should apply before the decision reverts to the insurer?

If independent advice and obtaining quotes is required then people should be given a longer lead time – up to 12 months, given the difficulties following a natural disaster – before the decision reverts to the insurer.

How should any costs already incurred (for example in preliminary works) be accounted for?

No comment.

Draft recommendation 12: Clearly stated mitigation discounts

and

Draft recommendation 13: Information on mitigation works that could reduce premiums

Financial Rights strongly supports amending the *Insurance Contracts Regulations* to:

- require insurer quotes and renewal notices for a property to expressly show what discounts have been applied (if any) to reflect mitigation measures undertaken on that property; and
- require insurer quotes and renewal notices for home insurance to provide a schedule of mitigation measures which customers of the insurer have undertaken for properties with similar characteristics in order to improve their risk rating. This should include a guide to the premium reductions (in percentage terms) that consumers have received for undertaking these measures.

What are the benefits of detailing mitigation works in quotes and renewal notices as either generalised groups, for example (roof improvements or structural improvements) or specific itemised measures (such as roof replacement, cyclone shutters or cyclone over-battens)?

These reforms are critical to build a genuine risk mitigation partnership.

Consumers should be empowered to purchase insurance products on the basis of genuine risk mitigation partnerships with insurers. Informing consumers about what mitigation they can undertake and how that will impact on their premium is essential information that consumers need to know. Knowing that a large portion of your premium is made up of the cost of a fire, flood or storm risk is incredibly valuable information to a homeowner or prospective homeowner.

Not only would such a move provide consumers with increased understanding about what effect mitigation strategies may have on reducing insurance premiums or what behaviours or conditions might increase premiums it would also:

- remove significant information asymmetries between insured and insurer;
- alert consumers to changes in the insurer's perception of their risk;
- benefit society as a whole from increased risk mitigation and decreased risk taking; and
- allow consumers opportunities to correct errors or misperceptions of their risks if identified.

Should standard categories of mitigation measures apply across all insurers? If so, what should these be?

Yes Financial Rights would support identifying standard mitigation measures or categories that could potentially apply to a property.

For example, with respect to bushfires the Country Fire Authority of Victoria identify 4 relevant categories:

1. Defendable space: an area of land around a building where vegetation (fuel) is modified and managed to reduce the effects of flame contact and radiant heat associated with a bushfire.
2. Access - Access from the primary road network to the building needs to be provided and designed to enable occupants of the building safe access and exiting in the event of an emergency. Clear access to the water supply may also crucial in the event of a fire.
3. Water supply - The provision of a dedicated water supply, with appropriate volume, access and markings will ensure that, in the event of a bushfire, a property is well equipped to defend against a bushfire if required
4. Construction standard - Building construction and design can be used to minimise the impact of ember attack and radiant heat on a building. Construction requirements for buildings are expressed as a Bushfire Attack Level (BAL) as prescribed in AS3959 or NASH Standard

We believe a similar set can be found from emergency services for cyclones, floods etc and insurers should be well placed to assist in this regard.

What system challenges (if any) might prevent an insurer from providing greater clarity around pricing of mitigation works?

No comment.

Are there any risks of requiring greater disclosure of insurers' mitigation discounts?

There should be no risk if there is a genuine risk mitigation partnership.

There is a risk that an insurer may not accept that the mitigation work undertaken meets the standard they require. There should be standards set to ensure that insurers cannot arbitrarily reject genuine, good faith, mitigation work undertaken independent of an insurer.

What is the best method for conveying estimates of possible mitigation discounts to consumers? Is there any research or evidence to demonstrate consumers respond better one way or another?

We note that few insurers have undertaken this exercise that we are aware of however we are aware of a couple of exercises.

Firstly NRMA recently conducted a 3 month trial of the Safety Hub which aimed "to see how safe we can make Australia."¹⁶ A select group of NRMA Insurance customers were invited to participate. The Safety Hub designed personalised safety tasks based on relevant risks, and then helped the user to complete them. For example, a home owner was asked to check for leaks. According to the app:

Frayed, rusted and kinked flexi hoses are one of Australia's leading cause of water damage in homes between 5 and 30 years old

The user is then given an explanation of what a flexi-hose is and then directed on how to check for leaks. The user is also asked to introduce themselves to their neighbours:

Why it matters? You can't be home every hour of every day. But if your neighbours are keeping an eye out while you're away, you can reduce your risk of crime.

They are then prompted to let NRMA know if they know their neighbours.

According to IAG, undertaking these risk mitigation tasks would then lead to discounts and offers. While premium changes were not included in the trial, it is Financial Rights understanding this option is under a consideration moving into the future.

A second example is the use of technology to signal risk in motor vehicle insurance. QBE, for example, offers "Insurance Box for young drivers". Here, drivers install an electronic device in their car that transmits back to the insurer a detailed breakdown of their driving habits in

¹⁶ <https://itunes.apple.com/au/app/nrma-safety-hub/id1385354399?mt=8>

areas such as their braking, acceleration, steering, cornering, speed and night driving.¹⁷ QBE then calculate a “DriveScore” rating to evaluate the driver. The higher the DriveScore the less the policyholder will pay for insurance. The lower the score, the more the driver pays.

The policyholder for all intents and purposes enters into a risk or loss mitigation partnership with the insurance to alter behaviour for improved outcomes for the driver, the insurer and arguably society, through safer driving.

The technology enables the individual consumer to take greater responsibility for the risks in their lives (in this case their driving) while at the same time remaining covered for the important and unexpected risks they face. The price signalling motivates behaviour. How this is calculated is fairly opaque¹⁸ though with the price signal applied annually on a post-facto basis. Further benefits that QBE claim the use of the Insurance Box can include improved social cache,¹⁹ tracking of your car if stolen,²⁰ more detailed information in collisions,²¹ and the maintenance of the car’s value.²²

While the above example raises a number of significant questions²³ it is not inconceivable to develop similar, ethical ways to ensure that component pricing, risk mitigation and price signalling can develop feedback loops that ensure premiums are appropriately lowered.

Consumers regularly choose different excess options that adjust their premium. We would expect that insurers could easily identify what actions a consumer could undertake to mitigate a particular cost component.

Should insurers be required to publish their mitigation lists (and/or expected premium reductions) online as well?

Yes.

¹⁷ <https://www.qbe.com.au/news/car/how-insurance-box-works>

¹⁸ QBE state that “we will receive data about your car's actual use and we will use this information to illustrate how you may save premium by driving more safely to minimise risk of collision. Information about your driving habits and your DriveScore are available in your dashboard and contribute to your premium calculation.” http://www.qbe.com.au/content/idcplg?IdcService=GET_FILE&dDocName=PRODCO48047&RevisionSelectionMethod=LatestReleased&Rendition=primary

¹⁹ “You can also proudly share your DriveScore with others to prove your driving skills. If you wish to cancel your insurance we will provide you with a Certificate that details your DriveScore and your claim free driving years.”

²⁰ “Worried about your car being stolen? Insurance Box can even help recover your car if thieves strike.”

²¹ “The technology can also be a big comfort if you're involved in a collision. It'll alert us to what's happened so we can get on with helping you, whether the accident was your fault or not.”

²² “If you have a good DriveScore you can show the person buying your car that you've driven it smoothly – this could help with value retention”

²³ Including: Are their potential discriminatory impacts – for example against shift workers who need to drive at night? What are the consequences for privacy? Can the police access this information? Other insurers?

To what extent should mitigation categories and the level of information about mitigation measures be prescribed or, should it be left to insurers to determine?

Insurers should work closely with government agencies, local government authorities, emergency services organisations and other stakeholders to develop standard mitigation strategies and categories.

What, if any, information should also be provided to consumers on factors to consider before undertaking mitigation works?

Consumers should be informed of the reasons why mitigation works are recommended, including the benefits of undertaking the work (in terms of safety and long term cost savings) and the risks in not doing so, as well as the potential costs of the work.

Consumers should also be provided assistance on how to obtain quotes for such work. For vulnerable consumers such as the elderly, greater assistance will need to be provided to assist them to undertake the work – this may involve practical assistance as well as financial assistance.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



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