

Australian Competition & Consumer Commission Review of Northern Australia Insurance Inquiry

Submission by Legal Aid Queensland



Australian Competition & Consumer Commission – Northern Insurance Inquiry

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission in response to the Australian Competition and Consumer Commission's (ACCC) *Northern Australia Insurance Inquiry*.

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

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

LAQ's Consumer Protection Unit lawyers have extensive experience providing specialist advice and representation to vulnerable clients in consumer law matters. The unit provides advice to clients as well as lawyers and financial counsellors throughout Queensland in relation to mortgage stress, housing repossession, debt, contracts, insurance, loans, telecommunications and unsolicited consumer agreements.

LAQ lawyers provide advice and assistance to Queensland insurance consumers in relation to claims on their insurance policies following natural disasters such as cyclones & floods. LAQ is therefore in a strong position to provide comment on the ACCC Northern Insurance Inquiry.

In LAQ's experience, the most important feature of insurance products to consumers is price. Irrespective of attempts to increase the awareness of the product features and price, in high risk areas such as North Queensland, vulnerable consumers will be unable to afford insurance because they have to choose between insurance and more essential goods and services such as food, utilities and medical treatment. For any solution or combination of solutions to be successful, they must both reduce the cost of insurance and increase the consumer's awareness of and access to information about the available products.

In this submission LAQ is only responding to those headings and questions we can answer from observations made and the experience of LAQ lawyers' day to day practice in this area.

1. *Your views on costs, premiums and profits*

1. How have the key cost components of insurance pricing in northern Australia (particularly catastrophe risk) changed over time?

- How have insurers responded to any changes in key cost components over time?
- What factors could have a significant impact on the key cost components in the future?
- What differences in key cost components exist across:
 - residential building, contents and strata insurance products?
 - different parts of northern Australia?
 - northern Australia compared to other regions in Australia?
- What are the economies of scale and scope in supplying insurance in northern Australia? What impact does this have on insurers' costs?

LAQ does not have access to data or analysis regarding changes to the key cost components of insurance over time or differences in the various sub-markets outlined in the question.

Mitigation

LAQ has observed some innovation in the market to make premiums more affordable for consumers. This includes a policy where in the event the insured's residence is destroyed a home of known specifications will be provided as payment instead of a rebuild of the original house. Innovations such as these are encouraging.

LAQ also strongly supports efforts around mitigating damage so that costs to consumers are lowered and viability of insurance pools is protected. LAQ is aware of mitigation strategies including:

- (a) The use of flood levees.
- (b) Improved drainage of areas vulnerable to flooding.
- (c) Building above anticipated flood levels.
- (d) Technology that can strengthen the structural integrity of older properties.
- (e) Research into improved building design and implementation of useful findings.
- (f) Research into the effects the surrounding environment has on building damage (e.g. identifying tree species that are susceptible to breakage and thereby contribute to debris loads causing damage during cyclones so that such trees may be avoided in public landscaping programs).

Costs

While a number of factors affect insurance costs, consumers are reporting to LAQ that repair costs are well above ordinary market rates. While increased demand for building and repair services naturally rises after a damaging event and it is expected prices may reflect this relative scarcity, many consumers feel they are being gouged by tradesman to complete repairs.

This is recognised by insurer's who have established panels, preferred suppliers, multiple quotes and other mechanisms to obtain value from repairers. However, LAQ is informed these mechanisms are not working as intended to minimise repair costs. Builders and consumers have

reported that insurers have selected quotes far more expensive than those that have been given by other builders for works of similar scope. This apparent choice of inferior quotes is affecting confidence in the insurance market.

LAQ would also draw the ACCC's attention to recommendation 27 of the 2011 Natural Disaster Insurance Review - <http://www.ndir.gov.au/content/report/downloads/NDIR_final.pdf> which recommended the establishment of a cyclone risk reinsurance pool as a potential way of reducing insurance premiums in Northern Australia.

2. How is insurance for consumers in northern Australia priced?

How has the price faced by consumers changed over time for home, contents and / or strata insurance?

How do insurers price risk in northern Australia (including the key information sources, types of modelling undertaken and different market participants involved in this process)? How has this changed over time?

To what extent (if any) are there cross-subsidies between consumers in northern Australia and other parts of Australia? Between regions within northern Australia?

What else informs the process by which insurers set prices for insurance products?

Are there any anomalies in how insurance products are priced in northern Australia?

LAQ does not have particulars as to:

- How insurers price risk in this market.
- How prices for various policies have changed over time. Anecdotally though, prices have increased well above the rate of inflation and we are confident a more reliable analysis would support this.
- The extent of cross-subsidies between consumers in Northern Australia and elsewhere. Consumers in North Queensland suspect they are subsidising southern markets. Consumers in North Queensland have commented that properties in North Queensland are rarely destroyed and that a property's fully insured value is rarely paid out following natural disasters, however where catastrophes occur in southern Australia, bushfires the most notable, they are just as wide-ranging and properties are often fully destroyed.
- The information and processes insurers use to set prices.

Consumers have, however, reported to LAQ anomalies in how insurance is priced. For instance:

- There is anecdotal evidence of consumers in western Queensland experiencing large premium rises for cyclone insurance. Consumers believe insurers are overestimating the effect of cyclones in non-coastal areas.
- Consumers are dissatisfied with risk being assessed by post code. One example of how this is inappropriate is in the case of the Postcode 4816. This postcode covers a huge geographic area and is composed of several non-contiguous parts ranging from Palm Island to the east and an area north of Julia Creek to the west, each with different cyclone risk profiles.
- Consumers regard actuaries as relying too much on historical information and not having foresight in assessing future risk. For example, one consumer has commented that previous events have removed many of the more suspect structures and that those

remaining and being constructed are more likely to withstand serious damage, but alleges actuaries are using data incorporating damage to these more suspect structures.

2. *Your views on the competitiveness of markets for insurance*

4. Which insurers are currently supplying home / contents / strata insurance in northern Australia?

Have insurers entered or exited markets for the supply of insurance products in northern Australia (within the last ten years)? What were the reasons insurers exited these markets?

LAQ has not surveyed the number of insurers for each of the markets mentioned and are therefore unable to list current and previous insurers in these products. Likewise, LAQ is unable to advise the reasons insurers enter and exit products.

However, anecdotally we understand a number of insurers have left all or parts of the markets mentioned in recent years. It is likely that insurers have left the market because supplying insurance in Northern Australia is not likely to satisfy profit expectations.

6. How competitive are markets for insurance in northern Australia?

How does this vary across:

- different regions of northern Australia?
- residential building, contents and strata insurance?

LAQ has received complaints of anti-competitive behaviour in the strata insurance market. The complaints are:

- Strata managers are engaging brokers who agree to share commission received from the insurer with the strata manager. The percentage of commission shared is a relevant factor in which broker is selected.
- These strata managers are not using, or making an effort to find, the most appropriate broker or broking arrangement for the strata properties they manage and are instead focused on maximising their revenue. It is alleged there are many instances where the strata manager and broker are not operating at arm's length and that it is common for the broker to be an associate or subsidiary of the strata manager and/or its owners.
- Strata managers are also influencing the broker's policy selection by having a bias towards those policies that generate a greater commission for the strata manager and incidentally the broker. Strata committees are consequently purchasing policies that may not be the most desirable policy for their strata property, whether by its terms and/or the policy's price.
- Insurers are not assisting consumers manage this power imbalance when they refuse to requote a property after a broker has sought a quote.
- Kickbacks are being paid to managers and/or brokers to maintain business.
- Strata managers are becoming involved in committee elections to ensure committees that are elected are favourable to them so they do not lose the fees earned through their management and related broking services.
- Strata managers are obstructing committee's from contacting the broker selected by the strata manager, and brokers more generally, to request further details to assist them

evaluate policies offered. It is further alleged that to obstruct or at least discourage contact between strata committees and brokers (and insurers as the case may be); strata managers are offering advice about the suitability of policies. Where strata managers lack the qualifications and licences to do so, they are breaching laws requiring advisors to hold appropriate qualifications when offering insurance advice and frustrating the purpose of these laws in providing protection to consumers.

LAQ acknowledges that reform to other areas of law (e.g. body corporate law, agency law) would compliment any efforts the ACCC chooses to undertake on the points above.

7. How are insurance products marketed in northern Australia?

Insurance products in Northern Australia are marketed direct to consumers (e.g. online) or through a broker.

In LAQ's experience, residential owner occupiers would lean more toward direct engagement with their insurer while others, for example body corporate committees and commercial property owners, would be more likely to use a broker.

Consumers who deal direct complain they often lack the expertise to properly assess and compare policies and, believing policies are more or less similar, tend to use price as the differentiator. In LAQ's submission, further work implementing the findings of the Insurance Council of Australia (ICA) Effective Disclosure Taskforce into Enhancing General Insurance Disclosure - <http://www.insurancecouncil.com.au/issue-submissions/reports/too-long-didnt-read-enhancing-general-insurance-disclosure> will assist consumers to more easily compare policies.

LAQ also refers the ACCC to the Review of the General Insurance Code of Practice being undertaken by the Insurance Council of Australia (ICA) where issues including matters relating to product disclosure are being examined. LAQ refers the ACCC to the ICA's Interim report and to the recommendations made. LAQ supports the recommendations made by the ICA relating to product disclosure in the Interim Report.

8. What strategies are used by insurers to retain and attract customers?

To what extent do insurers use:

- **discounts for new customers?**
- **'loyalty' discounts for existing customers?**
- **discounts for consumers bundling multiple insurance products?**
- **price discrimination?**
- **product differentiation?**

LAQ has been told anecdotally that the high increases in prices if insurance after an event are an attempt to get customers off their book and compromise customer's ability to make claims for damage not apparent at the time of ceasing the policy. However, LAQ has not seen this occur during the assistance LAQ has provided with insurance claims in Northern Australia.

3.1 Your views about choosing insurance

We are interested in what choices consumers have and how they decide which home, contents or strata insurance products to purchase. These questions are addressed to consumers, but we welcome views from all interested parties. The following questions are a guide.

17. Is price the focus of your decision?

Did you know about the price of insurance in your town before you moved there?

How important is price in your decision? Has price changed a lot in recent years?

Have you tried to get a lower price, for example through a higher excess, reducing your cover, or through a non-claim loyalty bonus?

What is the impact of high prices on your local community?

In LAQ's experience price is the primary driver for consumers when they are making a decision about insurance. In order to make an insurance policy affordable LAQ has seen consumers:

- (a) Increase their excess to lower premiums.
- (b) Underinsure their property.
- (c) Purchase insurance policies that have unfavourable terms or do not meet their needs.
- (d) Decide that they will not purchase any insurance.

20. How important is customer service and claims handling reputation?

How much do other peoples' experience with insurers matter in your choice?

How important is an insurer's claims handling reputation to your choice?

How much does customer service matter to you?

LAQ has been told by consumers that they find it difficult to assess the customer service and claims handling reputation of insurers because of the confidential nature of most settlements following an insurance claim being made.

21. Have you seen an insurer behaving in way that you think is unfair or confusing?

In LAQ's experience, consumers find Product Disclosure Statements (PDS) confusing and believe it is unfair for insurers to rely on exclusions in the PDS that the consumer does not understand or finds it difficult to find.

3.2 Your views on finding and using the information that you need

We are interested in how consumers find and receive information about insurance options (home, strata and contents) and how easy that information is to understand. We welcome views from all stakeholders. The following questions are a guide.

In LAQ's experience, consumer expertise around finding and using information to make insurance decisions is quite varied. Some consumers are very confident in engaging with insurers and PDS's to determine what is an appropriate insurance product for their needs.

However, many consumers inform LAQ that they find it very difficult to find, obtain and then understand information about insurance products. Consumers in these circumstances have highlighted that:

- (a) No two insurance policies are exactly the same which makes it very difficult for consumers to compare and contrast the features and value of individual policies.
- (b) Interpretation of clauses that are seemingly similar on their face can differ between insurers.
- (c) PDS's are lengthy, confusing and very difficult to understand. This complexity discourages consumers from engaging meaningfully with insurance products.

This experience is supported by the ICA's report "Too long didn't read – Enhancing General Insurance Disclosure - <http://www.insurancecouncil.com.au/issue-submissions/reports/too-long-didnt-read-enhancing-general-insurance-disclosure>

3.3 Your views on switching insurers

We are interested in why consumers think about switching, whether there are barriers to switching, and whether switching saves money. We welcome views from all stakeholders. The following questions are a guide.

29. If you have considered switching insurance in recent years:

Did you consider switching policies with the same insurer, to a different insurer, or both?

How did you find and compare policies?

Did you use the North Queensland Home Insurance website to compare policies?

How many quotes did you compare?

Was it a lot of effort?

How does the use of standard definitions, such as for 'flood', make it easier to compare?

Was your focus on price or coverage or both?

Why did you decide to switch or not switch?

Did you think about using a broker to help you?

Where consumers are dissatisfied with their current insurer or just curious as to whether their current policy is the best available, an obvious solution is to compare current arrangements to others in the marketplace, assuming the consumer wishes to maintain a policy at all.

In our observations:

- Many consumers find the process overwhelming and fail to act.

- Consumers have difficulty comparing offers.
- Where terms are on their face similar, consumers are unaware of how each insurer may interpret an otherwise seemingly similar term.
- There is little awareness of the North Queensland Home Insurance website.
- Many consumers are unaware of brokers, or do not view them – rightly or wrongly – as adding any value.
- Standardising definitions would allow consumers to make easier comparisons between products.

3.4 Your views on what consumers and insurers can do to improve affordability?

We are interested in how consumers and insurers are responding to concerns about affordability. We welcome views from all stakeholders. The following questions are a guide.

30. Have you considered making alterations to your home, or building a new home to a higher standard, to reduce the risk of storm or cyclone damage?

How did you find out about building for your local conditions?

How did you decide that it was a ‘worthwhile’ investment?

If you made any alterations, did this have any impact on your insurance premium? Has it already, or will it, save you money in the long run?

If you didn’t go ahead, why not?

31. What are insurers doing and could they do more to help?

Has your insurer told you how much you could save on your premium by taking action to make your house or belongings safer?

Do you have billing options? Can you choose to pay fortnightly or monthly? How much extra does it cost to pay fortnightly or monthly?

Can you get help if you are facing payment difficulties? Who can get a payment plan?

Does your insurer offer Centrepay to eligible customers?

Have you seen innovation? For example, does your insurer offer new or different policies to suit tenants, households on a low income, or people with only a small amount to insure?

In answer to Questions 30 and 31, LAQ supports insurers allowing insurance payments to be paid fortnightly and payments being able to be made through Centrepay.

In LAQ’s experience, many consumers find it difficult to afford insurance premiums when they fall due as a lump sum. However, they are more likely to be able to afford a regular fortnightly payment.

In LAQ’s experience, consumers have little or no awareness of mitigation strategies that could reduce their insurance premiums and strengthen their home against the risk of natural disaster and undertake necessary maintenance. There is a role for insurers to increase the awareness of consumers around these issues and the impact it can have on subsequent insurance claims.

32. What are you doing to manage the cost of insurance?

Have rising premiums motivated you to spend more effort looking for better policy options?

Have you, or would you, reduce your level of coverage to save? Who else can you get help from?

LAQ refers to its answer to Question 17.

LAQ would also draw the ACCC's attention to recommendation 27 of the 2011 Natural Disaster Insurance Review - http://www.ndir.gov.au/content/report/downloads/NDIR_final.pdf which recommended the establishment of a cyclone risk reinsurance pool as a potential way of reducing insurance premiums in Northern Australia.

4. Your views on mitigation

We welcome views from all stakeholders interested on the following questions.

34. To what extent could more investment in household mitigation activities contribute to addressing concerns about the affordability and availability of insurance?

How significantly could risk (and premiums) be reduced with mass private mitigation activities?

In which type of properties does most mitigation activity occur (e.g. old, new, strata, houses etc.)?

Where does it not occur?

What unique issues do renters face? Which risks can they, and can't they, mitigate?

Do landlords invest in mitigation?

LAQ supports more investment in household mitigation strategies and activities because it is in all stakeholders interests to minimise property damage. However, for consumers to be interested in mitigation activities, they need to see a tangible benefit in their premiums as a result of the activities. In recent history, consumers have complained there have been instances where mitigation efforts have offered little return to them by way of reduced premiums.

35. What are the barriers to households and property owners undertaking private mitigation?

Is there a lack of awareness about the risks, options, costs, and benefits?

How important is upfront cost and an uncertain pay-off period in a household's decision?

Is there a lack of awareness of the difference between minimum building standards and best practice?

Is there concern that mitigation works will have flow on effects through raising a property's value (such as higher local government rates)?

Are property owners concerned about affecting the aesthetics of their property?

In LAQ's experience the biggest barriers to households and property owners undertaking private mitigation is being able to identify what actions would provide a worthwhile benefit to them.

36. What role does the insurance industry have in promoting and contributing to public and private mitigation initiatives?

How do insurers educate their customers about the risk mitigation activities they can undertake?

How do insurers recognise and incentivise households that have undertaken mitigation works (either in a new build or retrofit)?

Do insurers commit to a long-term premium discount following a retrofit or is it a one-off?

How do insurers contribute to public mitigation activities, for example by sharing data and information that can assist public planning and mass education?

In LAQ's experience, the insurance industry has:

- (a) A strong education role to inform their customers about what mitigation initiatives are available and the tangible benefits that would result for the consumer if mitigation was implemented by the consumer.
- (b) A facilitation role in assisting consumers to implement private mitigation strategies.
- (c) Advocacy and partnership with government to ensure public mitigation initiatives are implemented for the benefit of all of the community.

37. To what extent could stronger investment in public mitigation activities contribute to addressing concerns about the affordability and availability of insurance?

What should be the focus of public mitigation? Education, research, public works, or incentives?

How effective has recent or current public mitigation activities been in reducing premiums?

How effective are partnerships between government and industry?

Could public mitigation activities act to encourage new insurers to enter markets in northern Australia?

In LAQ's submission, a combination of education, public works and incentives by insurers and the government is an appropriate investment that may address concerns about affordability. However, for this investment to be truly effective and be adopted by consumers it must have the practical effect of reducing insurance premiums. If it does not, it will not be successful.

5. Your views on regulation

We welcome views from interested parties on the following questions.

38. To what extent could the regulatory requirements relating to information, disclosure and transparency be improved?

What is the appropriate role for voluntary industry self-regulation of information provision?

What is the appropriate role for mandatory government regulation of information provision?

How is innovation and technology providing new opportunities for improved engagement and information provision?

What lessons can be learned from overseas and other industries?

LAQ supports improved disclosure and information provision to consumers. LAQ is aware that effective disclosure is an issue that is currently being examined as part of the Review of the General Insurance Code of Practice by the ICA.

39. To what extent does the exemption of insurance from unfair contract terms laws have on affordability and availability of insurance?

What impact would removal of the exemption have on the affordability and availability of insurances?

What does the exemption achieve for consumers?

Is the exemption necessary to protect industry?

LAQ has previously submitted to the recent review of the Australian Consumer Law (ACL) that insurance contracts should be subject to the unfair contract terms provisions of the ACL. LAQ maintains that the current ICA provisions provide consumers with less protection than is available under the ACL. However, in this context, while the removal of the exemption would have significant benefits for consumers, it is unlikely to reduce the price of premiums by any significant amount. Risk is the primary driver of price for insurance in Northern Australia.

40. What role should regulation play in how insurers manage consumers' personal data?

To what extent do, or should, consumers have access to the information held about them by their insurer?

How do, or should, consumers have an opportunity to verify that any information held about them is correct and complete?

Can consumers control how their information is shared with third parties?

To what extent should consumers be denied policies or services because they refuse to share information?

To what extent should insurers be permitted to discriminate on the basis of individual risk?

How could consumers use their own information to their advantage?

Consumers should have full access to the information held about them by their insurer to ensure their risk assessment, pricing and claims assessment is based upon reliable information. Further, consumers should also be aware of what factors influence their risk assessment and pricing to ensure they are provided an opportunity to properly inform an insurer of their circumstances.

Access should be available during business hours. An online portal may also be useful for providing access at any time for consumers. Where information is sought from an insurer it should be provided within a reasonable time. A notice at the commencement of a policy and upon each renewal directing consumers about how they may access information is an appropriate way of ensuring that consumers understand how to access their own data.

In circumstances where consumers refuse to share information, it is reasonable to allow an insurer to refuse service since a lack of reliable information available to the insurer for pricing and risk assessment risks viability of the insurance pool and the ability of the insurer to continue to offer their service. This concession to insurers should only be provided where such information is relevant to pricing and risk assessment.

Consumers should also be encouraged to present information to their insurer that may be relevant but overlooked. We are aware of one instance where a consumer claimed their residence contained no flammable materials in its construction and sought a reduction in the pricing of its fire risk but the insurer was not interested.

By having information relevant to pricing assessment, consumers will have the:

- Opportunity to explore mitigation measures that lower assessed risk and premiums.
- Compare risk assessments and pricing decisions of different insurers.

41. How material are taxes, levies and duties to the affordability of insurance in northern Australia?

Any expense that increases the cost of insurance to the consumer risks reducing affordability. Consumers are aware these costs contribute to the premiums they pay and have expressed their disapproval of insurance duty being charged on the GST inclusive amount of their premium, regarding this as double taxation on the GST component of their premium.