

12 April 2019

Northern Australia Insurance Inquiry  
Australian Competition and Consumer Commission

By email: [insurance@acc.gov.au](mailto:insurance@acc.gov.au)

Dear Sir / Madam

### **Submission on Draft Recommendations**

We are pleased to provide this submission on the Draft Recommendations set out in the First Interim Report of the ACCC's Northern Australia Insurance Inquiry.

We currently hold the role of Emergency Services Levy ("ESL") Insurance Monitor and Deputy Monitor in NSW.

The views expressed in this submission are:

- a) held by us as private citizens, and do not necessarily reflect those held by the NSW Government; and
- b) based on our knowledge and observations of the practices of general insurance companies, gained principally through our roles in reforms to insurance-based levies, as well as knowledge and experiences of consumer protection, competition and policy and regulatory matters across a number of industries over our professional careers.

### **Opening comments**

We welcome the findings and recommendations made in the ACCC's Interim Report. Whilst the ACCC's inquiry is focused on the northern Australia insurance market, many of the findings also apply to the property-related general insurance markets in the rest of Australia.

The 15 recommendations set out in the interim report are directed at a number of areas including improving affordability, making pricing more transparent, improving comparability across product offers, improving disclosure to enable consumers to become more active and informed in insurance purchasing decisions, raising awareness of the benefits of mitigation and its connection with pricing. We wish to express our strong support for all of these measures.

Our current involvement in monitoring property-related insurance in NSW as part of the ESL reform, and our previous similar involvement in Victoria with respect to the removal of the Fire Services Levy ("FSL"), has provided us with many insights into the operation of the market for these types of general insurance products, particularly, household general insurance. We do not dispute industry claims that there are a large number of suppliers in these markets offering a multitude of products. What we are concerned about is whether despite these conditions,

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competition may nevertheless not be working effectively in the interest of insurance consumers.

Economic theory predicts that where competition is not effective, the price reduction that should occur from the original plans to remove the insurance levy in NSW may not occur. This has been a fundamental consideration for us in monitoring insurance premiums which contain a pass-through of the emergency services contribution payable by insurers, in a context where there is no prescription about how the contributions should be recovered.

We share the ACCC's view that "*confident and engaged consumers are a fundamental driver of competition.*" In the general insurance markets that we have dealt with, there are apparent and persistent weaknesses on the demand side of the market. Some of these weaknesses derive from general behavioural characteristics of consumers, but others are attributable to or exacerbated by product and market characteristics, in particular, product variability, brand confusion and pricing complexity. As the ACCC has recognized:

"For competition in markets to be effective, consumers must be able to understand and compare insurers' offers. However, aspects of the way insurance is sold to consumers can create confusion and make it difficult for consumers to do this; including product complexity and disclosure requirements."<sup>1</sup>

In essence, for many household consumers, home insurance offers are hard, if not impossible to compare, and confusing because of the different definitions used by insurers for similar types of risks. These conditions are disempowering for consumers, and lead to their disengagement in the market. Industry stakeholders have long criticized consumers for being too focused on price, however, it is difficult to expect consumers to behave differently when they cannot compare between different product offers or understand whether differences in price are attributable to the level of cover or other factors.

The recommendations made by the ACCC in relation to improving disclosure, transparency and product standardization are essential to promoting more active, engaged and informed consumers. Such pro-consumer reforms have been debated and delayed long enough and it is time for policymakers to intervene and demonstrate greater leadership in these areas. We have long advocated for disclosure of last year's premium paid in insurance renewal notices, and in NSW, insurers who are subject to the ESL regime will be required to provide such information in renewal notices for renewals (in household and certain other classes of insurance subject to the ESL regime) commencing from 1 July 2019.

In the absence of any change to the current 'no advice' model within which general insurance is sold, the ability of consumers to better understand and compare different insurance products could be significantly improved with greater product standardization. Standardisation and standard cover should form part of a broader move towards simplification, without reducing customer choice.

As the ACCC has observed, the provisions relating to standard cover that are currently contained in the Insurance Contracts Act, as well as the way in which the market has implemented the model, are flawed in a number of respects:

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<sup>1</sup>Interim Report, page 129

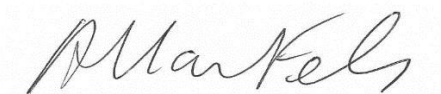
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- the statutory model deals with total replacement cover, whereas the majority of policies offered in the market are 'sum insured' policies
- other than flood, there is a clear lack of standard definitions of prescribed events. It is common to find many different definitions of the same risk in different PDSs and KFSs of different insurers
- there is no requirement for insurers to currently provide a product that is consistent with standard cover
- insurers are free to depart from standard cover and there is no requirement for insurers to specifically describe how a product is different from standard cover – an insurer is deemed to have informed the customer by merely providing a PDS, even though several studies (including by the ICA) have confirmed that policyholders do not read the PDS.

It is clear that the existing model has failed insurance consumers and we therefore support the ACCC's recommendation for an independent review of the current standard cover regime with particular regard to the efficacy of current disclosure requirements. This review should cover issues related to 'sum insured' including mandating its definition and the way it is calculated.

Our specific responses to the Draft Recommendations are outlined in Attachment A of this submission.

Yours sincerely



**Professor Allan Fels AO**



**Professor David Cousins AM**

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The responses in this Attachment cover all Draft Recommendations except draft recommendation 9.

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

**The Insurance Contracts Regulations should be amended to require insurers to estimate an updated sum insured for their home insurance customers and advise them of this estimate on their renewal notice.**

*The estimate should note when the information used by the insurer to form the estimate was last updated by the consumer, and direct the consumer to contact the insurer if renovations / alternations to their home had occurred since then. When the sum insured estimate is materially higher than provided for under the policy, the renewal notice should also include a warning to the customer about the dangers of their property being underinsured.*

This draft recommendation has been advanced in the context of protecting consumers against under-insurance. We acknowledge that under-insurance is a problem for many consumers and the consequences are quite clearly demonstrated following large scale natural disasters.

A related but opposite problem to under-insurance is over-insurance. Relatively little attention has been paid to over insurance, which can occur where people pay for cover for adverse events that they could easily afford from their own resources; they buy insurance of questionable value; or where they fail to take advantage of lower premiums in return for sharing some of the risk with insurers in the form of deductibles or excesses. Indeed, it has been observed that a consumer may be both under-insured and over-insured within a single policy - underinsured at the top end, where the consumer may be bearing too much open-ended risk, and over-insured at the bottom end, where the consumer is paying the insurer to bear risk that s/he could afford to cover (ie low excess).<sup>2</sup>

In an environment where rising premiums is making insurance less affordable as insurers adopt an increasingly granular approach to pricing risk (which is itself becoming more unpredictable due to climate change), there may be merit in educating consumers about how to make better decisions about their required level of cover, and avoid over-insurance. There may also be a case to explore whether standard cover for high risk areas such as northern Australia, should be specially defined. Such a product might reflect a greater degree of risk-sharing between customers, for example, by providing cover only where the loss or damage exceeds a level that the insured cannot afford to fund (i.e. a high excess product, e.g. \$50,000).

Concerns about people having too little insurance are neither new or unique to Australia. Following the Ash Wednesday fires in 1983, the Victoria Bushfire Review Committee raised concerns about insufficient incentives for property owners to take out insurance and that many properties affected by the fires were not insured.<sup>3</sup> The Insurance Council of Australia estimated significant levels of non-insurance and under-insurance in 1993-94, when 31 per cent of households were uninsured, and 34 per cent of homes and 50 per cent of contents were under-insured.<sup>4</sup> Using household expenditure data, a 2015 study by Richard Tooth estimated that in

<sup>2</sup> Ian McAuley, Over-insurance: Why it matters, June 2018.

<sup>3</sup> 1984 (Victoria): Report of the Bushfire Review Committee on bushfire preparedness in Victoria, Australia, following the Ash Wednesday fires 16 February 1983. S.I. Miller et. Al, page 55 and 60.

<sup>4</sup> ICA, 2002, Report on Non-insurance and Under-insurance in the Home and Small Business Portfolio

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2009-10 nearly 30 per cent of households in Australia did not have contents insurance while about 4 per cent of home own-occupiers did not insure their house.<sup>5</sup>

The ACCC has noted in its Interim Report that a number of reviews have called on the industry to do more to assist consumers avoid under-insurance. We agree that there is merit in amending the Insurance Contracts Regulations to require insurers to estimate a Sum Insured ("SI") for their home insurance customers and to advise them of this estimate on their renewal notice. Such information would be helpful in communicating the full extent of the loss that the insured may suffer if the insured asset was destroyed as a result of an insured risk.

At the outset, we also consider that it would be worthwhile clarifying the concept of 'sum insured'. We are not aware of a statutory definition that exists for this term. The issue turns on whether SI must equal the full (or near full) value of the asset, or whether it can be a lesser value.

The ACCC's interim report describes a 'sum insured' policy as a policy that sets a maximum level of cover and any payout is limited with reference to that amount. This would appear to imply that the SI value could reflect the dollar amount of loss that an insured wishes to be indemnified against. Such a value may be the full replacement value of the insured asset, if the insured wishes to be fully insured, or a lower value, if the insured wishes to be partially insured. Given the ACCC's observation that most claims for damage to buildings, including arising from natural catastrophes in northern Australia, are for a partial loss,<sup>6</sup> it seems logical that insureds should be able to nominate SI values that provide partial loss cover.

In contrast with the ACCC's definition of SI, we are aware that the industry operates such that a policyholder is deemed to be 'under-insured' where the SI value is less than the full (or near full) value of the insured asset:

*"Underinsurance is when the value you have insured your property for under your policy is not enough to cover the value of the items you are insuring.*

*Underinsurance can occur in any type of insurance policy, though it is more commonly reported in home and contents policies.*

*Best practice suggests a property is underinsured if an insurance policy covers 90 per cent or less of the rebuilding costs."<sup>7</sup>*

We are also aware that Section 44 of the Insurance Contracts Act, particularly sub-sections (2) and (3), provide for the payout to be reduced where the SI value is less than 80% of the value of the property and there is an 'averaging' provision in the contract of insurance. This effectively implies that the SI value should reflect the full value of the property.

#### **44 Average provisions**

- (1) An insurer may not rely on an average provision included in a contract of general insurance unless, before the contract was entered into, the insurer clearly informed the insured in writing of the nature and effect of the provision including whether the provision is based on indemnity or on replacement value of the property that is the subject-matter of the contract.

<sup>5</sup> Tooth, R. 2015, Analysis of demand for home and contents insurance, Sydney

<sup>6</sup> ACCC Interim Report, page 159.

<sup>7</sup> Extract from <http://understandinsurance.com.au/do-you-have-enough-insurance>

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(2) Where the sum insured in respect of property that is the subject-matter of a contract of general insurance that provides insurance cover in respect of loss of or damage to a building used primarily and principally as a residence for the insured, for persons with whom the insured has a family or personal relationship, or for both the insured and such persons, or loss of or damage to the contents of such a building, or both, is not less than 80% of the value of the property, the liability of the insurer in respect of loss of or damage to the property is not reduced by reason only of the operation of an average provision included in the contract.

(3) Where:

- (a) the sum insured in respect of property that is the subject-matter of such a contract is less than 80% of the value of the property; and
- (b) but for this subsection, an average provision included in the contract would have the effect of reducing the liability of the insurer in respect of loss of or damage to the property to an amount that is less than the amount ascertained in accordance with the formula

**AS/P**

where:

A is the number of dollars equal to the amount of the loss or damage.

S is the amount of the sum insured under the contract in respect of the property; and

P is 80% of the number of dollars equal to the value of the property.

the average provision has the effect of reducing the liability of the insurer to the amount so ascertained.

(4) In this section:

*value*, in relation to property, means:

- (a) if the relevant contract provides for indemnifying the insured in respect of loss of or damage to the property - the indemnity value of the property; or
  - (b) if the relevant contract provides for reinstatement or replacement of the property - the reinstatement or replacement value of the property;
- at the time when the relevant contract was entered into.

The ICA's Understand Insurance website explains this as follows:

*"Some contracts have averaging provisions that reduce the sum paid out by a certain percentage when the sum insured is less than the value of the insured object.*

*For instance, if you insure your contents for 25 per cent less than their true value and lodge a \$30,000 claim, the insurer may reduce your claim by \$7500."*<sup>8</sup>

We are aware that the concept of averaging has been described in some websites as akin to co-insurance. That is, where you are insured for 70% of the full value of the asset, you are assumed to be co-insuring to the extent of 30% of the full value of the asset. This seems consistent with the way the issue is described in the Understand Insurance website.

<sup>8</sup> <http://understandinsurance.com.au/do-you-have-enough-insurance>

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In practice, we have not seen averaging provisions in household insurance policies but they do appear in farm policies and business policies. The text of the “under-insurance” provision in a sample policy is shown below:<sup>9</sup>

*Some Sections contain an Under Insurance provision. If so, where your Property is insured for less than 80% of its value determined with the Property's Settlement Basis, at the time the insurance under this policy was taken out, renewed, extended or varied, we will only pay that portion of the claim which the Sum Insured bears to 80% of the value, in accordance with the following formula –*

$$\frac{\text{The amount of the loss, destruction, or damage X the Sum Insured}}{80\% \text{ of the value of the Property}}$$

Whilst we are not questioning the concept of co-insurance or self-insurance, we do question why payouts should be reduced due to averaging. The premium charged on a SI policy is based on the whole SI value and as such, it seems logical that the maximum payout the insured should be entitled to should be equal to the SI value, not a reduced proportion of it. The relationship between the SI value and the full value of the asset should have no bearing on the payout.

In the Australian Law Reform Commission Report No. 20 (1982) there is some suggestion that average clauses were intended to deter under-insurance because it leads to some sort of inequity due to the way in which premiums were set:

*“273. Equity. It is acknowledged that a principal aim of the average principle is to secure equity for all insureds and to provide a disincentive to undervaluation ... But if an insurer wished to ensure rate equity, it could simply alter its rating structure and charge a premium related to the risk relevant to the particular level of cover sought by the insured. At present, there is considerable cross-subsidisation from those insuring at higher levels to those with relative small amounts of cover.”<sup>10</sup>*

It is possible that premiums were set in a different way at the time of the ALRC’s review. Today, however, such cross-subsidies would be much reduced due to risks being priced in a more granular manner. It is therefore difficult for us to see why average provisions should apply at all.

It was also noted in ALRC 20 (albeit as a dissenting view) that averaging clauses remove the insured’s right to assess the most appropriate level of cover for him/her-self:

*“272. Finally the principle of average conflicts with a common principle of insurance, that it is up to the insured to assess the risk of loss and to decide whether to accept some of that risk himself, placing with an insurer only those risks which he regards as unacceptable. The principle of average removes this option from the insured.”*

Notwithstanding this represented a dissenting view, we concur with the views stated.

If insurers are to be required to provide SI value estimates to insureds each year on their renewal notices, we consider that the term should be better defined so that there is a common understanding of what the figure represents, both conceptually and in terms of the constituent

<sup>9</sup> Note that in this example, if the property is valued at \$20,000 but the SI value was \$10000 (ie 50% less than full value), and a loss of \$5000 occurred, the formula determines the payout as \$3,125, which is 62.5% of the loss.

<sup>10</sup> Australian Law Reform Commission, Report No. 20, 1982

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parts of its calculation. We note that *Recommendation 9: Disclose costs that count towards 'sum insured'* of the Interim Report recommends disclosure of the costs that count towards the SI value. However, we consider that there is a need to go further, by prescribing a definition and calculation of 'sum insured'.

We are aware that there can be material differences in the SI values generated by the SI calculators of different insurers. This is despite the fact that improvements in guidance to consumers, including tools and calculators, was recommended in the 2014 Financial Services Inquiry, and the ICA's own Better Disclosure Taskforce opted to enhance calculators for building insurance in October 2015. Our analysis of the SI calculators of 10 insurance brands indicates that there is a vast array of approaches to the calculation. In November 2018, we input the same details on a standard property into the sum insured calculators of ten of the largest home insurers in NSW, sampling ten locations across NSW for each brand.

The November 2018 analysis consistently returned a range of values that varied from lowest to highest by approximately 44 per cent with a variance from the maximum to minimum value of approximately \$150-160,000, or +/- \$75,000 on an average property sum insured of \$450,000 and by +/- \$80,000 on an average property sum insured of \$480,000.

The insurer brands and the constituents to their calculator's values (as shown in the 'detailed reports' issued by those calculators), are shown in the table below.

**Table 1: Components that are quantified in insurance company 'sum insured' reports (as at November 2018)**

SI component	Insurance company or brand									
	Allianz	CGU	Coles	Comm-Insure	GIO	NRMA	QBE	Suncorp	Westpac	Youi
Building cost	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Professional fees	✗	✗	✓	✓	✗	✓	✓	✗	✓	✗
Demolition & Debris Removal	✗	✗	✓	✓	✗	✓	✓	✗	✓	✗
GST	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓

Source: insurance company websites, data sourced November 2018

Each of the insurance companies or brands identified above used building cost data (and, presumably, online calculators integrated with their website's operations) supplied by Cordell.

However, there are material differences in the types of costs that are included in the 'sum insured' by the insurance brands in this sample. There were two broad groups (with one permutation) that have similar components, being those that included:

- the building cost and GST only, being CGU, GIO, Suncorp and Youi.
  - Allianz, presenting the building cost only, on an 'ex-GST' basis (noting that Allianz' PDS page 72 will cover GST liabilities if the consumer is liable for it).<sup>11</sup>
- professional fees, demolition and debris removal as well as the building cost and GST, being Coles, CommInsure, NRMA, QBE and Westpac.

<sup>11</sup> Allianz Home Insurance Product Disclosure Statement, prepared on 31/5/2017, page 72 GST Notice



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Such variations can be confusing for consumers and add to the challenges they may experience in comparing insurance cover options between providers. There are further complications and contradictions that may arise, as illustrated by the following changes to insurer's approaches that appear to have been undertaken in the last three to four months.

We use the Allianz SI calculator to illustrate. When the analysis was repeated late in March 2019, the Allianz sum insured calculator report included GST in its SI value. However, there was no change in the corresponding PDS (which was dated 31/5/2017) with terms aligned to GST-exclusive sum insured calculations.

The first displayed webpage with an 'estimated cost to rebuild your home' quantified the 'rebuild cost', 'GST' and 'total', as did the 'detailed report' that could be downloaded. However, we could not identify any statements, caveats or acknowledgements in the company website clarifying the changes made in the website and any variations in the treatment of GST in the SI value or in the PDS. A consumer that purchases a policy based on the SI value where it now includes the GST, may be over-insured by 10 per cent, if the policy treatment is as it appears to be.

At the same time, different scenarios run on 20, 22 and 26 March on CGU's sum insured calculator, delivered SI values and 'detailed reports' that included or omitted amounts for 'professional fees' and 'demolition and debris removal'. We were unable to identify any material advising why these elements were included or omitted. The amounts are not insignificant; totaling approximately \$54,745. The PDS remained that dated 01 May 2017 (Basic Cover), with terms aligned to an SI value that omits these elements and provisions 10% of the SI value on top of the SI for each (see pages 12 and 13). A consumer that purchases a policy based on the SI value where it includes those amounts, may be over-insured by 20 per cent, if the policy treatment is as it appears.

Elements comprising the building cost are not disclosed in the calculators. None of the insurers in the sample above appeared to provide a mechanism or process enabling consumers to identify, alter or agree with their insurer on the estimates of constituent elements of the SI within a policy.

This is further complicated by policy provisions present in a number of policies that enable insurers to depart from the sum insured, determine the cash value of a settlement in a different way through valuations, vary a cash settlement by trade discounts that may be available to the insurer (but not necessarily the consumer). Ultimately, the payout or indemnity received by an insured could potentially be substantially less than what the insured assumed s/he was covered for.

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

**The Insurance Contracts Regulations should be amended to require insurers to publish key facts sheets and product disclosure statements online in a prominent manner and alongside the relevant products.**

*They should be accessible prior to the commencement of a quoting process. This will facilitate more timely and convenient access for consumers to important information about products they are interested in buying.*

The role of PDSs and KFSs should be considered in the context of a revamp of the standard cover requirements in the Insurance Contracts Regulations. We consider that a standard cover

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model has the potential to address many of the problems that consumers currently face in comparing between the cover provided by different policies offered by different insurers. Until comparability between product offerings can be improved, it is likely that consumers will continue to base their insurance decisions largely on price.

The availability of a reference or standard product, offering cover for a prescribed set of listed events, all defined consistently and with prescribed payout limits, that can be purchased from every insurer will help increase the comparability of policies from different insurers. During the process of obtaining quotes, consumers comparing the standard product offer from different insurers should ideally be able to see the differences in prices and be confident that the price variation is not due to differences in the level of cover. This removes the risk of inadequate insurance that some consumers currently face, when they select the cheapest policy, because they cannot be certain that it provides the same coverage offered by a higher priced policy. Currently, many insureds find out that they are inadequately insured the hard way – when they have suffered loss or damage and are denied a claim because their policy does not cover the risk.

Whilst every insurer should be required to offer the standard cover product, there is no reason why individual insurers cannot also offer more innovative products that provide a higher or lower level of coverage. However, to ensure that the benefits of the standard cover model are preserved, the additional (or reduced) coverage offered should be selected by consumers based on opt-in (or opt-out) arrangements. This will enable the price for the higher (or lower) coverage product to be compared against the standard reference price. There should be a mechanism for insurers to provide guidance to consumers to aid their decision-making on the opt-in/opt-out choices available to them.

We anticipate that adoption of a standard cover model will allow the PDS to be considerably simplified. In a scenario where all insurers are required to offer a product with the same standard cover, it is possible that PDSs and KFSs may only be required to identify the options and departures from standard cover. It could also be that the case for retaining the KFS is removed. Whilst the KFS was originally intended to help simplify the information in the PDS for consumers, it is inherently difficult to simplify a complex product without losing key information or rendering it misleading.

We concur with the ACCC that such documents (including any revisions contained in supplementary updates) should be published online in a prominent manner and alongside the relevant products.

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

**The Insurance Contracts Regulations should be amended 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.**

*Providing consumers with information about the cost impact of optional inclusions/exclusions (e.g. flood cover, accidental breakage cover) as well as variable costs (such as changing an excess or sums insured) will allow consumers to make more informed decisions about their choice of cover.*

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We agree that insurers should disclose the changes in premiums resulting from optional inclusions or exclusions, or non-standard excess and sums insured, selected by a consumer. In the context of the standard cover model we outlined earlier, insurers may offer optional extras above and beyond the standard cover product, but these deviations from the standard product should be benchmarked against the standard cover price.

There may also be benefit in specifying the form in which this disclosure should be made. Doing so will further enhance comparability of the impacts of optional inclusions and exclusions.

Consumers shopping around for insurance online would benefit from being able to see the changes in premium from selecting different options, not just relating to the type of cover, but also on the excess and sum insured value.

The nature and amount of information to be disclosed on renewal notices should also be revisited under a standard cover regime. Where the customer has selected non-standard cover, renewal notices should clearly outline the price impacts relative to standard cover.

### **Draft recommendation 4: National home insurance comparison website**

**The government should consider developing a national home insurance comparison website. It should require the participation of all insurers active in relevant markets, allow consumers to compare policies by features, and make it quick and easy for consumers to act on the results.**

*An independent insurance comparison website may facilitate more informed consumer choice by assisting consumers to quickly and easily find insurers in their area and offering policies that meet their needs. Comparison websites can provide an opportunity for new entrants to increase consumer awareness of their brand at relatively low cost, reducing a barrier to entry. Enhanced comparability of products, such as through standardized definitions (recommendation 4) and mandated standard cover (recommendation 5) will assist in the effectiveness of such a website.*

We support this draft recommendation.

In a market where competition exists but is not sufficiently effective, and where regulation is considered the less preferred form of intervention, one response is to empower consumers. We consider that the level of information asymmetry that exists between insurers and their general insurance policyholders, particularly home insurance policyholders, is significant and more can and should be done to reduce the gap.

We are of the view that there is scope to enhance competitive price pressure in the home and contents insurance market through the development and operation of an insurance comparison aid. Aside from helping consumers compare different products in the market more easily, it would help raise consumer awareness of price differences. We agree that the ACCC's recommendations in relation to standard cover is a key enabler of an independent insurance comparison website.

We do not consider that the usefulness or effectiveness of an insurance comparison website would be reduced if it were not to produce "live" quotes (i.e. a quote that the consumer can automatically proceed with). Indeed, we note that the ACCC's 2014 report into the comparator website industry referenced studies by PriceWaterhouse Coopers and Frost & Sullivan in 2012, Nielsen Research in 2013 and TNS in 2013, which pointed to the use of price comparison tools

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for research purposes.<sup>12</sup> We consider that it is important to have upfront clarity on the objective(s) of the service, as this will help inform its design and scope, as well as avoid subsequent criticism that the service is not working as intended.

In our role as the Monitor for the Fire Services Levy reform in Victoria, we undertook a review into the development of a home insurance price comparison aid for Victorians in September 2014.<sup>13</sup> At the time, the FSLM's tracking of a basket of insurer quotations revealed sustained and large price differences in the market for residential properties that were identical in every way. Given the low levels of switching that were occurring in the market, it was apparent that consumers had little awareness of these price differences.

The September 2014 study commissioned a report from H&P|OpenMind to explore the behaviour of consumers in the Victorian residential insurance market and test the validity and appetite for three models of price comparison tools. These models are summarised below.

**Table 2: Models for price comparison tool, FSLM**

Model	Description
<b>Indicative Quote Generator</b>	A consumer enters minimal property information: suburb, type of insurance (home and /or contents), and sum insured value, and is provided with a series of indicative quotes from 10 insurers that would assist by directing his/her shopping around effort.
<b>Personalised Quote Generator</b>	A consumer enters 40-plus pieces of information per policy, as if filling in a specific insurer's quoting form, before receiving a close to exact quote for their property from 10 insurers. The accuracy of the end quote would be reliant on insurers allowing the tool 'live' access to quoting platforms.
<b>Interactive Quarterly Report</b>	A report highlighting the major price discrepancies in the Victorian residential insurance market is published on a website on a quarterly basis, with an accompanying media release. Consumers would be able to filter the results of the quarterly report to match their suburb/area for more relevant findings.

Source: Fire Services Levy Monitor, *Developing a home insurance price comparison aid for Victorians, Report, September 2014.*

The findings from the market research confirmed that:

- Consumers frequently had some awareness of price differences and the potential savings that they could gain but their awareness did not align with the full extent of differences in the market.
- In general, "...there was little to no understanding of why these price differences exist, how insurance is priced, and what influence various characteristics of the insured policyholder and the property have on the final premium."
- Understanding policy details and level of coverage was a key issue, with few knowing how to separate and interpret the different 'fine prints' offered by each insurer. Most admitted they did not ever read the PDS and of those who did, none were able to understand it given the complexity in wording and length of the document.
- The most common method for shopping around was to visit individual insurer websites, with the initial search list usually influenced by awareness of the largest, most well-known insurers. Respondents indicated they would like to compare more than they do.

<sup>12</sup> ACCC, 2014, The comparator website industry in Australia, page 11.

<sup>13</sup> Fire Services Levy Monitor, *Developing a home insurance price comparison aid for Victorians, Report, September 2014.*

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- Key barriers to shopping around were the time and search costs involved in entering information into quoting platforms, issues with understanding the complex nature of the residential insurance industry and the limited scope for comparison.

The preferred price comparison model was the Indicative Quote Generator model. It was suggested that combining this with the media release element of the Interactive Quarterly Report option would assist in raising awareness for the tool. The reduced preference for the Personalised Quote Generator was due to concerns about having to re-enter the long list of information repeatedly on the chosen insurer's website. Consumers understood that the indicative tool could save them by directing shopping around, rather than attempting to give them a live quote.

The independence of insurance comparison websites and their coverage of a sufficient number of insurers are important considerations. We support the three guiding principles previously issued by the ACCC into price comparison websites, which are (1) facilitate honest, like-for-like comparisons; (2) be transparent about commercial relationships, and (3) clearly disclose who and what is being compared.

To date, we are aware that many Australian insurers have been reluctant to participate in insurance comparison websites due to concerns about diluting the value of their brands and accelerating the commoditization of their products. Insurers heavily invest in the infrastructure to support their sales channels and listing on a comparator website could equate to them competing with themselves. However, adequate participation is a necessary prerequisite for the provision of fulsome comparative information to consumers.

We are also aware of the north Queensland home insurance website which was established in 2015 and administered by ASIC. This website was intended to assist consumers in that region with comparing and purchasing suitable home insurance policies. However, that comparison service has not been effective and we understand that it has not been widely used. Not all insurers operating in that market supply data to the comparison service.

It would also be worthwhile for the ACCC to explore other complementary tools, mechanisms or interventions to deal with the problem of customer inertia in the home insurance market. We are aware, for example, that in the UK, Ofgem (at the recommendation of the Competition Markets Authority) is in the process of rolling out a Disengaged Customer Database which aims to identify those energy customers who have been on a poor value default tariff with the same supplier for three years or more.<sup>14</sup> The Energy Market Investigation (Database) Order 2016 compels suppliers to provide data about these customers to Ofgem. Rival energy suppliers are then provided access to this data to market to these customers.

Admittedly, such measures are relatively new, however, initial small-scale testing by Ofgem has suggested encouraging results:

*"The results of this trial have been encouraging, and the effect sizes observed greater than expected for a letter-based intervention among a disengaged group of customers. A postal intervention on eligible consumers increased switching rates compared against a control group between 5 percentage points (pp) and 8pp, depending on the intervention and the duration of the assessment period. The baseline switching rate for the control group was between 6.8% and*

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<sup>14</sup> <https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/how-switch-energy-supplier-and-shop-better-deal/ofgem-disengaged-customer-database>

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9.6% for a switching period of 14 and 19 weeks respectively. This is higher than expected and a number of factors could have influenced this outcome."<sup>15</sup>

Ofgem's trial tested switching outcomes from two alternatives – sending (up to 6) marketing letters from suppliers to customers and a 'Best Offers Letter' (BOL) from Ofgem. Qualitative interviews conducted with select customers indicated an interesting observation:

"...very few of the customers interviewed actually switched to one of the suppliers who they received information about, most common actions were:

- Customers were prompted to look on a price comparison website (PCW) and look for a better deal.
- Customers were prompted to call their current supplier and use the BOL or marketing as evidence to negotiate a cheaper internal tariff."<sup>16</sup>

Given that both energy and insurance products are complex products, the barriers to switching in the insurance market could be similar to that in the energy market.<sup>17</sup> Such initiatives may also assist those who are excluded from the market due to lower online capabilities. Clearly, protection of consumer data must be a key priority for such an initiative, and consumers should be given an opt-out choice if they decide not to participate.

#### **Draft recommendation 5: Renewal notices should give 28 days notice**

**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.**

*The Insurance Contracts Act currently requires no less than 14 days. The current minimum timeframe does not provide consumers with sufficient time to consider their renewal quote and explore their insurance options. It also may not be sufficient time for some consumers to have ready-access to funds.*

We agree with the ACCC's considerations and recommendations that the statutory minimum timeline for provision of renewal notices should be increased.

In practice, we understand that some insurers may already be providing their renewal notices to their policyholders well in advance of the statutory minimum period.

Receiving renewal notices earlier could provide time-constrained policyholders with more time to consider their options. However, it is also possible that a longer notice period may lead to some policyholders forgetting to renew. Consideration may therefore need to be given to renewal reminders for some customers.

#### **Draft recommendation 6: Disclosure where premium increases are capped**

**The Insurance Contracts Act should be amended 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**

<sup>15</sup> [https://www.ofgem.gov.uk/system/files/docs/2017/11/small\\_scale\\_database\\_trial\\_paper\\_pdf.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/11/small_scale_database_trial_paper_pdf.pdf)

<sup>16</sup> Ofgem, Small Scale Database Trial, Research Results, para. 1 13, available at [https://www.ofgem.gov.uk/system/files/docs/2017/11/small\\_scale\\_database\\_trial\\_paper\\_pdf.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/11/small_scale_database_trial_paper_pdf.pdf)

<sup>17</sup> Ofgem's research into the barriers of switching in the energy market provides some useful information. For example, [https://www.ofgem.gov.uk/system/files/docs/2017/11/ofgem\\_consumer\\_first\\_panel\\_wave\\_one\\_report\\_pdf.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/11/ofgem_consumer_first_panel_wave_one_report_pdf.pdf)

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**and provide an estimate of the timing and extent of premium increases that the insurer intends to apply in future.**

*This will allow consumers to recognise price as a signal of risk and prepare for potential future premium rises.*

The ACCC's Interim Report has identified that insurers sometimes 'cap' premium increases for existing customers to protect them from the price shock they would otherwise experience with a large price increase that may be caused by a re-rating of risks. Insurers also impose 'cups' or collars which have the opposite effect – that is, limit the amount of premium reduction that would otherwise occur.

The ACCC considers that whilst avoiding price shock may be desirable, it also mutes the signal that the customer would otherwise receive about the risks they face and the impacts on their premiums. We agree with this view to some extent, but also consider that little may be lost because premium pricing is so opaque and affected by such a wide range of premium adjustments (some unrelated to costs and risks) that it is difficult to discern what prices actually signal.

There is insufficient information currently available on how insurers manage price caps and cups. We consider it unlikely that insurers would be able to absorb the cost of price capping per se for an extended period without adversely affecting their bottom line. If this is accepted, then price caps would either result in a deferral of some of the increase an insured would have received to a later year, or, must be borne by other insureds. The ACCC's Interim Report indicates that capping involves a deferral of a price increase.

The existence of a price capping practice also raises other questions. In NSW, the Monitor's office has observed that the average premium for renewing customers in the combined home and contents market segment is higher than the average premium for new customers.<sup>18</sup> The Monitor invited insurance companies, the public and other interested parties to make submissions in response to its Discussion Paper but did not receive any submissions from individual insurance companies.<sup>19</sup> We note however, that the ACCC's Interim Report has flagged comments from one insurer that this practice may reflect efforts to 'enhance profitability by leveraging customer loyalty'.<sup>20</sup> In the UK, British insurers have been upfront about the existence of the practice and have committed to tackling pricing practices that unfairly penalize long standing customers.<sup>21</sup> To the extent that renewing customers may be enjoying the benefit of price caps, this would suggest that the gap observed in the Monitor's analysis could be larger in the absence of such premiums adjustments, if the collective impact of price caps outweighed that of price cups.

We consider that there is considerable scope to enhance consumers' understanding of how their insurance premiums are determined. For this to occur, insurers need to be significantly more transparent about how premiums are set. The fact that the Monitor did not receive any submissions from individual insurance companies in response to its Discussion Paper may signal an unwillingness to engage on this issue.

<sup>18</sup> [https://www.esinsurancemonitor.nsw.gov.au/sites/default/files/DiscussionPaper\\_Pricing\\_New%26Renewals\\_FINAL.pdf](https://www.esinsurancemonitor.nsw.gov.au/sites/default/files/DiscussionPaper_Pricing_New%26Renewals_FINAL.pdf)

<sup>19</sup> The Insurance Council of Australia did provide a submission, which is available on the Monitor's website:

[https://edit.esinsurancemonitor.nsw.gov.au/sites/default/files/2018\\_12\\_20\\_ICA\\_Sub\\_ESL\\_ESLIM-Pricing-Differences-Paper.pdf](https://edit.esinsurancemonitor.nsw.gov.au/sites/default/files/2018_12_20_ICA_Sub_ESL_ESLIM-Pricing-Differences-Paper.pdf)

<sup>20</sup> ACCC Interim Report, page 85.

<sup>21</sup> <https://www.abi.org.uk/news/news-articles/2018/12/cma-pricing-super-complaint-abi-response/>

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By contrast, the submissions provided by consumer groups indicate a clear and keen interest in understanding how premiums are determined.<sup>22</sup> The ACCC's future focus on premium adjustments (Focus Area 3) provides an important opportunity for this and other pricing issues to be further examined, not just for Northern Australia, but for the rest of Australia.

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

**States and territories should implement measures to prompt consumers to investigate insurance costs when they are considering purchasing real estate.**

**As a first step, states and territories should include 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.**

**If recommendation 5 (to review and mandate standard cover) is accepted, states and territories should mandate that a current home (building) insurance premium based on the standard cover product be listed in a statutory information disclosure for a real estate transaction.**

*This will provide prospective purchasers with a clearer expectation of the possible insurance costs associated with the property.*

We support recommendation 7 as a possible added measure of consumer protection.

Consumers can face an absence of information about how different risk factors affect their policies. They also face challenges in obtaining information from their insurer about how the price of their policy is determined or why their premiums have risen. Suitably framed component pricing obligations made compulsory via legislation would provide consumers with more information about their risks (such as likely insurance costs) and how to manage them. At the very least, insurers should provide a full breakup of the premium payable on a policy, including taxes and charges included in the premium (this is done already in NSW), and changes in the sum insured value each year to ensure policy holders keep up with increasing building costs. Any intermediary fees and charges (eg an underwriting fee or a policy fee) that form part of the price of an insurance renewal should also be separately disclosed. This level of transparency is reflected in the Insurance Monitor's price comparison order in NSW.

Warning purchasers of real estate about the possible insurance costs associated with their property is likely to be particularly relevant to northern Australia given the greater likelihood of variations in premium prices arising from circumstances specific to that region (eg the increased risk of flood and storm damage arising from changing weather patterns and the impact of this on home and contents insurance premiums).

As well, as stated previously in this response, we support the ACCC's recommendations about reviewing and mandating standard cover.

We hold reservations about the inclusion of a standard cover premium (i.e. an insurance quote) in the manner described in this draft recommendation. Having to include one, or even some, quotes may risk distorting decision making. For example, by biasing consumers towards the specified quote providers (competitive distortions and provider biases).

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<sup>22</sup> For example, refer submission by the Financial Rights Legal Centre:  
[https://edit.eslinsurancemonitor.nsw.gov.au/sites/default/files/181220FRLC\\_ESLIMPriceDifferencing\\_Submission\\_FINAL.pdf](https://edit.eslinsurancemonitor.nsw.gov.au/sites/default/files/181220FRLC_ESLIMPriceDifferencing_Submission_FINAL.pdf)



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In our experience, insurance premium prices can change rapidly or be markedly different between different insurers. While not insurmountable, issues of this kind would need to be addressed, to prevent adverse unintended consequences.

### **Draft recommendation 8: Requesting personal information held by insurers**

**The Insurance Contracts Regulations should be amended to require insurers to 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.**

*This will empower consumers to check and confirm their risk assessment, pricing and claims assessment is based upon reliable and verifiable information.*

We are of the view the relationship between consumers and insurers should be as transparent as possible. This means consumers should be aware of the information held by insurers about them, including personal information about their financial/credit/risk history, as well as the insurer's policies for use, handling and safekeeping of that information.

We accept the need for insurers to consider all aspects of risk associated with a customer, such as in making decisions regarding claims and whether to accept a consumer's application to take out an insurance policy.

We note relevant issues relating to 'big data' are being considered by the ACCC in relation to Open Data in the banking sector, and the Human Rights Commissions through its Human Rights and Technology research project. There may be strong parallels applying to the general insurance sector.

The ESL Insurance Monitor's *June 2018 Occasional Paper: Monitoring insurance premiums in the world of big data* explores issues surrounding insurer's adoption of technology, specifically 'big data' techniques, and the potential implications for companies, consumers, policy makers and regulators. We draw the ACCC's attention to chapter 4 *Implications for regulation*, and its discussion of consumer protection concerns in relation to data security and privacy, discriminatory practices and access to insurance and marketing practices and product sustainability.

### **Draft recommendation 10: Clear disclosure of products considered and remuneration**

**The Corporations Regulations should be amended 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. If recommendation 3 (insurers to report their brands and where they are writing new business) is adopted, this disclosure should also refer consumers to this information. Finally, comparison websites should also be required to disclose the amount of commission and other remuneration that they receive for each product.**

*Comparison websites and insurance brokers only consider a sub-set of the market when providing a quotation or recommendations. Consumers should clearly understand the breadth of search undertaken by the comparison website or insurance broker they are looking to use.*

We support this recommendation for reasons provided in the ACCC's Interim Report. We note in particular the challenges identified in relation to brokers and intermediaries. We consider comparison websites in insurance markets fall short of those operating in relation to goods and services in markets other than those in financial services. Further information supporting

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our views can be found in our submission to the Senate inquiry in general insurance in Australia.

We note the ACCC comments about the current situation against its 2015 guidance for comparator services and the issues identified by ASIC in 2012. A detailed analysis of the current state of play in general insurance markets appears overdue, particularly in light of the findings of the Royal Commission into banking, superannuation and financial services, and recommendations in relation to transparency, intermediaries and conflicts of interest.

In response to the specific questions for consultation, our comments in brief are:

**When in the insurance process should this disclosure be provided to consumers?** At query inception and at any time during the process that the consumer asks for the information.

**Should the wording of the disclosure be left to the comparison website/broker, or be prescribed?** We consider the wording should be prescribed, with options to suit particular intermediary relationships.

**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?** Ideally, we would support disclosure about the actual amount of commission or other remuneration that the comparison website, broker or intermediary is to receive. There should be full transparency about the value of the remuneration. However, given that remuneration may occur as a profit share, for example, we acknowledge that actual dollar information may not be available at the time of the quote is provided.

**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)?** We consider this recommendation would be impractical and would impose significant compliance costs, if imposed before recommendation 3 is in effect.

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

**The Insurance Contracts Act should be amended to provide consumers with the 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.**

*The consumer must be given clear notice of the implications of accepting a cash settlement, for example the insurer will be discharged of any obligations to manage or guarantee the quality, cost or timeliness of any repair the consumer chooses to undertake. Any ancillary expenses subject to the claim that are not within the scope of works for the quote (such as temporary accommodation costs) would be settled separately.*

We support the recommendation to give consumers greater control over how their claims are settled.

Consumers have faced a profound lack of certainty over the extent of the cover offered by their insurance policy (which they do not become aware of until they lodge a claim) as well as a lack of bargaining power when making a claim with their insurer.

To date, claims handling has not been recognized as a 'financial service' under the Corporations Act and the only standards applying to insurers in this area are contained in the

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General Insurance Code of Practice which is not binding upon subscribing insurers.<sup>23</sup> The Insurance Contracts Act and Insurance Contracts Regulations do not appear to deal with the settlement of claims.

As the ACCC has observed, the odds may be stacked against an insured not just at the settlement stage, but at many points during the claims process, including:

- at the loss assessment stage, given that a loss adjuster is an agent of the insurer and is under no obligation to advocate for the interests of the consumer
- when the validity of the claim is being assessed
- reliance on the insurer's choice of preferred repairer
- claims management
- dealing with faulty repairs
- negotiating cash settlement amounts

The current exemption of general insurance from the unfair contract terms ("UCT") provisions of the ASIC Act exacerbates this situation by allowing the insurer full discretion over the determination of cash settlement amounts, even if the payout differs significantly from the real cost the consumer requires to rebuild. Although the insurance industry has argued that there are sufficient protections for consumers in the Insurance Contracts Act, we agree with the ACCC that the 'duty of good faith' provides much more limited protection than that offered by the UCT laws. We do not see any reason why insurance consumers should not receive the same UCT protections that are available to consumers of other types of financial services.

We understand that insurers have raised the prospect of higher insurance premiums if the exemption from UCT laws is removed. We expect that many will also argue that the same will occur if changes are made to the way claims are settled. Indeed, a 25 March 2019 industry article predicted 'the end of current practices such as cash settlements following a natural disaster' if the claims handling exemption from the financial services definition is removed.<sup>24</sup>

It is possible that having less discretion to settle a claim in a way that minimizes the cost to insurers may lead to average claims costs rising in the longer run, which will in turn translate into higher premiums. However, this possibility is not, in our view, a sufficient reason to shy away from reform. As the Hayne Royal Commission noted, arguments about 'unintended consequences' of change or disruption have no useful content.<sup>25</sup> If higher payouts reflect a true, fair and agreed amount, over the long run, more consumers may be encouraged to insure. Ultimately, implementation of this recommendation may bring about worthwhile change, such as a boost in consumer trust in general insurance markets.

In total loss situations, we consider that cash settlements for SI policies should closely align with the amount the consumer nominated as the sum insured, plus any safety net or other allowances provided under the policy. The SI value is an important factor affecting the premium charged, and insureds are entitled to expect that insurers will live up to their end of the bargain when a payout is required.

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<sup>23</sup> We note that the Financial Services Royal Commission has recommended changes in both of these areas.

<sup>24</sup> <https://www.insurancenews.com.au/regulatory-government/claims-reform-may-end-cash-settlements>

<sup>25</sup> Royal Commission into Misconduct in the Banking and Superannuation and Financial Services Industry, Final Report, Volume 1, page 4, 18.

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An additional matter worth revisiting is the case for the exclusion of general insurance from statutory guarantees regime in the Australian Consumer Law ("ACL").<sup>26</sup> This regime provides automatic protection to consumers who buy goods, in relation to standards such as their quality, fitness for purpose, condition and availability of parts. It also applies to services sold to consumers, in relation to standards of care, skill and technical knowledge in service delivery and fitness for purpose. Such automatic guarantees, however, do not apply to general insurance contracts. This means that insurance consumers cannot rely on any statutory guarantees, the breach of which would otherwise give rise to certain statutory rights and causes for action.

The ASIC Act contains certain consumer protection which mirror those in the ACL. However, an explicit exclusion applies to general insurance.

The Explanatory Memorandum to the Trade Practices Amendment (Australian Consumer Law) Bill (No.2) 2010 suggests that the exclusion of insurance from the statutory guarantees regime is due to the existence of specific insurance legislation:

*"7.58 Guarantees relating to the supply of services do not apply to contracts of insurance as these contracts are covered by legislation that applies specifically to insurance markets. [Schedule 1, item 1: Chapter 3, Part 3-2, Division 1, paragraph 63(b)]"*

We submit that given the existence of a standard cover regime in the Insurance Contracts Regulation, there may have been a reasonable case to support the exclusion of insurance from the statutory guarantees regime. However, given how the standard cover regime has failed, we would argue that the rationale for the exclusion needs to be revisited.

We note that the Commonwealth Government has recently passed certain amendments to the Corporations Law to introduce design and distribution obligations upon issuers and distributors of financial products.<sup>27</sup> Treasury's Module 6 submission to the Royal Commission noted that these amendments:

*"... will require product issuers (including insurers) to develop a target market determination that will specify the target market for each of their products. This target market must be such that the product will likely be consistent with the likely objectives, financial situation and needs of consumers within that target market."<sup>28</sup>*

Product issuers who do not meet these obligations will be precluded from offering the product. Similarly, product issuers who distribute their own products, and other third party distributors will be required to take reasonable steps to ensure that the way the product is marketed or sold is consistent with the target market determination for the product.

The amendments will also give ASIC powers to intervene in the sale of such products. As the Hayne Royal Commission report has noted, *"it will give ASIC power that may go some way to altering the kinds of, and the characteristics of, products that may be sold..."<sup>29</sup>*

Given these developments in financial services regulatory policy, we consider that a review of the reach of the statutory guarantee regime may be timely and could be regarded as a

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<sup>26</sup> The guarantees relating to services are that those services will be: provided with due care and skill, fit for any specified purpose (express or implied) and provided within a reasonable time (when no time is set).

<sup>27</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r6184](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6184)

<sup>28</sup> Treasury submission to Royal Commission, Module 6, Policy.

<sup>29</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Final Report, Volume 1, page 293.

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complementary measure to the design and distribution, and product intervention powers now conferred upon ASIC. Extending the reach of the statutory guarantees regime to general insurance would provide consumers with individual remedies and reinforce the need to reduce insurance consumer detriment by striking more of a balance between the interests of insureds and insurers. We consider it may also go some way towards addressing some of the concerns about the product intervention powers that were identified by the Royal Commission.<sup>30</sup>

Insurers may argue that there are practical difficulties with removing the exclusion. However, we are aware that in New Zealand, there is no carve-out for insurance, from the statutory consumer guarantees regime set out in the Consumer Guarantees Act 1993 (NZ).<sup>31</sup> This suggests that any implementation hurdles that may be of concern to Australian insurers can be overcome.

### Draft recommendation 12: Clearly stated mitigation discounts

**The Insurance Contracts Regulations should be amended 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.**

*This is important to help ensure premium adjustments are comparable between insurers and transparent for consumers. It also provides clarity to consumers and assists with evaluating investments in mitigation works.*

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

**The Insurance Contracts Regulations should be amended to 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.**

*This would provide (new or renewing) consumers with current information on a practical range of actions that could be undertaken to mitigate risk and show them what the benefit could be in terms of premium reductions. This will assist consumers to decide if the risk mitigation option is worth the upfront cost.*

We support draft recommendations 12 and 13 of the Interim Report. To the extent that an insured is paying a premium that incorporates mitigation discounts, this information needs to be factored the insured's consideration of prices quoted by other insurers where the insured is assessing his/her renewal options.

We consider that information on mitigation measures that might help reduce premiums would also be useful to insurance consumers. Given the large upfront costs that may be involved, such information would help consumers decide whether to commit to such expenditure.

We are aware, anecdotally, of consumers experiencing challenges obtaining clear or committed advice from insurers on mitigation discounts that may be available to them, and of

<sup>30</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Vol. 1, pages 294 to 295. For example, cl. 1023D(1)(b) of the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill states that ASIC's intervention must be on the grounds that a financial product has resulted in, or will or is likely to result in, significant detriment to retail clients.

<sup>31</sup> See, for example, *Consumer guarantees for services*: <https://www.consumerprotection.govt.nz/general-help/consumer-laws/consumer-guarantees-act/>

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consumers making large capital expenditures on mitigation measures later not benefiting from premium discounts in the way they expected. We consider that this is a subset of the broader problem of the opacity of pricing of insurance premiums that consumers face. The issues identified by the ACCC may be exacerbated in northern Australian markets, but these may become increasingly relevant in higher risk locales throughout Australia.

In principle, where there are regions and large numbers of consumers with similar risk and property profiles, range estimates of discounts for certain measures are conceptually feasible for insurers to develop. There may be practicalities or compliance costs in delivering such an estimate in hardcopy, or in assuming the information and discounts may or should apply to all consumers, rather than just those who are in higher risk locations.

Outside of higher risk locations (where information of the kind contemplated by the ACCC may be warranted), an obligation for insurance companies to engage with and respond in writing with a request for information and provide an estimate or discount that is binding on the insurer, tailored to the specific consumers circumstances, may be an alternative that is worth exploring.