



NATIONAL
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21 April 2008

Mr David Hatfield
Acting General Manager
Australian Competition and Consumer Commission
GPO Box 3131
Canberra Act 2601

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Dear Mr Hatfield

**Insurance Council of Australia application for authorisation A91086
- interested party consultation**

Thank you for your letter of 2 April 2008 inviting comments on an application by the Insurance Council of Australia (IC) for the authorisation of an “agreement between members (both present and future) of the Insurance Council of Australia Limited to voluntarily adopt a common definition of “flood” for the purposes of provision of flood insurance services to the community.”

The National Insurance Brokers Association (NIBA) whose members are responsible for placing over 80% of all commercial insurance for Australian businesses is pleased to make this submission.

NIBA strongly supports the concept of insurance companies applying a consistent definition of flood but has some concerns about the actual definition proposed by the IC. Also NIBA considers that there should be an obligation on those insurers that choose not to rely on the agreed common definition to clearly explain to policy-holders in simple terms where their definition differs from the agreed common definition.

As a general proposition Australian insurance policies do not provide cover for flood insurance. Australian insurance policies generally, although not always, contain a specific exclusion from the policy’s coverage for damage caused by flood. Commercial insurance policies are more likely than retail policies to include flood coverage. At the present time there is no single definition of a “flood” used by Australian insurance companies and as a result it is often difficult for a policy-holder to understand just how an exemption for flood will apply to their insurance policy.

An agreed common definition of flood would simplify matters and should assist insurance policy-holders to better understand the protection offered by their insurance policy. NIBA is also supportive of the IC’s intention of rolling out a complementary communication campaign designed to raise consumer awareness about the proposed agreed common definition.

NIBA, however, questions whether the definition of flood proposed by the IC is the most suitable definition to form the basis for an agreed common definition.

The definition proposed by the IC is an expansive one. It is wider than the definition currently used by many insurers. Increasing the scope of an exemption contained in an insurance policy has the effect of reducing the coverage of that policy making it more likely that the insurer will deny a claim. Consequently insurance brokers and their clients prefer policies with more limited flood exclusions.

Authorising the definition of flood proposed by the IC is likely to see many insurance companies reduce their current coverage. For example, the current definition of flood used by many insurance companies does not contain the third dot point of the proposed definition in paragraph 4.2 of the application. The inclusion of that dot point would mean that insurance policies offering such coverage now would not respond to "water that cannot drain or run off as a result of water that is overflowing or escaping from an inland watercourse or water pool preventing the escape of water" unless the policy had cover for flood.

One Home Insurance policy wording examined by NIBA states that the policy would cover "Storm" as follows:

"If your home or contents suffer loss or damage caused by a violent wind, cyclone or tornado, thunderstorm or hail which may be accompanied by rain or snow, or a sudden, excessive run-off of water as a direct result of a storm in your local area." (underlining added)

It appears to NIBA that unless the proposed common definition omitted the third dot point, the "storm" scenario highlighted above may NOT always be covered by the policy.

The difficulty comes where excessive storm water (which would normally run-off into storm water drains) is prevented from escaping into storm water drains that have already been blocked by flood waters. In this situation the flood waters would not have reached and damaged the insured's property. While the excessive storm water would have caused the damage to the insured's property, the insurance policy, if using the proposed definition of flood, would not respond unless it specifically covered flood.

NIBA would like to see a more limited exemption than that proposed by the IC. This would encourage insurance companies to expand and not reduce the coverage of their policies.

NIBA would also like to see those insurance companies that choose not to adopt the agreed common definition explain, in a simple and concise way to potential policy-holders before entering into the policy, exactly how the policy definition varies from the agreed common definition.

There is currently a standard voluntary insurance cover regime under the Insurance Contracts Act 1984. The regulations made under the Insurance Contracts Act prescribe motor vehicle insurance, home building insurance, home contents insurance, sickness and accident insurance, consumer credit insurance and travel insurance. These policies are typically caught as "retail" insurance policies under the Corporations Act.

A review of the Insurance Contracts Act, dated June 2004, by Alan Cameron and Nancy Milne recommended that "the standard cover regulations should be upgraded and modernised following a suitable process of consultation with stakeholders including the insurance industry and consumer representatives." The Treasury has indicated that it intends to conduct a review of that recommendation and associated recommendations. It is, however, unclear as to the timing of the Treasury review.

In the longer term NIBA would like to see all issues relating to insurance contracts included under the Insurance Contracts Act. NIBA would also like to see all the implications of any authorisation of a definition of flood by the ACCC considered by Treasury as part of its review into standard cover.

NIBA's main concern with the IC proposal can be summarised as follows:

- the proposed definition is too broad and is likely to have the effect of insurers limiting the scope of current flood exclusions to the disadvantage of consumers;
- if a common definition is to be used, in the long run it is better dealt with as part of the Insurance Contracts Act reform.

There is nothing in this submission that should be regarded as confidential.

If you would like any further information please do not hesitate to contact me - (02 9459 4305 or npettersen@niba.com.au).

Yours sincerely



Noel Pettersen
Chief Executive Officer