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By email: insurancedisclosure@treasury.gov.au

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Dear Sir/Madam

DISCLOSURE IN GENERAL INSURANCE: IMPROVING CONSUMER UNDERSTANDING

The Insurance Council of Australia (Insurance Council) appreciates the opportunity to respond to Treasury's Discussion Paper "Disclosure in General Insurance: Improving Consumer Understanding" (the Discussion Paper).

The need for an Action Plan to improve consumer decision making

The Insurance Council and its members have long had concerns about the effectiveness of the product disclosure regime established by the Financial Services Reform Act 2001 and have consistently advocated for changes which better reflect the characteristics of general insurance. This work underwent a quantum shift on 2015 with establishment of a program of research and initiatives designed to improve the effectiveness of product disclosure. (See Attachment A for details.)

However, better consumer outcomes cannot be achieved solely through improved disclosure. While general insurance may be simple in concept, depending on the extent of protection which the policyholder is seeking, the policy documents of necessity may be lengthy and cover a variety of risks. Better consumer outcomes therefore also depend on increased consumer understanding of the risks they face and the options available for managing those risks. For this reason, the Insurance Council's work program goes beyond disclosure in itself to look at consumer behaviour.

Some of the initiatives proposed by the many inquiries which have considered consumer decision making in general insurance require careful research and consideration before adoption. It would be counter-productive to add to the material provided to consumers if there is no demonstrable proof that they will read and benefit from it. Other recommendations for change more clearly offer benefits and can be put in place with appropriate transition periods that allow for effective implementation.

Consequently, in seeking to galvanise improvements in consumer understanding, the Insurance Council is proposing an Action Plan of initiatives for both industry and government with some items which can be implemented now and others which require further co-operative analysis by stakeholders. This Action Plan will address the issues canvassed in the Discussion Paper as well as others relevant to better consumer decision making. (The Insurance Council will also be responding to those reports/consultations.)

Unless otherwise stated, the initiatives are intended to apply only to policies sold to retail clients as defined by s761G Corporations Act 2001. Under regulation 7.1.17A of the Corporations Regulations 2001, the definition of a retail general insurance product extends to medical indemnity insurance.

However, this occurred in a particular context following reforms to stabilise the medical indemnity insurance market. All other professional indemnity products, including those provided to other healthcare practitioners such as dentists and optometrists, are not defined similarly as retail products. As such, medical indemnity insurance it is not proposed to be caught by the requirements currently being discussed.

The Action Plan

For industry

1. Inclusion of year on year premium comparisons in renewal notices for home and contents and motor vehicle policies.
2. Contribute detailed consumer research on value of a core package of covers for home and contents insurance to standard cover regime review.
3. Develop a common definition for “actions of the sea” and work with stakeholders to determine the need for other common definitions.
4. PDSs and KFSs to be published prominently online.
5. Insurance brands to be published on the insurer’s website and on ASIC’s website.

For Government

6. Amend the Corporations Act to make it clear that general insurers can discuss with individual consumers the most appropriate level of sum insured for them.
7. Amend the Insurance Contracts Act to facilitate electronic disclosure of insurance documents.
8. Review the usefulness of the concept of a key facts sheet and consider how it could be made more useful in practice.
9. Legislate to apply protections from unfair contract terms to insurance contracts.

These initiatives are explained in detail in Attachment B. We look forward to discussing their implementation with Treasury and other stakeholders such as ASIC and consumer advocacy organisations.

Other Issues

The Discussion Paper also raises for consideration issues that stem from other inquiries such as the ACCC’s First Interim Report on insurance in Northern Australia. Where these

have not been included in the Action Plan, the Insurance Council's position on them is explained in Attachment C.

If you have any questions or comments in relation to our submission, please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
Executive Director & CEO

THE INSURANCE COUNCIL'S WORK PROGRAM ON EFFECTIVE DISCLOSURE

While the comprehensive product disclosure regime established by the Financial Services Reform Act 2001 aimed to provide transparency of the coverage provided by an insurance policy and how it operates, the general insurance industry soon recognised that the provision of mandated disclosure documents, without a clear objective to aid decision-making, often fails to effectively engage consumers. This is a challenge for consumer contracts of all kinds around the world.

In order to improve consumer outcomes, the Insurance Council and its members advocated for changes which took account of the unique characteristics of general insurance. However, while some requirements were pruned back, general insurance has suffered from a lack of priority, with Government and regulators focused on more problematic areas of financial services.

Taking on this challenge, in 2015 the Insurance Council Board established an independent Effective Disclosure Taskforce (the Taskforce) to assess the effectiveness of, and recommend initiatives to enhance, disclosure. The Taskforce consisted of experts from the industry, consumer movement, academia and the field of behavioural sciences. The report¹ handed down by the Taskforce made 16 recommendations, which were endorsed in full by the Insurance Council Board.

In considering the effectiveness of the disclosure regime, the Taskforce found an absence of empirical research around how general insurance consumers actually use disclosure documents to inform their decision-making. To ensure that future reforms had positive impacts, the Taskforce concluded that a comprehensive research program was required. Measuring how disclosure is currently performing would also provide a benchmark against which the effectiveness of future initiatives and reforms could be measured.

In 2016, the Insurance Council undertook the first tranche of consumer research to explore how consumers use a wide range of information for the most commonly purchased general insurance products, including motor, home building, home contents and travel policies. Importantly, the research utilised an ethnographic method to observe actual behaviour in the environment in which decision-making occurs.

The research, completed and released in 2017, made a number of important findings² but key was the observation that the often subjective process of selecting “the right” policy is tackled by consumers in varied ways, and the industry needs to be nimble and innovative in engaging with a diverse range of consumers. The research also suggested that the industry needs to do more to ensure that consumers are not just focused on the price of a policy, but are cognisant of the importance of selecting the right type and level of cover. While these are ambitious goals, the industry has never been better placed than in the current digital era to design more targeted and engaging information and tools.

¹ Insurance Council of Australia, Effective Disclosure Taskforce (October 2015), ‘*Too Long; Didn’t Read. Enhancing General Insurance Disclosure*’, [report](#) to the Board of the Insurance Council of Australia.

² Insurance Council (February 2017), *Consumer Research on General Insurance Product Disclosures*, research findings report, http://www.insurancecouncil.com.au/assets/report/2017_02_Effective%20Disclosure%20Research%20Report.pdf

This foundational research is a key plank of the Taskforce’s strategic plan to ensure that disclosure is fit for purpose and fulfils a relevant and useful purpose in the coming years. The research has provided the basis for the industry to commence a dialogue, including with regulators and consumer advocates, on the transformative change required to best serve consumers.

Since the first tranche of consumer research was completed, the industry has been focussed on using the findings to inform the development of an industry work program on pragmatic initiatives. In 2017, the Insurance Council facilitated a series of workshops to foster an innovative and collaborative approach to improving disclosure. The workshops focused on identifying pragmatic industry-wide initiatives as well as concepts which may be useful to drive change individually by members.

Key themes that emerged from the workshops include:

- There needs to be strong leadership and commitment in order to seize an opportunity to transform the general insurance industry. The industry’s success will determine its future relevance and its role in building community resilience.
- Change needs to be evidence-based and driven by the desire to improve consumer outcomes.
- Members want a genuine partnership with consumers to increase individual and community resilience. The existing processes of designing products and communicating with consumers are too heavily focused on insurer or legislative requirements.
- There is a strong desire to empower consumers and to make it easier for consumers to make good decisions. The more complex and opaque product design and sales processes are, the more unlikely this can be achieved.

Through the workshops, members identified several potential areas for action within three interrelated themes:



Since the workshops, the Insurance Council has commenced further research to test consumer views on whether a common “core” product across the industry would aid comparison and comprehension. (This research is discussed further under initiative 2 in the industry’s Action Plan - see Attachment B).

Throughout this program of work, individual Insurance Council members have used the industry research to inform their own initiatives to improve consumer decision making.

ELEMENTS OF THE ACTION PLAN

For industry

1. Inclusion of year on year premium comparisons in renewal notices for home and contents and motor vehicle policies and explanation of the key reasons for movements in premium.

This initiative responds directly to the first issue raised in the Discussion Paper (consultation questions 1-13).

Comparison of last year's premium with the proposed premium for renewal can better enable a consumer to assess the value of their insurance and encourages them to shop around if dissatisfied. An explanation by the insurer of the key reasons for movements in premium further strengthens a consumer's ability to compare.

In relation to home and contents and motor vehicle policies, Insurance Council members have agreed to provide premium comparisons and an explanation of premium changes caused by objective criteria such as an updated risk profile. The commitment will apply from 1 July 2020, though some members will be able to do so earlier.

For the sake of maximum transparency and comparability between different insurance policies, it is essential that insurers do the comparisons on the same basis. This consistent methodology is currently being developed by the Insurance Council and its members.

Component pricing

This is the second issue raised in the Discussion Paper (consultation questions 1-13).

From its participation in reviews such as the Senate Economics References Committee Inquiry into General Insurance, the Insurance Council agrees with the observation in the Discussion Paper (page 12) that there is no generally accepted definition of "component pricing" nor is there agreement on what it would achieve. In some cases, the intent is to test insurer explanations as to reinsurance costs, in others to gauge whether the insurer is making "super" profits, in still others whether the insurer is charging what the consumer considers to be an appropriate premium for the risks at a particular address.

There is no evidence that the Insurance Council is aware of which demonstrates that ordinary policyholders are looking for premium breakdowns on their new business quotes and renewals. In fact, from consumer testing done by several of its members, consumers thought it would be more extraneous information that they would need to work their way through. Furthermore, to the extent that information on components of the premium such as reinsurance costs is available, there are strong considerations of commercial sensitivity which require confidentiality.

From the discussions it has had with stakeholders during its Effective Disclosure work program, the Insurance Council considers that the real goal underlying the request for component pricing is the need for consumers to have a better understanding of the level of natural hazards they face at their specific address. This was a recommendation of the Insurance Council's Effective Disclosure Taskforce. Also relevant are the ACCC's Interim

Report Draft Recommendation 7 that States and Territories implement measures to prompt consumers to investigate insurance costs before purchasing real estate and Recommendation 14 regarding public mitigation works and expected premium reductions.

In response to this, the Insurance Council has encouraged its members to provide consumers with information on the natural hazards they face for the property they want to insure. This will give consumers a lead on the mitigation measures they could undertake. The consumer could then discuss with insurers possible premium reductions in recognition of the reduced risks being underwritten.

2. Contribute detailed consumer research on value of a core package of covers for home and contents insurance to standard cover regime review.

This initiative responds directly to the third issue raised in the Discussion Paper (consultation questions 14-21).

The Insurance Council agrees with the general assessment that the standard cover regime does not facilitate good insurance decisions; it doesn't make comparison between policies easier or help people who don't want to think too much about their insurance needs and would like to purchase a policy "like everyone else has". In recognition of what their customers want and what they're willing to pay for, insurers rarely offer precisely all elements specified in the standard cover regulations. They may exclude some items or offer additional covers.

Insurance Council members agree that it can be difficult for policyholders to appreciate the derogations from standard cover. However, this is not something which can be fixed by more prominent disclosure or express disclaimers beyond the "clearly inform" currently required. The difficulty is the assumption behind the regime that ordinary consumers are aware of the standard cover provisions as set out in the Insurance Contract Regulations and can readily evaluate the impact of greater or lesser cover.

Nor would removal of the ability to derogate from the current standard cover requirements provide a solution as they include items such as total replacement which most insurers are not willing to offer because they come at a cost which most policyholders are unwilling to pay. Also, it would prevent insurers from tailoring policies to those, such as low income earners, with fewer risks to cover.

With product design and distribution obligations across financial services expected to be legislated this year, the Insurance Council suggests that any review of the standard cover regime needs to consider the relationship between standard cover requirements and the concept of a target market.

For some types of policies, the Insurance Council considers that it is likely to be more productive to develop a core package of covers which would be common to all policies. It would be open to individual insurers how they dealt with the core set of covers, for example, a policy may only offer those protections. An insurer could also include more features in its policy if it wanted but on current thinking, they could not offer less. Insurance Council funded research into a core package of covers for home and contents insurance is well advanced in assessing consumer interest in this concept (See Attachment A).

The Insurance Council therefore strongly supports a review of the standard cover regime which explores in detail the issues discussed above. As a demonstration of its commitment to advancing the policy debate, the Insurance Council is willing to make its detailed consumer research results in relation to a core package of covers available to the Review.

3. Develop a common definition for “actions of the sea” and work with stakeholders to determine the need for other common definitions.

This initiative responds directly to the fourth issue raised in the Discussion Paper (consultation questions 22-26 (labelled 1-5 in the paper)).

The Insurance Council acknowledges there are often minor differences in the descriptions of cover provided by individual insurers. However, from its own survey of documentation for home and contents insurance, the Insurance Council is uncertain that these differences are as detrimental for consumers as often maintained. For example, from the experience of insurer claims staff, consumer advocates and the Australian Financial Complaints Authority (AFCA), there is evidence for example that consumer dissatisfaction with claims denied because of failure to perform adequate routine maintenance stems from lack of consumer understanding rather than definitional issues. This would be best addressed through financial literacy initiatives

It is clear that the logic behind the definitions of “actions of the sea” which vary in how they deal with for example tsunamis, storm surge or king tides is not readily understood outside the insurance world. The Insurance Council is willing to work with interested stakeholders to develop a draft text which could be put to the Government for adoption in legislation.

In relation to additional work, the Insurance Council is keen to hear from consumers; advocacy groups; and other stakeholders on other terms that may be problematic.

4. PDSs and KFSs to be published prominently online.

This initiative responds to ACCC draft recommendation No 2.

It is good commercial practice for an insurer to make its PDSs and KFSs freely available on line. It makes for a much better customer relationship if the consumer can access and understand descriptions of the cover available and thereby avoid disappointment at claim time. Insurance Council members therefore agree that, at a minimum, where a quote can be provided there will be a link to the relevant PDS and KFS.

5. Insurance brands to be published on the insurer’s website and on ASIC’s website

This initiative responds to ACCC recommendation No 3.

Many insurers already publish on their websites each of the brands under which they provide insurance. Insurance Council members undertake to do this as a matter of course for retail brands sold through direct distribution channels and also to provide the information to ASIC for publishing on its MoneySmart website and wherever it feels appropriate.

For Government

6. Amend the Corporations Act to make it clear that general insurers can discuss with individual consumers key questions such as the appropriate level of sum insured.

This initiative responds to ACCC recommendation No 8.

The Insurance Council and its members have consistently argued since the introduction of the current financial services regulatory regime that the definitions of personal and general financial advice in the Corporations Act impede insurers from having worthwhile and informative conversations with policyholders about their insurance needs. The industry has had extensive discussions with ASIC as to what can and cannot be said. However, due to the nature of the Corporations Act definitions and the one size fits all nature of the regulatory regime, ASIC has been reluctant to be definitive in its guidance on the difference between general and personal financial advice in the general insurance context.

For example, RG244 “Giving information, general advice and scaled advice” states:

RG244.47

“You can use personal information about a client to give general advice that is more relevant to a client. However, you must ensure that you do not, in fact, consider the client’s relevant circumstances when you prepare and give the general advice. You cannot avoid this by giving a general advice warning to the client.”

and

RG244.48

“We will not action where you give personal advice merely because you give general advice using personal information about a client’s relevant circumstances to choose general advice that is relevant and useful to them.”

Given the above, the Insurance Council has supported recommendations made for example by the Financial Systems Inquiry and the Productivity Commission in its review of Competition in Financial Services for the advice definitions to be reviewed while expressing reservations that the simple replacement of “general advice” by “general information” would be satisfactory outcome all round.

The Insurance Council advocates that, regardless of what else is amended, the Corporations Act should make it clear that general insurers can discuss with individual consumers key questions such as the appropriate level for them of sum insured.

7. Amend the Insurance Contracts Act to facilitate electronic disclosure of insurance documents.

This initiative responds to the sixth issue raised in the Discussion Paper (consultation questions 35-37).

Facilitated by advances in Information Technology, Insurance Council members are experimenting with modern forms of disclosure beyond the traditional written word. Generally, this experimentation is not hindered by regulatory obstacles. However, as advocated consistently by the Insurance Council, the Insurance Contracts Act needs

amendment to enable electronic communication to be available to insurance policyholders on the same basis as for all other financial services.

Due to the requirement in the Insurance Contracts Act to “give” relevant information and notices, hard copy disclosure remains the default method of disclosure for insurance and, in contrast to other sectors of financial services, specific consent is required for electronic communication. ASIC has been able to facilitate electronic disclosure by providing relief under the Corporations Act for other financial sectors but cannot do this in relation to the Insurance Contracts Act.

Remedying this lack of power on ASIC’s part would be a simple legislative change and could be undertaken as one of a number of “housekeeping” amendments to update the Insurance Contracts Act. Any changes required to the Electronic Transactions Act could be made at the same time.

8. Review the usefulness of the concept of a key facts sheet (KFS) and consider how it could be made more useful in practice.

This initiative responds directly to the fifth issue raised in the Discussion Paper (consultation questions 27-34).

The requirement for a KFS for home and contents policies was introduced in the aftermath of the extraordinary natural catastrophes in 2010/2011 without comprehensive consumer testing to verify that it would facilitate improved consumer decision making. Understandably, the idea of a short summary which consumers could use to quickly scan the key features of a policy and compare it with other policies on offer has wide appeal and there has been consumer interest in extending it to other types of insurance such as for motor vehicles. The Insurance Council itself at the time of the 2010/2011 catastrophes was exploring the value of a short form policy summary that would be around six pages in length.

However, research undertaken for the Insurance Council and other bodies such as the Financial Rights Legal Centre³ indicates that the KFS concept, even if implemented differently may not be as effective in practice as hoped. Although possible improvements in the efficacy of written product disclosure should not be ignored, it is now commonly thought that the greatest improvements in consumer outcomes will come from paying greater attention to consumer behaviour and taking this into account in product design and distribution.

The Insurance Council is therefore keen to participate in a thorough analysis of the pros and cons of a KFS as a means of enhancing consumer understanding. However, it is essential that the review takes account of other issues addressed in this submission such as the role, if any, for a standard cover regime and how disclosure will mesh with legislated product design and distribution obligations.

It needs also to consider the benefits of continuing to mandate a particular format if use of the KFS is endorsed. While relaxation of the current highly prescribed model may give insurers greater flexibility in what they disclose, this approach was originally favoured by

³ Financial rights Legal Centre, “(In)effective Disclosure: An experimental study of consumers purchasing home contents insurance”, September 2018.

insurers as it protected them from allegations of misleading deceptive conduct if a policyholder suffered a major loss as a result of an event which was not included in the KFS summary of key covers.

It is only once the effectiveness of the KFS concept has been endorsed by a comprehensive review that meaningful consideration can be given to introducing a KFS for other insurance types.

9. Legislate to apply protections from unfair contract terms to insurance contracts

The Insurance Council accepts that protections from UCT should be applied to insurance contracts and urges the Government to resolve this long standing policy issue.

However, this must be done in a way which does not weaken the basis on which an insurer agrees to provide insurance. Key to achieving this is providing an exemption from review for the main subject matter of the contract. The Insurance Council advocates this be done along the lines of the approach taken in the EU, otherwise the remedy will operate more severely, and create far more uncertainty, than the general UCT regime does for other sectors of the economy⁴.

The Productivity Commission's recommendation in 2008 was that the national generic consumer law should address unfair terms in standard form contracts in order to prevent a significant imbalance in the parties' rights and obligations arising under the contract.⁵ The same goal should guide implementation of the Government's decision to apply UCT protections to insurance contracts. It should not seek to review the merits of the commercial bargain underlying the policy by applying a narrow interpretation of the exemption for terms which define the main subject matter or taking a restrictive view on the legitimate interests of the insurer.

The Insurance Council is very disappointed that the Financial Services Royal Commission's Final Report considered that the only terms which should be exempt from review are those which define the thing being insured. The reason given was that to do otherwise would restrict the range of terms which were reviewable. However, this is not an argument as to why insurance should be treated more harshly than other sectors of the economy.

It is difficult to see how the approach favoured by Commissioner Hayne can be made to work in practice. Apart from leaving completely open for review what risks are being covered by a "home" or "motor vehicle" policy, many general insurance policies do not cover "things", for example liability products; travel products; sickness & accident products.

The Insurance Council's concerns are explained fully in the Insurance Council's submission of 24 August 2018 to the Treasury consultation on this issue. The Insurance Council is currently working with its members to quantify the impact on consumers of managing the uncertainty that would result from adoption of the FSRC's recommendation. The potential impact of a narrow definition of 'main subject matter' may include decisions not to cover some risks and higher premiums.

⁴ In the ASIC Act and the equivalent provisions in the Australian Consumer Law.

⁵ Productivity Commission, [Report into Australia's Consumer Policy Framework](#), Recommendation 7.1, volume 1, page 69.

OTHER ISSUES

What are the costs and benefits of mandating a link to the ASIC MoneySmart website to be included in new quotes and renewal notices? (Discussion Paper Consultation Question 11 and ACCC Recommendation 7)

Insurance Council members would not support another mandatory disclosure requirement such as this without hard evidence that it would help rather than hinder consumer decision making in relation to general insurance.

Are there any risks associated with disclosing the types of costs that count towards estimation of the sum insured? (Discussion Paper Consultation Question 12 and ACCC Recommendation 9)

and

Would the disclosure of types of costs that count toward sum insured on an insurer's sum insured calculator be appropriate? (Discussion Paper Consultation Question 13 and ACCC Recommendation 9)

Members advise the Insurance Council that they support this recommendation and are examining the extent to which their sum insured calculators already explain the costs which a sum insured is designed to cover.