



**Law Council**  
OF AUSTRALIA

*Legal Practice Section*

**12 March 2019**

Manager  
Insurance and Financial Services Unit  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [Insurancedisclosure@treasury.gov.au](mailto:Insurancedisclosure@treasury.gov.au)

Dear Sir/Madam

**Disclosure in General Insurance: Improving Customer Understanding**

Thank you for the opportunity to provide a submission to the Treasury regarding the Discussion Paper entitled *Disclosure in General Insurance: Improving Customer Understanding*.

The attached submission has been prepared by the Australian Consumer Law Committee and the National Insurance Lawyers Group, which are committees of the Legal Practice Section of the Law Council of Australia.

Please contact Mr Travis Kotzur, Section Administrator, Legal Practice Section on (02) 6246 722 or at [travis.kotzur@lawcouncil.asn.au](mailto:travis.kotzur@lawcouncil.asn.au), in the first instance if you require further information or clarification.

Yours sincerely

**Jonathan Smithers**  
Chief Executive Officer



**Law Council**  
OF AUSTRALIA

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*Legal Practice Section*

# **Disclosure in General Insurance: Improving Customer Understanding**

**The Treasury**

**12 March 2019**

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## About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933 and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12-month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2019 Executive as at 1 January 2019 are:

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- Mr Tass Liveris, Executive Member
- Dr Jacoba Brasch QC, Executive Member
- Mr Tony Rossi, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

## About the Section

The Legal Practice Section of the Law Council of Australia was established in March 1980, initially as the 'Legal Practice Management Section', with a focus principally on legal practice management issues. In September 1986 the Section's name was changed to the 'General Practice Section', and its focus broadened to include areas of specialist practices including Superannuation, Property Law, and Consumer Law.

On 7 December 2002 the Section's name was again changed, to 'Legal Practice Section', to reflect the Section's focus on a broad range of areas of specialist legal practices, as well as practice management.

The Section's objectives are to:

- Contribute to the development of the legal profession;
- Maintain high standards in the legal profession;
- Offer assistance in the development of legal and management expertise in its members through training, conferences, publications, meetings, and other activities.
- Provide policy advice to the Law Council, and prepare submissions on behalf of the Law Council, in the areas relating to its specialist committees.

Members of the Section Executive are:

- Ms Maureen Peatman, Chair
- Mr Michael James, Deputy Chair
- Mr Geoff Provis, Treasurer
- Ms Tanya Berlis
- Mr Dennis Bluth
- Mr Mark Cerche
- Ms Peggy Cheong
- Mr Philip Jackson SC
- Dr Leonie Kelleher OAM
- Ms Christine Smyth

## Acknowledgement

This submission has been prepared by the Australian Consumer Law Committee (**the ACLC**) and the National Insurance Lawyers Group (**NILG**), which are committees of the Legal Practice Section of the Law Council of Australia.

## Introduction

1. This submission has been prepared by the Australian Consumer Law Committee (**ACLC**) and the National Insurance Lawyers Group (**NILG**), which are committees of the Legal Practice Section of the Law Council of Australia.
2. The Committees are grateful for the opportunity to provide this submission to Treasury regarding the Discussion Paper entitled *Disclosure in General Insurance: Improving Consumer Understanding (Discussion Paper)*. The Committees have responded to a number of the Consultation Questions raised.
3. The submission comprises two parts: Part A provides the views of the NILG; and Part B provides the views of the ACLC. The Law Council has not sought to reconcile any difference in the views of the two Committees. However, the Law Council trusts that the views of both Committees will be of assistance to the Treasury. As such, the Law Council requests that following comments be attributed to the individual committees rather than the Law Council as a whole.

## Part A – National Insurance Lawyers Group

### Summary

4. In summary, the NILG:
  - Supports the propositions that ‘a fair and well-functioning insurance sector requires consumers to be well-informed’ and that a ‘consumer’s ability to make efficient and appropriate choices with respect to insurance can be enhanced by the availability and accessibility of relevant information disclosed’.
  - Supports premium comparisons on an insurer’s renewal notice, subject to certain exemptions and qualifications. However, the NILG believes that a disproportionate focus on price during the renewal process could be detrimental to the consumer.
  - Supports review of the standard cover regime. Ideally, if clarity can be achieved on an acceptable minimum community standard level of cover, a person could purchase a product and have a degree of comfort (even without reading) that the cover is of a minimum standard unless otherwise clearly notified.
  - Supports standardised definitions where appropriate.
  - Does not support the Key Facts Sheet (**KFS**) in its current form due to issues with the quality of the content. A document providing consumer guidance on key matters to consider is likely to be more beneficial.

### Premium increases and component pricing included in renewal notices (Consultation Questions 1-13)

5. The NILG supports premium comparisons on an insurer’s renewal notice.
6. It may be appropriate to consider an exemption where the customer is represented by a licensee that provides personal advice. There may be little real benefit to a customer where they rely on personal advice and it may increase the end cost if it requires changes to the insured’s agent’s documentation and procedures.
7. The NILG believes that the customer focus at renewal should be on the value of the benefits under the policy, including considering whether cover remains appropriate for

the customer's needs and whether equivalent or more suitable cover is available from other insurers.

8. These considerations cannot be assessed on premium price alone. Disproportionate focus on premium price may be detrimental to consumers who may choose a cost-effective policy without understanding whether the coverage afforded meets their needs.
9. See below comments on Consultation Questions 1 to 13.

**Question 1:** It has become apparent from discussions with industry stakeholders that there is no generally accepted definition of component pricing. What is understood by the term 'component pricing'?

10. Evaluating what the 'components' of a premium are is a difficult task and each insurer may establish its premium in different ways.
11. It will therefore be difficult to develop a clear and effective definition of 'component' that can apply fairly between insurers, but which is also understandable to consumers at all financial literacy levels in a way that is not misleading.
12. Even where an appropriate definition of component pricing was established, the NILG is of the view that the focus at renewal should be on the value of the benefits under the policy, including considering whether cover remains appropriate for the customer's needs and whether equivalent or more suitable cover is available from other insurers.
13. These considerations cannot be assessed on premium price alone. Disproportionate focus on premium price may be detrimental to consumers who may choose a cost-effective policy without understanding whether the coverage afforded meets their needs. This would not be in the customer's or community's interest.
14. Customers should be specifically warned not to focus on price alone when evaluating an insurance product.
15. A renewal document should portray a balanced message as to cover and premium price. Component pricing is therefore concerning in that it increases the focus at renewal on the price of the product by encouraging customers to evaluate the policy based only on a comparison of the yearly premium price.

**Question 2:** What is the goal of disclosing a breakdown of an insurance premium on a renewal notice (component pricing)? How would consumers use this information?

16. It is questionable whether component pricing will be of any real benefit to consumers. The focus at renewal should be on the value of the benefits under the policy, as well as the price. Component pricing is likely to be used by consumers to compare products on price alone which could be to their detriment. See comments in Question 1 above.

**Question 3:** Are there any risks associated with insurers providing a detailed breakdown of a premium's components (i.e. commercial sensitivities)?

17. The breakdown of a premium's components and the level of detail required in explaining changes in price to consumers will depend on the definition of component

pricing. It is likely that commercial sensitivity will be relevant as to the level of information provided. See comments in Question 1 above.

**Question 4:** If consumers act to mitigate some of the risks broken down in component pricing disclosure, how would insurers reduce their premium?

18. With regard to the components that might be affected by the consumer, it will depend on the choices the consumer makes with regards to coverage levels, types, excess, etc. However, not all components can be affected by a consumer.
19. If component pricing was included on the renewal notice, it is imperative that it does not send the impression that it is good to reduce cost at the expense of appropriate coverage.
20. Customers should be reminded to consider the coverage choices they made when acquiring the product and whether these choices continue to be appropriate to them. Where they make changes to their policy, premium will be reduced or increased depending on the circumstances.

**Question 5:** Would the disclosure of component pricing on policy renewal notices be appropriate for any other type of general insurance product other than home building and home contents insurance?

21. See comments in the questions above.

**Question 6:** What components would be most useful for consumers to see listed on their renewal notices? (For example, taxes, amount attributable to flood cover)

22. The focus should be on coverage choices and options and the need to re-consider whether they are still appropriate for the consumer's needs (for example, the sum insured, coverage options and excess levels). See comments in the questions above.

**Question 7:** What data/breakdown are insurers able to provide if component pricing disclosure was introduced?

23. This would be a matter for insurers to consider and would depend on any level of information required by a component pricing obligation. See comments in the questions above.

**Question 8:** Where the previous year's premium is disclosed, should it be just the premium, or should it include taxes and charges? Should the amount of the insured value for the previous year also be disclosed?

24. If taxes and charges are not applied consistently by insurers they should also be disclosed so as to make it clear to the consumer where increases in cost have occurred, particularly where the insurer has no control of such increases (for example, tax).
25. The amount of the insured value should also be included in the disclosure for clarity where a consumer's premium increases and decreases as a result of change to the insured value.



**Question 9:** Would insurers prefer to provide further information along with a breakdown of component pricing (for example, a written explanation in the renewal notice, the opportunity to call their contact centre for more information)? Would these items be helpful for consumers?

26. This would be a matter for insurers to consider.
27. It may be the case that excessive information would lead to an information overload for consumers and be another document which they may not read. One option could be to inform consumers of the availability further information should they wish to obtain it.
28. Any such document should make consumers aware that they should consider their level of cover as well as the price.

**Question 10:** Would the inclusion of the sum insured and any excess along with previous year's premium on renewal notices be more appropriate than only disclosing previous year's premiums?

29. As per the NILG's comments in Question 8 above, including the sum insured would be appropriate. However, as mentioned previously, the focus should be on the appropriateness of cover afforded by the policy as opposed to a disproportionate focus on price.

**Question 11:** What are the benefits and costs in mandating a link to the ASIC's Money Smart website to be included in new quotes and renewal notices?

30. The NILG suggests that this would benefit consumers and agrees with this proposal on the basis that the benefit outweighs the costs associated.

**Question 12:** Are there any risks associated with disclosing the types of costs that count towards estimation of sum insured?

31. In the view of the NILG, this question is not entirely clear.
32. If reference is being made to the factors an insurer uses to determine the sum insured which the insured has no option to change, the NILG does not see any clear value to the consumer in such a proposal.
33. If reference is being made to factors used in helping a consumer select their sum insured, such as through an online sum insured calculator, the NILG supports the proposal. Consumers should consider the sum insured upon each renewal and such mechanisms would be of assistance where the consumer is not seeking personal advice. There is always a risk that such a mechanism could over or under estimate the sum insured required by the consumer.

**Question 13:** Would the disclosure of types of costs that count toward sum insured on insurers' sum insured calculator be appropriate?

34. As mentioned in the questions above, the customer should be reminded to consider the adequacy of cover including the sum insured. Insurers could provide a link to a sum insured calculator or other informative documents to assist customers who are not obtaining personal advice.

## Standard cover (Consultation Questions 14-21)

35. The NILG believes that standard cover could be a useful way in which to ensure a minimum level and consistency of cover for consumers that meets community standards and manage the risk that no matter how good disclosure is, a consumer may not read or be able to understand it.
36. The standard cover regime could be reviewed and amended so as to enable a person to purchase a product and, without reading any of the associated documents, know that the cover is acceptable to an acceptable minimum community standard. Any end result should seek to fairly balance what an underwriter can deliver practically and what the community expects from the standard product.
37. However, we do not recommend that insurers should be prevented from being able to deviate from standard cover (except in justifiable cases) as this is likely to stifle competition for insurers and reduce choice for consumers who may require limited forms or levels of cover.
38. A fair trade-off between community expectations of standard cover and cover that is commercially acceptable for insurers to provide, will be difficult to achieve, and setting new standard cover provisions must be assigned to a group that is trusted by both parties.
39. In order to ensure an amended standard cover regime is effective, deviation from standard cover warnings should be made obvious to consumers. Current practices of relying on delivery of the policy document to this are not good enough.
40. The NILG considers the following measures, separately or in combination, could increase the effectiveness of the standard cover regime:
  - A simple and concise warning could be included on the front page of the Product Disclosure Statement (**PDS**) with a clear explanation of the deviation in cover and the potential impact. This warning could alternatively be included on the schedule of cover, or both.
  - A separate notice containing the warning could be given to the consumer upon application which requires their acknowledgement prior to cover being issued.
  - A requirement for insurers to notify the Australian Securities and Investment Commission (**ASIC**) when they are offering a product which deviates from standard cover. ASIC will have a product intervention power as a result of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* which may allow it to investigate and intervene where appropriate.
41. See below comments on Consultation Questions 14 to 21.

**Question 14:** Does standard cover achieve the purpose for which it was implemented? If not, how could it be improved?

42. The current standard cover regime does not achieve the purpose for which it was intended as a result of the following issues:
  - insurance products are inherently complicated, making comparisons of cover between products difficult;
  - coverage summaries are offer high level information which can omit important information and mislead consumers; and

- financial literacy and consumer engagement can hamper insurer efforts to provide clear summaries of coverage, warnings and notices.
43. Standard cover alone will not provide a complete solution. Other measures which will need to be taken into account, include:
- measures to improve financial literacy;
  - products will need to be of reasonable value to their intended target market and designed in a clear and concise manner to the extent reasonably possible;
  - application processes will need to be redesigned to ensure that only consumers from the eligible target market acquire the product;
  - application processes will need to be able to provide useful information to consumers where choice in coverage is required, without being able to provide personal advice such as a needs analysis or providing warnings of key issues; and
  - renewal processes will need to prompt customers to re-consider their position and whether the insurance still meets their needs before renewing.
44. If drafted properly, standard cover could enable a person to purchase a product and, without reading any of the associated documents, know that the cover is acceptable to a minimum community standard. It should also be updated on an ongoing basis as required.
45. There will be a challenge in achieving a fair balance between consumer interests and commercially viable insurance practices, as well as entrusting the matter of setting standard cover provisions to a group which can represent both interests appropriately.
46. It will likely be the case that the regime will not be able to resolve all issues and strike a fair balance between consumer and insurer interests in all respects. Once such issues are identified, appropriate ways to manage these issues can be put into place.
47. One such issue is that not being able to deviate from standard cover is likely to stifle competition for insurers and reduce choice for consumers who require limited forms or levels of cover.
48. The NILG considers the following measures, separately or in combination, would increase the effectiveness of the standard cover regime:
- A simple and concise warning could be included on the front page of the PDS with a clear explanation of the deviation in cover and the potential impact. This warning could alternatively be included on the schedule of cover, or both.
  - A separate notice containing the warning could be given to the consumer upon application which requires their acknowledgement prior to cover being issued.
  - A requirement for insurers to notify ASIC when they are offering a product which deviates from standard cover. ASIC will have a product intervention power as a result of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* which may allow it to investigate and intervene where appropriate.
49. An amended standard cover regime with the above measures is only likely to negatively affect consumers who ignore obvious warnings, make poor choices regarding the cover that they need despite more readily available information, or who choose not to obtain personal advice from a financial adviser.

50. The NILG is happy to further discuss the proposals with the Treasury.

**Question 15:** Are the current terms and conditions, including caps, limits, and exclusions included under standard cover seen to be adequate?

51. Current key terms and conditions under standard cover are not adequate and should be reviewed and updated in consultation with key stakeholders.

**Question 16:** What would be the likely consequences if the standard cover regime was extended to cover a wider number of terms and conditions? What sort of areas might be usefully added to standard cover?

52. Any extensions of standard cover should be carefully considered by key stakeholders. See comments in Question 14 above.

**Question 17:** Should there be a 'default cover' that insurers are required to provide without exception?

53. No. See comments in Question 14 above.

**Question 18:** Should all insurers be required to provide products that provide standard cover as prescribed in the Insurance Contracts Regulations?

54. No. See comments in Question 14 above.

**Question 19:** Is the requirement to 'clearly inform' a consumer that an insurance contract provides less than standard cover as it is commonly understood, an appropriate threshold for insurers to satisfy before they are exempted from providing standard cover?

55. No. The NILG agrees with the comments in the Discussion Paper as to the ineffectiveness of 'clearly informing' consumers through warnings in a PDS. See comments in Question 14 above.

**Question 20:** Where insurers deviate from standard cover, should they be required to provide express disclaimers identifying where the policy deviates from standard cover?

56. Yes, as noted in question 14 above, warnings should be obvious to consumers.

**Question 21:** What disclosure requirements could the Government look into in order to reflect the intended purpose of standard cover requirement?

57. As noted in response to Question 14 above, the NILG considers the following measures, separately or in combination, would increase the effectiveness of the standard cover deviation warnings:

- A simple and concise warning could be included on the front page of the PDS with a clear explanation of the deviation in cover and the potential impact. This warning could alternatively be included on the schedule of cover, or both.
- A separate notice containing the warning could be given to the consumer upon application which requires their acknowledgement prior to cover being issued.

## Standardised definition of key terms (Consultation Questions 22-26)

58. Standardising policy definitions may be appropriate for problem areas in the market (for example, natural disasters or medical definitions).
59. For standardised definitions which are not compulsory to adopt, insurers should provide consumers with a clear and obvious warning explaining the differences in the definition and the potential impact on a consumer.
60. See below comments on Consultation Questions 22 to 26.

**Question 22:** Has the standard definition of flood reduced the number of complaints/disputes with insurers about coverage?

61. The number of disputes is a matter for insurers to comment on.
62. The standard definition has assisted to achieve consistency of application between insurers and avoid confusion and dissatisfaction where similar claims are treated differently by different insurers. Nevertheless, issues continue to exist in terms of the level of consumer understanding as to the application of the definition. Further consideration needs to be given to consumer education on this issue as part of existing financial literacy programs.
63. While we are not aware of any identified concerns as to the operation of the current definition, we are happy to engage in discussion in the event that other stakeholders raise such issues as part of this consultation and consider any variations proposed to the definition.

**Question 23:** Should the Government mandate standardised definitions for a menu of key terms?

64. Standard definitions could be mandated as part of the standard cover regime where appropriate. However, insurers should have the option to deviate from standard definitions where they provide appropriate warning commensurate with the principles outlined above.

**Question 24:** If key terms were to be standardised, what definitions should the Government prioritise? What terms tend to be subject to dispute due to misunderstandings of meaning?

65. The Australian Financial Complaints Authority (**AFCA**) should be consulted on the definitions which give rise a significant number of disputes and standardised definitions should be established for problem areas where appropriate.
66. Key medical definitions should be standardised by reference to the most up to date medical knowledge. To facilitate this, a panel comprised of expert medical practitioners should be formed to determine appropriate medical definitions. That panel should be chaired by a senior medical practitioners (such as the Surgeon-General) and comprise medical experts. The panel should be independent of industry and consumer advocates. The definitions arrived at should, however, be subject to consultation prior to being enacted. The definitions should be mandatory with no scope for derogation by insurers. The above panel should review the definitions by the same process at regular intervals (ideally every three years) or when the panel

becomes aware of any material change in medical literature which creates a basis for an earlier change to a specific definition.

67. Consideration should be given to defining the main prescribed events contained in the Key Facts Sheets set out in Part 5 of the Insurance Contracts Regulations 2017 (Cth). Each event should be standardised. Care would need to be taken with 'definitions' which include multiple different concepts. Different concepts should be separately defined (for example, 'storm' and 'storm surge'). Insurers should be able to depart from the definitions subject to appropriate warnings being given in accordance with the principles set out in answer to Question 14 above.
68. The NILG would welcome the opportunity to engage in further discussion in this regard and to consider definitions as proposed.

**Question 25:** What impact would standardising some definitions have on underwriting?

69. The impact would need to be considered on a case by case basis.
70. Some definitions should be standardised and compulsory. For others, it might be not be appropriate to make them compulsory and insurers should issue warnings, with an explanation of the differences and the potential impact on the consumer, where they deviate from standard definitions.
71. Insurers should be required to identify why they have or have not used a standard definition. The requirement to provide a comprehensive warning would likely result most insurers adopting a standardised definition where appropriate.
72. However, if cover is not available or only available at a higher cost, having a standardised definition for that cover will not be of value for consumers.
73. The NILG would welcome the opportunity to engage in further discussion in this regard and to consider definitions as proposed.

**Question 26:** Should there be standard definitions for exclusions, for example, wear and tear?

74. AFCA should be consulted on the definitions for exclusions which give rise a significant number of disputes and standardised definitions should be established for problem areas where appropriate. By way of illustration a definition which has generally created significant disputes is the term 'unaccompanied luggage' in travel insurance policies.
75. The NILG would welcome the opportunity to engage in further discussion in this regard and to consider definitions as proposed.

## Review of the Key Facts Sheet (Consultation Questions 27-34)

76. In the NILG's view, a KFS has the potential to mislead consumers due to oversimplification of what is covered by the policy.
77. If the standard cover regime as proposed above is implemented, the NILG does not see the need for KFSs as they would add little value to the consumer.
78. It may be of more value to mandate informative guidance/education on what a consumer should consider when making a decision in relation to certain products.

79. See below comments on Consultation Questions 27 to 34.

**Question 27:** Should the KFS be extended beyond two pages to convey more information, similar to the short-form PDS?

80. In the NILG's view, a KFS has the potential to mislead consumers due to oversimplification of what is covered by the policy. The members of the NILG have seen examples, particularly in relation to home and home contents policies, where a KFS could be misleading to a consumer.
81. If the standard cover regime as proposed above is implanted, the NILG does not see the need for KFSs as they would add little value to the consumer.
82. It may be of more value to mandate informative guidance/education on what a consumer should consider when making a decision in relation to certain products. Such tools could be developed as part of the standard cover review process.

**Question 28:** The form of the KFS is currently prescribed in the law, should this be removed to allow industry to take a more innovative approach?

83. The KFS in its current form should be removed, particularly if the standard cover regime as proposed above is implemented. See comments in relation to Question 27 above.

**Question 29:** Are there any legal issues industry would like to raise regarding the extension or modification of the KFS?

84. See comments in relation to Question 27 above.

**Question 30:** Are there items that would be more suitable for inclusion for consumers in a KFS?

85. See comments in relation to Question 27 above.

**Question 31:** In the context of home building and home contents insurance, what are considered to be the key policy elements that consumers need to know about for them to make an informed decision when comparing across policies?

86. Key policy elements include:
- limits and sub-limits;
  - type and level of excesses;
  - scope of exclusions;
  - types of cover provided (for example, defined events vs accidental damage);
  - basis of settlement for the cover; and
  - impact of policy conditions and other relevant terms regarding price, payment, refunds, cancellation, etc.

**Question 32:** Would there be merit in extending the KFS requirement to other forms of general insurance? What value does it add for the consumers?

87. The NILG submits that the KFS in its current form is of great value to consumers, particularly if the standard cover regime as proposed above is implemented. See comments in relation to Question 27 above.

**Question 33:** How can the low awareness of KFS's be addressed and the difficulty of consumers in comparing different policies using KFSs overcome?

88. As noted above, KFSs have the potential to mislead consumers due to oversimplification of what is covered by the policy. On this basis, comparison of products through the use of a KFS would not be appropriate. See comments in relation to Question 27 above.

**Question 34:** Should the KFS be replaced with a new approach? If so, what approach should be taken?

89. See comments in relation to Question 27 above.

## A modern approach to disclosure (Consultation Questions 35-37)

90. See below comments on Consultation Questions 35 to 37.

**Question 35:** Are there more effective or innovative ways to communicate information on policies to consumers?

91. Yes, however subject to minimum legal and regulatory requirements, insurers should innovate in this area.

**Question 36:** Is the law currently preventing more effective methods of disclosure? If so, how?

92. It is the NILG's understanding that the *Corporations Act 2001* (Cth) and the *Insurance Contracts Act 1984* (Cth) (**Insurance Contracts Act**) operate differently with regards to electronic communication of information and rules surrounding receipt of documentation. This has the potential to cause issues for electronic communication methods.

**Question 37:** How could the law facilitate new methods of disclosing the content currently required in the PDS, while still ensuring adequate consumer protections?

93. The main issue appears to be ensuring that consumers understand the product before making a decision on whether it is right for them.
94. As has been seen with the PDS regime, providing disclosure documentation may be an ineffective way to educate consumers in respect of the product.
95. Other measures which can be implemented to prevent a consumer purchasing a product which is not right for them include:
- designing a product application process where only eligible target market consumers can acquire the product;



- designing a product application process which provides helpful information to consumers where they are required to make a choice as to coverage; and
- advising consumers as to the availability of financial advisers who can provide personal advice.

## Contact

96. The NILG would be pleased to discuss, or expand on, any aspect of this submission. In the first instance, please contact Mr Mark Radford on (T) 02 9191 9621.

## Part B – Australian Consumer Law Committee

### Premium increases and component pricing included in renewal notices (Consultation Questions 1-13)

97. The ACLC supports disclosure of the previous year's premium on insurance renewal notices but believes that such a notice should also include:

- a written explanation automatically – not on request;
- multiple years' premiums (as the energy sector does); and
- consumer testing of a standardised design.

98. The ACLC also supports introduction of component pricing.

**Question 1:** It has become apparent from discussions with industry stakeholders that there is no generally accepted definition of component pricing. What is understood by the term 'component pricing'?

99. The ACLC understands that this to be a consumer protection initiative and we are not across industry's varied interpretations. Fundamentally, it is what the consumer understands is the cost that makes up the price of their insurance premium. This may require some industry concepts but, should further the principal of being a means to inform the consumer of what comprises the cost of their policy.

100. An insurance premium can fundamentally be broken down into four parts: risk; expenses; profit; and statutory charges. These key components of a premium can be further broken down and can include some, if not all of the following:<sup>1</sup>

- Risk:
  - claims costs (natural hazards and perils – for example, cyclone, flood zone, the number of roundabouts, burglary rates, etc); and
  - reinsurance costs
- Expenses:
  - acquisition costs (including commission, customer discounts, etc);

<sup>1</sup> See, eg, Darren Robb, et al, 'Profit Margins in Regulated General Insurance Markets' (Speech delivered at the Actuaries Institute General Insurance Seminar, Sydney, 12-13 November 2012) <<https://www.actuaries.asn.au/Library/Events/GIS/2012/GIS2012PaperProfitMarginsWorkingParty.pdf>>; Amanda Aitken, et al, 'General Insurance Analytics Field Guide: A roam over the data analytics countryside' (Speech delivered at the Actuaries Institute General Insurance Seminar, Melbourne, 13-15 November 2016) <<https://www.actuaries.asn.au/Library/Events/GIS/2016/PaperAitkenBaburinaChenCohenConnorFuWood.pdf>>.

- claims handling expenses;
  - administrative and overhead expenses (corporate costs including legal, finance, actuarial, information technology, etc);
  - price moderation; and
  - cost of capital.
- Profit:
    - allocated financial capital (monetary assets held to support risk);
    - economic capital (assets help to allocate future sales of insurance policies); and
    - investment income expected on positive cash flow balances (an offset).
  - Statutory charges:
    - taxes (for example GST);
    - levies including Emergency Service, and
    - duties.

**Question 2:** What is the goal of disclosing a breakdown of an insurance premium on a renewal notice (component pricing)? How would consumers use this information?

101. disclosing a breakdown of an insurance premium can:

- remove information asymmetry between insured and insurer;
- increase the possibility for a genuine risk mitigation partnership between the insured and the insurer;
- provide consumers with increased understanding about what effect mitigation strategies may have on reducing insurance premiums or what behaviours or conditions might increase premiums;
- provide a signal to consumers of the risk factors taken into account when premiums are set; and
- allow consumers to compare product like for like and make informed decisions when deciding to stick with an insurer or to switch.

**Question 3:** Are there any risks associated with insurers providing a detailed breakdown of a premium's components (i.e. commercial sensitivities)?

102. The ACLC is not in a position to identify what 'commercial sensitivities' may be raised by industry. The ACLC would advocate that any reasons proffered by industry should be taken with caution and be evidenced based. The ACLC also challenges the conception that competition would be affected. If all participants in a market are required to provide the information the result would be improved competition to the benefit of consumers by improving transparency.

**Question 4:** If consumers act to mitigate some of the risks broken down in component pricing disclosure, how would insurers reduce their premium?

103. No comment.

**Question 5:** Would the disclosure of component pricing on policy renewal notices be appropriate for any other type of general insurance product other than home building and home contents insurance?

104. No comment.

**Question 6:** What components would be most useful for consumers to see listed on their renewal notices? (For example, taxes, amount attributable to flood cover)

105. At a minimum, the following components should be listed:

- risk;
- expenses;
- profit; and
- statutory charges.

**Question 7:** What data/breakdown are insurers able to provide if component pricing disclosure was introduced?

106. No comment.

**Question 8:** Where the previous year's premium is disclosed, should it be just the premium, or should it include taxes and charges? Should the amount of the insured value for the previous year also be disclosed?

107. The ACLC is of the view, that where the intention is to correct information asymmetry, it is imperative to provide all relevant information. The ACLC is also of the view that all relevant information when considering and comparing the cost of insurance will include:

- the total price (including taxes and charges);
- available previous years (as currently done in the energy market) – this would address industry concern about the value of only two years of information to ameliorate the concern that the Insurance Council of Australia as raised in the Discussion Paper;
- insured value (and any changes) – should also be disclosed yearly; and
- any change in the policy coverage that affects the price – this will enable a consumer to understand if their insurer has changed the policy and:
  - improved coverage which has increased the premium as the risk of a claim has increased; or
  - decreased coverage which has decreased the premium as the risk of a claim has decreased.

108. The purpose of this would be to signal to the consumer, who may not have read the PDS or any supplementary guide that there has been a material change to their policy.

109. **Question 9:** Would insurers prefer to provide further information along with a breakdown of component pricing (for example, a written explanation in the renewal notice, the opportunity to call their contact centre for more information)? Would these items be helpful for consumers?

110. As the ACLC is not an insurer, it would not be in a position to comment except insofar as its view as to the needs of a consumer. As was evident in the Discussion Paper, there is no one size fits all solution to improving consumer awareness and providing information. A consumer having multiple sources of information that are consistent, value adding and accurate.

111. The ACLC agrees that:

- information specifically about why their premium increased should be included on top of the gross figures, and should be short, consistent and a genuine attempt to inform (not mislead or obfuscate); and
- call centres should be equipped to better inform and have a discussion with consumers about how insurance is priced.

112. The ACLC does not believe that one is better than another. Given that consumers are diverse, insurers should have a diverse response to address the issue of better informing consumers about the components of their insurance policy.

**Question 10:** Would the inclusion of the sum insured and any excess along with previous year's premium on renewal notices be more appropriate than only disclosing previous year's premiums?

113. No comment.

**Question 11:** What are the benefits and costs in mandating a link to the ASIC's Money Smart website to be included in new quotes and renewal notices?

114. As with Question 9, as consumers are diverse as to sources of information that will assist them in understanding, the ACLC is of the view an external party such as ASIC Money Smart would be a sensible repository for information for the consumer.

**Question 12:** Are there any risks associated with disclosing the types of costs that count towards estimation of sum insured?

115. No comment.

**Question 13:** Would the disclosure of types of costs that count toward sum insured on insurers' sum insured calculator be appropriate?

116. No comment.

## Standard cover (Consultation Questions 14-21)

**Question 14:** Does standard cover achieve the purpose for which it was implemented? If not, how could it be improved?

117. No. The standard cover regime as currently legislated is not achieving its purpose.

118. Sections 35 and 37 of Division 1 of Part V of the Insurance Contracts Act provide for standard cover in certain types of common general insurance but allow insurers to contract out of these provisions so long as they clearly disclose this fact in writing.

119. In practice all insurers contract out of the provisions through issuing a PDS. Consumers are not aware of:

- what is standard;
- what is below standard; or
- what is above standard.

120. Consumers would be unlikely to be aware of the standard cover regime.

121. The standard cover regime was originally enacted to address difficulties caused by lack of information available, the variety of terms and widespread use of unusual terms.<sup>2</sup> The original vision for standard cover was one in which insurers could be free to market policies which offered less than standard cover but if they did would have to draw the insured's attention to that fact.<sup>3</sup>

*does not have effect where the insurer proves that, before the contract was entered into, the insurer clearly informed the insured in writing (whether by providing the insured with a document containing the provisions, or the relevant provisions, of the proposed contract or otherwise).*<sup>4</sup>

122. As outlined in the discussion paper, few people use the PDS in their pre-purchase decision making. Standard cover as a consumer protection is failing.

123. The courts have held that in order to have satisfied the obligation to 'clearly inform' a consumer under section 35, all that an insurer need do is merely provide a copy of the PDS or Policy.<sup>5</sup> A real concern for consumers is that policies or PDS' are frequently very long and complex documents. Given this, the mere provision of a policy or PDS should not be sufficient to discharge that obligation.

124. One of the key issues that presently exists in financial services is the gap between what consumers understand they have bought, and what insurers are actually providing. This is in large part due to consumer disengagement caused, at least partly, by complex and confusing documentation.

125. The ACLC believes that one way to close that gap is to mandate that all 'prescribed contracts' of insurance provide Standard Cover which includes cover for all matters currently the subject of the Standard Cover provisions. The only way an insurer can go below the Standard Cover is if the prospective insured makes a positive election not to have a particular aspect of the cover. The prospective insured's renewal notice should provide a break-down of the various matters which an insured can opt-out of,

<sup>2</sup> Law Reform Commission, *Insurance Contracts* (Report No 20, 15 December 1982) xxvi.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Insurance Contracts Act 1984* (Cth) s 35.

<sup>5</sup> *Max Hams v CGU Insurance Ltd* [2002] NSWSC 273 (12 April 2002) 248.

and should provide the insured with a breakdown of the premium reduction an insured can expect in respect of any particular choice they make.

126. It is the view of the ACLC that providing a level of standard cover which can only be reduced by a positive election of an insured is likely to lead to consumers making more informed decisions in respect of the insurance cover they seek.

**Question 15:** Are the current terms and conditions, including caps, limits, and exclusions included under standard cover seen to be adequate?

127. No, standard cover has not moved in line with consumer expectations.

128. The minimums have not increased in line with inflation and the Consumer Price Index.

**Question 16:** What would be the likely consequences if the standard cover regime was extended to cover a wider number of terms and conditions? What sort of areas might be usefully added to standard cover?

129. No comment.

**Question 17:** Should there be a 'default cover' that insurers are required to provide without exception?

130. For standard cover to be effective, it is our view that it cannot be deviated below and only built upon to provide cover over and above the standard core offering.

131. Consumers could then choose products that have competed above a minimum standard, rather than risk losing core necessary cover. Consistent with the answer provided to Question 14 above, the consumer should be given the option to make a positive decision to opt-out of certain aspects of the cover, and should be informed of any premium saving they may experience as a result of that decision.

**Question 18:** Should all insurers be required to provide products that provide standard cover as prescribed in the Insurance Contracts Regulations?

132. Given the ACLC's view that there should be default cover (i.e. standard cover) on Question 17, yes.

**Question 19:** Is the requirement to 'clearly inform' a consumer that an insurance contract provides less than standard cover as it is commonly understood, an appropriate threshold for insurers to satisfy before they are exempted from providing standard cover?

133. Since the decision in *Hams v CGU Insurance*, it has been readily accepted that the mere provision of a policy or PDS is sufficient, even where that document is a long or complex document. Regrettably, the word 'clearly' has been given little work to do.

134. It is the view of the ACLC that there should be prescribed minimum standards of cover for prescribed contracts which cannot be deviated from without a positive election by the consumer. See answer to Question 14 above.

**Question 20:** Where insurers deviate from standard cover, should they be required to provide express disclaimers identifying where the policy deviates from standard cover?

135. If the proposal referred to in the ACLC's answer to Question 14 above is adopted then this question is redundant, because any deviation from standard cover will be at the specific request of the consumer.

136. In the event that insurers are allowed to offer products below standard cover, then there should be an express disclaimer that is prominent, appears in renewal notices and is upfront in disclosure documents. Ideally, it should be imbedded into the sales process to ensure products are not mis sold.

**Question 21:** What disclosure requirements could the Government look into in order to reflect the intended purpose of standard cover requirement?

137. The Government could consider:

- standardised product disclosure statements (that are consumer tested);
- a star rating system (bronze, silver, gold) for products that meet or exceed standard cover;
- investing in consumer testing to determine what consumers expect of standard cover.

## Standardised definition of key terms (Consultation Questions 22-26)

138. See below comments on Consultation Questions 22-26.

**Unnumbered question:** What is the goal of standardised definitions?

139. In the ACLC's view, the goals of standardised definitions should be to:

- Improve consumer financial literacy in relation to insurance and risk;
- better consumer understanding of insurance contracts;
- reduce confusion;
- ensure fairer competition as consumers do not have to choose between unknown variables – for example, is definition A the wider definition that will cover a future event or will definition B and is there a cost difference between A and B driving the cost of the policy or more likely to pay out than the other; and
- avoid insurers changing definitions to reduce their exposure after they have been successfully challenged.

**Question 22:** Has the standard definition of flood reduced the number of complaints/disputes with insurers about coverage?

140. No comment.

**Question 23:** Should the Government mandate standardised definitions for a menu of key terms?

141. The ACLC is of the view it is in the interests of consumers some definitions should be mandated by Government to strike the fair balance between consumer protections and the industry.

**Question 24:** If key terms were to be standardised, what definitions should the Government prioritise? What terms tend to be subject to dispute due to misunderstandings of meaning?

142. Part 5 of the Insurance Contracts Regulations 2017 mandating Key Facts Sheets provides an extensive list of prescribed events for each form of insurance. Each event should be standardised.

143. If prioritisation is required, then the definitions generally presented in the Key Fact Sheet should be prioritised, namely:

- fire;
- explosion;
- storm (including storm surge and run-off);
- accidental breakage;
- lightning;
- theft;
- burglary;
- actions of the sea;
- malicious damage;
- impacts;
- escape of liquid;
- removal of debris;
- alternative accommodation;
- high value items and collection; and
- items away from insured address.

144. Consideration could be given to other common terminology, such as exclusions, including:

- depreciation;
- wear and tear, rust or corrosion;
- structural failure;
- mechanical or electrical breakdown or failure; and
- the action of insects or vermin.

**Question 25:** What impact would standardising some definitions have on underwriting?

145. No comment.



**Question 26:** Should there be standard definitions for exclusions, for example, wear and tear?

146. Yes, see response to Question 24 above.

## Review of the Key Facts Sheet

**Question 27:** Should the KFS be extended beyond two pages to convey more information, similar to the short-form PDS?

147. Before a decision is made that KFS should be extended upon, consumer testing should be undertaken as to what would be useful for consumers, including analysis of:

- the impact of lengthening on comprehension;
- how easy is it to understand, given current variance;
- use of pictorial representations, as contemplated in the Voluntary Insurance in Superannuation Code and whether it would aid consumer comprehension.

**Question 28:** The form of the KFS is currently prescribed in the law, should this be removed to allow industry to take a more innovative approach?

148. Innovation may lead to better examples, or poorer examples over time. Consumers should not be the 'guinea pig' in the interim.

149. Consideration should be given to how best to use resources to reach the common goal of an effective and efficient document that allows for the purpose of the KFS to remain front and centre.

150. A variety of new form KFSs need to be developed in tandem with the industry and consumer tested. The most successful one should be mandated.

151. That 'best model' should be mandated and that mandate include prominence in appearance.

**Question 29:** Are there any legal issues industry would like to raise regarding the extension or modification of the KFS?

152. No comment.

**Question 30:** Are there items that would be more suitable for inclusion for consumers in a KFS?

153. No comment.

**Question 31:** In the context of home building and home contents insurance, what are considered to be the key policy elements that consumers need to know about for them to make an informed decision when comparing across policies?

154. What a consumer values may differ to what are highly claimed events ascertained from the insurers data of trends.

155. Consideration of whether low value high frequency claims are as important as high value low frequency events.

156. The ACLC's view is to consider the following frameworks:

- storm (including storm surge and run off) are potential high value and high impact for some consumers (but not all);
- water leak may be a high frequency claim with low consumer sentiment; and
- fire may represent a low frequency claim with potentially high impact.

157. In comparing across policies, consumers need to know price versus sum insured and whether any sub-limit may apply

**Question 32:** Would there be merit in extending the KFS requirement to other forms of general insurance? What value does it add for the consumers?

158. If KFS is improved, it has a potential to other forms of general insurance, including pet insurance and phone insurance.

**Question 33:** How can the low awareness of KFS's be addressed and the difficulty of consumers in comparing different policies using KFSs overcome?

159. Insurers have a role in improving financial literacy and to promote financial literacy tools such as KFS.

160. Industry could assist by allowing a comparison tool of KFSs so consumers can compare each KFS with their competitors'. The KFS could provide the standard information that can be pooled together so consumers can compare product features.

**Question 34:** Should the KFS be replaced with a new approach? If so, what approach should be taken?

161. No comment. Consumer testing is required with behavioural insights as to what would resonate with consumers.

## A modern approach to disclosure (Consultation Questions 35-37)

**Question 35:** Are there more effective or innovative ways to communicate information on policies to consumers?

162. No comment other than to note that industry should be investing money in possible innovative alternatives, including:

- personal advice models to explain;
- online tools;
- infographics; and
- simplification of terms.

**Question 36:** Is the law currently preventing more effective methods of disclosure? If so, how?

163. No comment.

**Question 37:** How could the law facilitate new methods of disclosing the content currently required in the PDS, while still ensuring adequate consumer protections?

164. Regulatory testing overseen by ASIC could be explored with certain requirements including: consumer testing; transparency on effectiveness; and reporting obligations.

## Contact

165. The ACLC would welcome the opportunity to discuss its submission further and to provide additional information in respect of the comments made above. In the first instance, please contact the Committee's Chair, Mr Ben Slade, on (T) 02 8267 0914.