

**Treasury Consultation –
Disclosure in General
Insurance – Improving
Consumer Understanding**
Submission by Legal Aid Queensland



Disclosure in General Insurance – Improving Consumer Understanding

Legal Aid Queensland (LAQ) welcomes the opportunity to provide a submission in response to Treasury's Consultation concerning Disclosure in General Insurance – Improving Consumer Understanding.

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

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

LAQ's Civil Justice Services Unit lawyers have extensive experience providing specialist advice and representation to clients in insurance, banking and finance, credit and debt and consumer law. LAQ regularly assists clients who have problems with insurance.

Consultation questions:

Premium Increases and component pricing included in renewal notices

- 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'?**

Component pricing means the insurer provides a breakdown of each component, and its individual price, that constitutes the premium a consumer must pay under their insurance policy.

The breakdown should be in an easy to understand format for the consumer and should include all risks personal to the consumer and in their environment that contribute to an increase or decrease in the insurance premium for a policy that is charged by an insurer.

- 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?**

Consumer capacity to understand and ability to find and use information to make insurance decisions varies. Some consumers are confident in engaging with insurers and Product Disclosure Statement's (PDS) to determine the appropriate insurance product for their needs. However, recent research by Monash University and the Financial Rights Legal Centre¹ suggests that consumer confidence does not always lead to consumers making better insurance decisions.

LAQ's experience is that many consumers find it very difficult to locate, obtain and understand information about insurance products. Consumers have highlighted that:

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

As a consequence, the goal of disclosing a breakdown of component pricing on a renewal notice should:

- (a) Allow consumers to understand what the policy includes and the price for each component,
- (b) Provide the consumer with more information about the personal risks affecting their insurance policy and premium; and
- (c) Allow consumers to compare insurance products more easily and make informed decisions about what policy is appropriate for them without having to interpret an extensive PDS.

The types of benefits that disclosure of component pricing would bring consumers include:

- (i) An increased awareness of the risk factors that insurers use to set insurance premiums.
- (ii) The ability to take steps to mitigate their own individual risk factors.
- (iii) An ability for the consumer to provide further information to insurers that would allow them to challenge the risk factors relied upon by their insurer to set their insurance premium.

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

LAQ is not aware of any commercially sensitive information that would be disclosed as part of component pricing. The risks faced by a consumer and how that translates into the premiums they have to pay is not commercially sensitive. In LAQ's view any potential detriment to the insurer is outweighed by the consumer benefit.

¹ <https://australiancentre.com.au/wp-content/uploads/2018/09/InEffectiveDisclosure-final.pdf>

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

If a consumer takes steps to mitigate their risks then insurers should reduce that consumer's insurance premiums. Consumers are unlikely to take steps to mitigate insurance risks if they do not have access to information that would increase their understanding of the value to be achieved (ie a reduction in their insurance premiums) in taking steps to mitigate their personal risks.

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?

LAQ supports the introduction of component pricing for all forms of general insurance.

In LAQ's experience, consumers do not understand how premiums are calculated for the various general insurance products available in the market. For the reasons set out in LAQ's answer to Question 2, access to component pricing is likely to improve consumers' awareness and understanding of risk and result in consumers making better informed insurance choices and decisions.

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

The following components would be most useful for consumers:

- (a) Any risk based on their location or postcode;
- (b) Any risk based on their individual circumstances;
- (c) Any amount attributable to their claims history;
- (d) Government fees, charges and taxes;
- (e) Premiums associated with the risk of
 - (i) Fire,
 - (ii) Flood,
 - (iii) Cyclone,
 - (iv) Tidal Surge
- (f) Any risks directly associated with the property being insured such as:
 - (i) Age,
 - (ii) Location,
 - (iii) Geography,
 - (iv) Building materials, and
 - (v) How mitigation undertaken by the consumer can impact the insurance premium.

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

LAQ has no information to be able to comment on this 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?

LAQ supports the view that when the previous year's premium is disclosed on a renewal notice it should include taxes and charges. LAQ also supports the amount of the insured value from the previous year being disclosed to the consumer.

Improving consumer understanding of insurance products, including the insured value, the policy's price and what will cause a change in the premium, is an important part of the disclosure regime.

The proposal allows consumers to make informed decisions because:

- (a) They have one document which provides all relevant information about the product.
- (b) They have access to all of the relevant information that is needed to make an informed decision as to whether the insurance being offered is good value.

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?

LAQ supports, in principle, insurers' having the ability to include with a breakdown of component pricing:

- (a) An explanation of the more complicated issues relating to component pricing; and
- (b) The opportunity for the consumer to call the insurer's call centre for more information.

In particular, LAQ Supports, the ability of the consumer, after reading the new information provided on the renewal notice, to ask questions of the insurer and clarify any issues that the consumer has about the policy.

However, this proposal will only be useful if:

- (i) The explanation provided is clear and does not further confuse consumers.
- (ii) Call centre staff are appropriately trained in component pricing so that they can clearly, accurately and concisely answer any questions that are asked.

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?

In LAQ's experience the sum insured and excess for an insurance policy is highly relevant for consumers in regions at high risk of severe weather events. LAQ has assisted a number of clients whose sum insured was significantly less than the amount needed to rebuild a home after a natural disaster.

Consumers often do not consider and include into the "sum insured":

- (a) Labour costs increases which are experienced following natural disasters.
- (b) That building codes may have changed since the house was built.

- (c) Modifications, improvements, renovations or extensions made to the property since it was first insured.

If all information relating to how the sum insured is calculated (including the items referred to above and costing for all components) was clearly broken down for each component consumers would be able to make informed decisions about the type, quality, extent and price of insurance cover required to protect themselves and their families.

LAQ also recommends the continued development of on-line sum insured calculators on insurer's website. These online calculators assist consumers to easily identify the insurance policy and appropriate sum insured for their needs.

11. What are the benefits and costs in mandating a link to the ASIC's MoneySmart website to be included in new quotes and renewal notices?

Many consumers see ASIC's MoneySmart website as providing independent and accessible advice about all types of finance and insurance products. Providing a link will remind consumers, at the point in time when they are looking for insurance, where reliable and independent information is available.

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

LAQ is not aware of any risks that would be associated with disclosing this information.

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

LAQ refers to its answer to Question 10.

Standard Cover - is the current disclosure regime effective?

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

In LAQ's submission the purpose of the standard cover regime was to:

- (a) Protect consumers by providing them with a base level of insurance coverage, and
- (b) Require insurers to clearly inform consumers about any variations from the standard cover.

Insurers have met their obligations to clearly inform consumers of variation to standard cover by providing a lengthy PDS which sets out the exclusions from standard cover. These PDS can be difficult for consumers to compare.

The intent of the standard cover regime to provide consumers with a base level of cover and inform them of any deviations from that cover has not been met because:

- (a) Consumers are overwhelmed by long PDS documents and do not read them.
- (b) Consumers who do attempt to read the PDS find them difficult to understand.

- (c) Different insurance products that purport to protect against the same risk contain nuanced differences in coverage that can only be identified through a forensic comparison of the different PDS.
- (d) Exclusions from the base level of cover means that many consumers do not have the standard level of insurance cover that was originally envisaged by the legislation.

LAQ submit that the standard cover regime be changed as follows:

1. standard cover should provide a base level of insurance cover that protects consumers against risk and cannot be contracted out of by the insurer of the consumer.
2. standard cover cannot be derogated by an insurer through the use of exclusions. If Insurers want to differentiate their products they are able to do this by adding additional features to standard cover.

The above approach would provide consumers with some certainty when purchasing insurance and insure they are protected against standard risks which the community expectation would require insurers to provide.

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

The current terms and conditions of standard cover are adequate. However, it is the ability of an insurer to derogate from those standard terms (through the use of exclusions from standard cover) and how they then communicate those derogations that causes consumers the greatest problems.

Section 35(2)(a) of the *Insurance Contracts Act 1984* requires insurers to clearly inform the insured in writing of any derogation from standard cover. This notification is usually done through the PDS.

Consumers either:

- (a) Do not read the PDS document because they find them difficult, intimidating or confusing; or
- (b) If consumers do read the PDS to try and determine the extent of their cover they find the PDS difficult and confusing. After reading a PDS consumers often remain uncertain about the extent of their insurance cover.

As a result, consumers rarely understand any derogation from standard cover that is communicated to them by insurers. This problem would be solved by not permitting derogation from the standard insurance cover regime.

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?

If the standard cover regime was expanded:

- (a) More comprehensive insurance products are likely to be provided.

(b) The cost of standard cover is likely to increase.

The most important addition to standard cover would be to remove the exclusions contained in section 19(2)(e)(i) and (ii) which currently excludes from cover destruction or damage intentionally caused by the insured or residing family members of the insured where the damage is caused by a perpetrator of domestic or family violence.

We are aware of a number of client's experiencing domestic and family violence who have made unsuccessful insurance claims where the perpetrator of the domestic violence has damaged the family property while jointly insured or while residing at the property.

It is appropriate that coverage still be provided to the victim in these circumstances.

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

LAQ supports insurers being required to provide a default cover from which there are no exceptions. This default cover should be included in the standard cover regime.

If insurers wish to differentiate their products or provide consumers with additional benefits this can still be achieved by providing Gold Standard products that build on the standard cover regime rather than derogate from it.

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

LAQ refers to its answers in Questions 14-17. We support the view that insurers should be required to provide standard cover products as prescribed by the Insurance Contracts Regulations and which cannot be derogated from by the insurer.

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?

LAQ does not support allowing insurers to deviate from standard cover. However, if the ability to derogate from standard cover is retained, LAQ supports retaining the requirement for an insurer to clearly inform the consumer of any reduction from standard cover.

The current disclosure regime is failing to provide consumers with standard cover and clear, understandable notification by their insurers of any derogation from it.

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

LAQ does not support allowing insurers to deviate from standard cover. However, if the ability to derogate from standard cover is retained, we support insurers being required to provide express disclaimers on an insured's renewal notice or accompanying an insured's renewal notice which sets out the derogation from standard cover.

Recent research by the ICA and Monash University and the Financial Rights Legal Centre suggests that the most likely document that a consumer will read about their insurance policy is the renewal notice. As a result, relevant disclaimers should be included in the renewal notice.

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

The current disclosure requirements, which are met primarily through an insurance policy's PDS, do not achieve their objective of informing consumers about the nature, type, cost and extent of their insurance cover.

It is important that any changes to disclosure requirements provide an opportunity for insurers to be innovative and allow them to consider meeting these disclosure requirements through alternative means such as video and other multi-media platforms.

However, it is important that any new methods of disclosure are developed in conjunction with consumer representatives and are consumer tested to ensure their effectiveness before the law is changed.

Standardised definition of key terms

What is the goal of standardised definitions?

The goal of standardised definitions of insurance terms is to:

- (a) Improve consumer understanding of insurance products;
- (b) Allow consumers to easily compare insurance products;
- (c) Provide certainty to consumers following natural disasters or catastrophic weather events that any damage to their property will be covered.

1. Has the standard definition of flood reduced the number of complaints/disputes with insurers about coverage?

Following the 2010/2011 Floods and Cyclones in Queensland, LAQ took on over 570 insurance cases and provided advice to hundreds of other Queenslanders concerning their insurance policies and disputes with their insurers. A significant number of these disputes occurred because of the different definitions of floods that existed across all insurance policies during that time. A large number of these disputes were resolved after complaints were lodged with the Financial Ombudsman Service.

Since the introduction of the standard definition of flood, LAQ has assisted consumers with their insurance disputes following a number of natural disasters including:

1. Cyclone Yasi – February 2011
2. Flooding affecting Bundaberg and Maryborough - January 2013
3. Cyclone Marcia – February 2015
4. Cyclone Debbie – March/April 2017
5. Flooding events in Western Queensland – Flood Events Associated with Cyclone Yasi - February 2011, and
6. Major storm events throughout Queensland eg Brisbane - 27 November 2014.

In LAQ's experience, the disputes consumers seek legal advice about have changed in character from disputes about definitions of covered events, such as flood, to disputes about:

- (a) The definition of exclusions such as reasonable maintenance; and
- (b) The scope of works and how and to what standard a property should be fixed to; and
- (c) The appropriateness of cash settling a claim.

2. **Should the Government mandate standardised definitions for a menu of key terms?**
3. **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?**

LAQ supports the government mandating standard definitions of a menu of key terms. We do not support the industry view that this approach will reduce consumer choice. Currently, the different definitions of key terms that exist do not improve consumer choice. Instead they increase consumer confusion and make it difficult for consumers to easily and effectively compare and contrast insurance products.

In LAQ's experience of assisting thousands of Queensland consumers with insurance following natural disasters the following key terms in insurance products tend to be subject to the most disputes due to misunderstandings about their meaning:

- (a) Terms relating to storm surge and actions of the seas;
- (b) Terms relating to earth movement and subsidence;
- (c) Terms relating to reasonable maintenance of a property and wear and tear;
- (d) Terms relating to how cash settlements may be used when a consumer has a dispute about a proposed scope of works.

4. **What impact would standardising some definitions have on underwriting?**

LAQ is not aware of any negative impacts that standardising definitions would have on an insurer's underwriting processes.

5. **Should there be standard definitions for exclusions, for example, wear and tear?**

LAQ refers to its answer to Question 3 above.

We support standard definitions for exclusions in an insurance policy. Standard definitions will for consumers:

- (a) Improve understanding of insurance policies,
- (b) Make it easier to compare insurance products, and
- (c) Provide certainty for consumers about the extent of their insurance coverage.

Review of Key Facts Sheet (KFS)

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

KFS have the ability to play an important role in the insurance disclosure process. However, in a regime that allows insurers to derogate from standard insurance cover, it is extremely difficult to convey all relevant information about the product in a 2 page KFS.

The effectiveness of KFS would be improved if insurers were required to provide:

- a basic standard cover level of insurance, and
- standardised definitions of key terms and exclusions were introduced into legislation.

This approach would reduce the complexity of insurance products and minimise the difficulties consumers currently face in trying to compare and contrast insurance products.

The effectiveness of the KFS could also be achieved by:

- (a) Improving the quality of KFS provided to consumers. There is currently a very wide disparity in the quality of KFS that are provided to consumers by various insurers; and
- (b) Improving how KFS are used as part of the insurance process by insurers.

Currently KFS are not always provided at the point of sale, difficult to find on websites and not understood by consumers because their purpose is not adequately explained.

If improvements, as outlined above, are made to other parts of the insurance process there is no need to extend the KFS to allow more information to be included.

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?

LAQ supports retaining the current form of the KFS prescribed in law. The industry needs to improve the quality of their compliance with the existing law. Improved compliance by insurers will result in improved KFSs and will address some of the issues currently faced by consumers.

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

LAQ has no submission to make in response to this question.

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

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?

The following elements are the most important to be included in a KFS:

- Sum Insured;
- Excess;
- Premium;
- Exclusions from or additions to standard cover;
- Policy Holders;
- Insured property;
- Any restrictions on making a claim;
- Minimum and maximum levels of cover for major events covered by the policy.

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

The merit of extending the KFS requirement to other types of general insurance should be reviewed once:

- (a) LAQ's suggested changes to the standard cover regime and standard terms have been implemented; and

(b) The quality and accessibility of insurers' KFSs for consumers in Home and Contents are improved.

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

The low level of awareness of the KFS can be addressed by:

- (a) Always providing the KFS at the point of sale;
- (b) Mandating the KFS be available and prominent on the insurer's building and contents web pages; and
- (c) Ensuring insurer compliance with the existing law which will improve the quality and consistency of the KFS.

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

LAQ does not support the KFS being replaced with a new approach.

A Modern Approach to Disclosure

35. Are there more effective or innovative ways to communicate information on policies to consumers?

LAQ supports the view that many consumers do not engage with the current disclosure regime which focuses on disclosure through the Product Disclosure Statement.

We support insurers exploring alternative methods of disclosure including video and other multimedia and the development of disclosure documents expressed in easy English/ AUSLAN and other languages.

However, it is important that any new methods of information communication are developed in conjunction with consumer representatives and are consumer tested to ensure their effectiveness before the law is changed.

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

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

The current law of disclosure remains important because it provides a base level of protection for consumers. Before the law of disclosure is changed, it is important that alternative methods of disclosure be developed by insurers in consultation with consumer representatives and then tested on consumers so that it can be shown that the alternative methods of disclosure are effective before they are introduced into law.