Lyn Magree
[redacted]

Via Electronic Submission (competitiontaskforce@treasury.gov.au)

19 January 2024

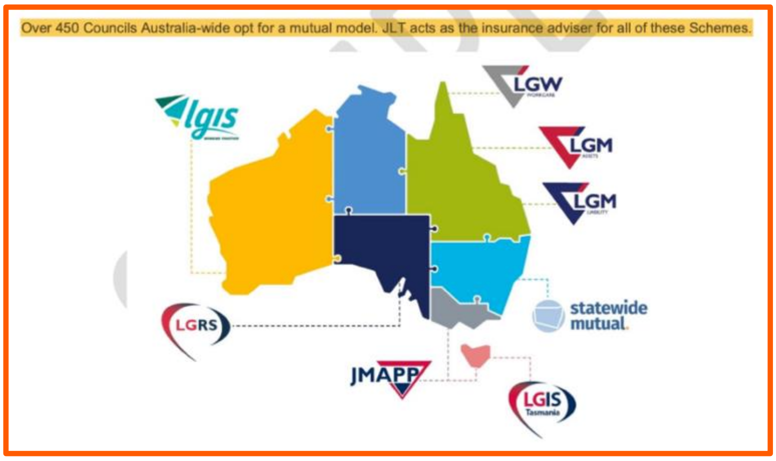
Dr Jim Chalmers, Treasurer
Competition Review Taskforce
Treasury
Langton Cres
Parkes ACT 2600

Re: Merger Reform Consultation: Modernising Australia's Merger Regulations

Dear Treasurer

Thank you for providing an opportunity to offer insight on the effectiveness of *Australia's current merger rules and processes in enabling beneficial mergers while addressing potential anti-competitive concerns.*

Section 50 of the Act reveals that the existing merger rules and processes are antiquated and lack efficacy. The merger guidelines, initially established in 2008 and updated in 2017, primarily focus on diminishing competition within traditional 20th Century industries, predominantly tangible in nature. Regrettably, these guidelines have proven inadequate in identifying and addressing competition issues arising from 21st Century threats such as those related to cybersecurity and climate change. The recent hacking of Optus that affected 10 million Australians and the destruction left by Tropical Cyclone Jasper in Queensland are examples.



This submission focuses on the insurance broking industry and *"The abusive behavior on the part of some brokers who enrich themselves at the expense of both their customers and underwriters,"* as stated by Chubb CEO, Evan Greenberg, in his Letter to Shareholders in 2016.[1]

It also focuses on the anti-competitive behaviour and monopoly that JLT, (a subsidiary of the Marsh McLennan Group) has on Australia's 500+ municipal councils, which are exempt from going to tender under Section 55 of the Local Government Act (NSW).[2] Other states have similar Acts of exemption.

[1] Chubb CEO Evan Greenberg, Chubb Limited Annual Report 2016, Letter to My Fellow Shareholders, p. 14
[2] Statewide Mutual General Manager Toolkit, March 2018, Why don't Members Go To Tender?, p. 12

statewide mutual.

WHY DON'T MEMBERS NEED TO GO TO TENDER?

With the traditional model of purchasing insurance through the market failing Council in adverse times, the participating Councils worked with JLT to set up a more sustainable model to provide a continuing remedy.

In establishing the Mutual, Members wished to establish an insurance Mutual so that they could purchase insurance collectively, self-insure some aspects of their risk, control risk management and run their claims. This model requires a more binding and lasting undertaking than a mere contract and hence the Scheme was established by Deed.

Members' annual contribution to the Scheme is not a traditional contract of indemnity like almost all insurance policies. It is a contribution of a Member to a discretionary trust held for its benefit, not a contract.

Thus, while Section 55 of the Local Government Act is quite specific in that it requires Councils to tender for certain **contracts**, Members' contributions do not constitute a contract for the purposes of the Act.

Further, the agreement made by the Members individually to the Scheme constitutes an agreement between the Member Councils to establish the Scheme which is an exemption to Section 55.

It is for this reason, exemption, that I support the ACCC's proposed reforms to include, *"entrenching, materially increasing or materially extending a position of substantial market power"*.

I have highlighted some of the inadequacies of Section 50, in particular the 5,000 merger and acquisitions that have occurred in the broking industry in the past decade.[3]

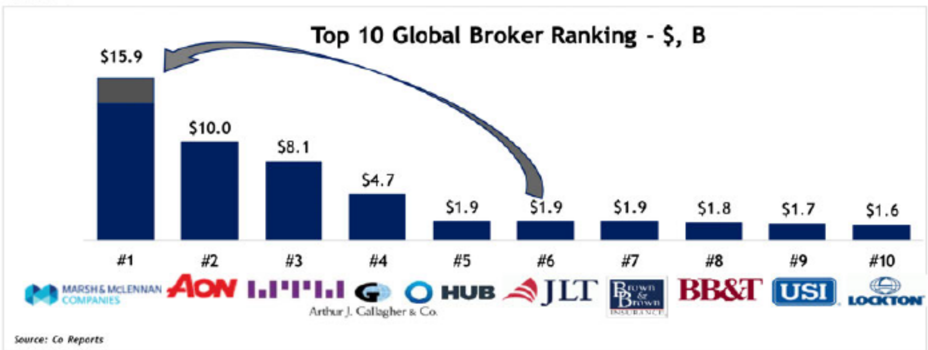
> In 2011, our total shareholder return, including dividends, was 19%, compared with 2% for the S&P 500 index. We are proud of our results, and the return on investment we have created for shareholders.

These type of acquisitions are destructive behaviour with short-term benefits only. It's a vacuous model reliant on M&A activity for the achievement of revenue growth and shareholder return. It's recycled revenue acquired for no other purpose than to meet annual targets and the awarding of executive compensation, which is aggressive and extreme.[4]

These acquisitions have entrenched market power in the insurance broking industry and culminated in a global oligopoly of the Big Three: **Marsh**, **Aon**, and **Willis**.[5]

(averaged ~$1B (spend) annually). For the foreseeable future, save for tuck-in M&A opportunities at Marsh Agency, MMC will not be acquiring much "inorganic" growth.

Exhibit 1



The Hales Report Contact: Feedback@TheHalesReport.com Page 1

[3] Deloitte, "2021 Insurance M&A Outlook Powering through disruption" p. 10

[4] Marsh & McLennan Annual Proxy Statements: 2010 p. 30; 2011 p. 27; 2012 p. 34; 2013 p. 36-37; 2014 p. 30; 2015 p. 25; 2016 p. 22; 2017 p. 24; 2018 p. 25; 2019 p. 29; 2020 p. 32; 2021 p. 34; 2022 p. 34

[5] The Hales Report, October 2, 2018: "Issue #20 Vol: 2"

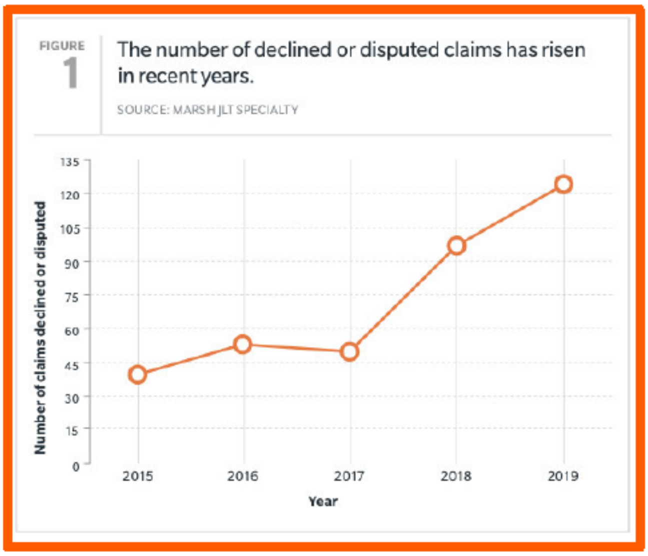
On the announcement of its acquisition of JLT, [Marsh issued the following press release] on 18 September 2018. Of particular note:

> *"The acquisition of Jardine Lloyd Thompson creates a compelling value proposition for our clients, our colleagues and our shareholders. The complementary fit between our companies creates a platform **to deliver exceptional service to clients and opportunities for our colleagues**."*

The media releases that accompany each acquisition always state the benefits to clients; yet consistently fall short of realisation. Despite the purported economies of scale derived from a high number of M&As, there has been no discernible reduction in insurance premiums or service enhancements. On the contrary, this trend has given rise to inherent cybersecurity risks[6], increased premiums, increased operating margins of 31.1%[7], M&A fatigue and employee attrition rate of 22%, employee burnout, protracted and contentious claims processes[8], and an elevated CEO pay ratio at Marsh McLennan of 454.[9]

The rise of declined or disputed claims

The Marsh JLT Speciality graph, below, confirms that the acquisition didn't deliver exceptional service to clients. On the contrary, the number of declined or disputed claims increased, which may have been a direct result from the significant number of employees made redundant by both Marsh and JLT in April 2018, prior to the acquisition in September.



Marsh misled clients when stating reasons for the rise of declined or disputed claims:

> *"As risks evolve, insurance policy response is tested against factual scenarios that are unchartered territory for insurers and policyholders. As society becomes more interconnected, regulated, and litigious, losses have the potential to be more frequent and severe. As such, the likelihood of your business needing to manage a complex insurance recovery is more likely than ever before.*
>
> *"Additionally, the insurance industry continues to scrutinise claims, deploying significant legal*

[6] Marsh McLennan 2022 Annual Report, Cybersecurity, Risks Relating to the Company Generally, Data Protection and Technology Risks, p. 19
[7] Marsh McLennan Investor Presentation, Third Quarter 2023, Risk & Insurance Services, p. 24
[8] Marsh JLT Specialty, Managing Complex and Disputed Insurance Claims, A Practical Guide, p. 1
[9] Marsh McLennan Notice of Annual Meeting and 2023 Proxy Statement, Additional Information, CEO Pay Ratio, p. 83

resource to assist doing so. The number of declined or disputed claims continues to rise (see Figure 1, above), a trend we do not expect will change as the insurance market continues to transition."

Councils class action against JLT

In 2019, a number of councils in NSW and Victoria mounted a class action against JLT for alleged price gouging, with several councils claiming they were *"ripped off"*. Refer screenshot to the right.

Council class action against insurance broker claims ratepayers paid too much

By Jewel Topsfield
September 4, 2019 – 5.52pm

"Several councils have told us they feel ripped off. We are talking many millions of dollars - this claim is to recover those costs."

The cost of insurance premiums is typically recouped through rates.

The lead council in the class action - Moira Shire - paid more than $2 million for property insurance over the last decade.

Mr Mills said this could represent an overpayment of between $600,000 and $1 million.

The lead council in the class action, Moira Shire, paid more than $2 million for property insurance in the last decade, which could represent over payment of between $600,000 and $1 million.

It must be said that the purpose of a tender process is to promote fair competition among potential suppliers of service providers and enhance transparency in the procurement process. Tenders ensure that all interested parties have equal access to information and opportunities, reducing the likelihood of favouritism or bias. This doesn't happen in Australia. JLT, a subsidiary of Marsh, has a monopoly on councils. Because of the long-term, entrenched relationship that has been allowed to occur for over 20 years, no other broker is going to waste time going to tender.

GOULBURN MULWAREE COUNCIL

Special Rate Variation Proposal

Scenarios	2024-25	2025-26	Cumulative
Base Case - Rate Peg*	3.5%	2.5%	6.1% (over two years)
Option 1 - One - year SRV (including rate peg)	43.5%	2.5%	47.1% (over two years)
Option 2 - Two - year SRV (including rate peg)	25.5%	20.5%	51.2% (over two years)

Rates comparison v 5 Major Expenditure Categories 2018/19 - 2023/24

	Increase ($'000)	Increase (%)	Average Increase ($'000)	Average Increase (%)
ESL	404	92.66%	67	15.44%
Insurances	1,002	89.46%	167	14.91%
IT Expenses	985	569.36%	164	94.89%
Light & Power	1,641	156.29%	274	26.05%
Depreciation	13,884	114.59%	2,314	19.10%
Increase in expenses	17,916	120.28%	2,986	20.05%
Rates	4,710	24.76%	785	4.13%

JLT's Monopoly of Australia's Councils

Last year Goulburn Mulwaree Council, my council, put forward a special rate variation proposal. Goulburn, a member of Statewide Mutual and one of 113 NSW Members of 450 councils in the collective monopoly of mutuals managed by JLT is exempt from going to tender. The screenshot on the left shows insurance as a major expense, and yet insurance doesn't go to tender. How is this acceptable? How can the state governments justify this exemption?

Goulburn ratepayers were not pleased with the special rate variation proposal. Below is the YouTube video link *"Goulburn ratepayers say 50 per cent rate hike crazy, outrageous"*.

Goulburn ratepayers say 50 per cent rate hike crazy, outrageous

Ratepayers are not the only ones upset

Insurance brokers generated global fees and commissions of $226 billion

According to consultancy Insuramore, insurance broking generated global fees and commissions of **$226.4 billion** in 2022. The figures represented a rise of almost 10.5% from **$205 billion** in 2021. **Marsh McLennan** ranked first in terms of broking revenues earned, followed by **Aon**, **WTW**, and **Gallagher**.

Chubb CEO: 'Abusive behavior on the part of some brokers'

Not all insurers and underwriters are in favour of paying exorbitated commission, as the broker does not bear any risk in the insurance transaction—**all risk is borne by the insurer**. Given their absence of risk exposure, the commission disbursed to brokers is significant.

In his letter to Shareholders in 2016, Chubb CEO, Even Greenberg, made his thoughts known and referred to the abusive and predatory behaviours on the part of brokers. Refer right.[10]

Evan G. Greenberg
Chairman and Chief Executive Officer
Chubb Limited/Chubb Group

By the way, another sign of a soft insurance market is the abusive behavior on the part of some brokers who enrich themselves at the expense of both their customers and underwriters. Cloaked in the mantra of "customer best interest" or "treating customers fairly," they seek the cheapest price and broadest coverage at commission terms that by any measure are excessive. Forcing underwriters to succumb to the lowest common denominator is hardly in the customer's, or industry's, best interest. These predatory behaviors, which have shown up around the world, and in London in particular, are simply unsustainable from an underwriting perspective and will come back to haunt these brokers: there will be customer and regulator backlash, or worse. Remember, distribution can be disintermediated.

Volume based commission should be phased out

Below is an extract from Marsh's 2022 Compensation Guide relating to Contingent Commissions, which is the type of commission Greenberg is referring to[11]. It is these commissions that has led to a decade of incessant M&As, and which have incurred the wrath of insurers and underwriters such as Greenberg.

Marsh Compensation Guide for Australian Clients

Contingent Commissions

Some insurers agree to pay Marsh contingent commissions when we meet set thresholds for insurance policies placed with them during a given year or other time period. The set thresholds may include volume, profitability, retention and/or growth metrics. The amount of contingent commission earned may vary depending on factors relating to an entire book of business over the course of the year or period. As a result, the amount of contingent commission attributable to any given insurance policy typically will not be known at the time of placement. Marsh & McLennan Agency and parts of Marsh's Consumer business will accept contingent commissions.

Where Marsh is involved in such arrangements, Marsh may be considered to have an incentive to place a client's insurance with a specific insurer. In order to control any potential conflict of interest arising from such placements, Marsh employs policies and procedures to avoid such conflicts arising.

[10] Chubb Limited Annual Report 2016, CEO Evan Greenberg Letter 'To My Fellow Shareholders', p. 14
[11] Marsh Compensation Guide for Australian Clients 2022, Contingent Commissions, p. 2

Example of Entrenched Market Power

On 18 September 2018, Marsh McLennan announced its acquisition of competitor JLT in a US$5.6 billion deal. At the time JLT had a monopoly on Australia's 500+ municipal councils, which Marsh inherited on the completion of the JLT acquisition on 1 April 2019.

Commission to Marsh increased from 25% to 26.5%

On the completion of the JLT acquisition on 1 April 2019, Marsh sent an all colleague email advising that its fee from underwriter CFC (cyber) increased from 25% to 26.5%. The increase of fee was volume related. It is this fee that incentivises acquisitions and has led to 5,000 M&As in the past decade. Below is an extract from that email (refer attachment No. 6).

6. Commission

Commission to Marsh has increased from 25% to **26.5%.**

Marsh has confirmed agreement from CFC that this brokerage will increase based on pre-agreed premium bands under the arrangement.

For the record, volume based commission does not incentivise brokers to lower their premiums. It is the client, ultimately, who pays the commission via increased premiums.

Marsh McLennan CEO's bonus increased by 44.4% because of JLT Acquisition

Below is an extract from the Marsh McLennan 2020 Proxy statement for the 2019 year.[12] Marsh McLennan CEO Dan Glaser's annual bonus increased by a staggering +44.4% due to the completion of the JLT acquisition. Marsh CEO, John Doyle's increased by 23.1%.

Name		Decision Date	Base Salary	Annual Bonus Award	Annual LTI Award[1]	Total Direct Compensation
Mr. Glaser	MMC CEO	2/19/2020	$1,500,000	$6,500,000	$11,500,000	$19,500,000
		2/19/2019	$1,500,000	$4,500,000	$11,500,000	$17,500,000
		Change	0.0%	+44.4%	0.0%	+11.4%
Mr. McGivney	Marsh & McLennan Chief Financial Officer	2/19/2020	$800,000	$2,100,000	$2,800,000	$5,700,000
		2/19/2019	$800,000	$1,750,000	$2,500,000	$5,050,000
		Change	0.0%	+20.0%	+12.0%	+12.9%
Mr. Doyle	Marsh President & CEO	2/19/2020	$1,000,000	$4,000,000	$3,200,000	$8,200,000
		2/19/2019	$1,000,000	$3,250,000	$2,800,000	$7,050,000
		Change	0.0%	+23.1%	+14.3%	+16.3%
Ms. Ferland	Ex JLT CEO now Mercer	2/19/2020	$850,000	$2,000,000	$2,000,000	$4,850,000
Mr. Burke[2]	Ex JLT CEO	2/19/2020	$1,011,810	$2,041,484	$0	$3,053,294

Name	Description
Mr. Glaser President and CEO	• Successfully completed the JLT transaction, the largest acquisition in the Company's history that is providing clients with enhanced talent, capabilities and geographic footprint. • Led the Company to generate underlying revenue growth of 4%, which is the 10th consecutive year of underlying revenue growth in the range of 3% to 5%, and to deliver 7% growth in adjusted EPS*, despite modest dilution in the first year of the acquisition of JLT. Our strong financial performance was reflected in our 42% TSR, which outperformed the S&P 500 ® index and our peer group median.

[12] Marsh McLennan 2020 Notice of Annual Meeting and Proxy Statement, pages 31, 37

91% variable remuneration for Marsh McLennan CEO

The broking model is increasingly reliant on revenue derived from M&A activity and commission from insurers, which is not always conducive to clients, the community or employees. Marsh McLennan senior executives are substantial shareholders, and all in positions of power and influence. Let me reiterate: acquisitions are destructive behaviour with short-term benefits only. It's a vacuous model reliant on M&A activity for the achievement of revenue growth, shareholder returns and the awarding of executive compensation, which is aggressive and extreme.[13]

As of December 31, 2019, variable compensation represented about 91% of our CEO's target total direct compensation and about 83% for our other named executive officers, as shown in the following chart.

Percentages may not add to 100% due to rounding.

Insurance broking is still heavily reliant on stock options

The use of stock options may have decreased for many in the S&P 500; however, the insurance broking industry is still heavily reliant on the pay-at-risk model. The below table highlights senior executives pay-at-risk for **Marsh** and **Aon**, which is exceptionally high and in the 83-95% range.

Marsh McLennan – Variable Remuneration – Percentage for CEO and NEOs (Named Executive Officers)													
Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
CEO	90%	91%	93%	91%	88%	89%	89%	89.7%	90%	89%	91%	91%	91%
NEOs	77%	78%	83%	78%	79%	80%	80%	82.3%	81%	82%	83%	83%	83%
Aon – Variable Remuneration – Percentage for CEO and NEOs (Named Executive Officers)													
Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
CEO	85%	92.8%	88%	89%	88%	89%	95%	90%	89%	90%	90%	92%	92%
NEOs	80%	82.4%	84%	85%	84%	82%	86%	82%	81%	81%	77%	84%	86%

		STOCK* (Beneficial Owners - PORTFOLIO)			RECORDED	TOTAL VALUE
		NUMBER OF	PRICE AS AT	$ VALUE	$ SALES	
		STOCK	Nov 15, 2021			
Marsh	Dan Glaser	1,727,471	$167.42	$289,213,195	$198,750,880	$487,964,075
Aon	Greg Case	1,286,723	$301.91	$388,474,541	$190,876,740	$579,351,281
Willis	John Haley	549,296	$229.80	$126,228,221	$0	$126,228,221
TOTAL		3,563,490		$803,915,957	$389,627,620	$1,193,543,577

[13] Marsh McLennan 2020 Notice of Annual Meeting and Proxy Statement, p. 32.

*Marsh Proxy Statement as at February 28, 2021 (filed March 31, 2021)
*Aon Proxy Statement as at April 8, 2021 (filed April 15, 2021)
*Willis Towers Watson Proxy Statement as at December 31, 2020
www.sec.gov

Questions must be asked as to how it was possible for three CEOs to acquire such largesse while charged with the responsibility of acting in the best interest of clients. Insurance broking is largely responsible for the transfer of risk and the mitigation and management of climate-related financial risks, and therein the health and wealth of the global economy. The current system is not fit-for-purpose and can no longer be justified.

ACCC's Northern Australia Insurance Inquiry Report – November 2020

In May 2017, the Australian Government asked the ACCC to undertake an inquiry to help address concerns about insurance affordability and availability in northern Australia, and consider how to promote more informed and more competitive insurance markets.

In 2017, the ACCC held a number of public forums in Townsville, **Cairns**, Rockhampton, Mackey, Broome, Karratha, Darwin and Alice Springs. Over 150 people attended the meetings.

On 24 October 2017, the ACCC released an issues paper seeking feedback on costs, premiums and profits, competition, consumer experiences, risk mitigation and regulation in the insurance sector. The questionnaire, which focused on consumer issues, asked specific questions, and one related specifically to the role of insurance brokers.

25. Have you used, or considered using, a broker?

- Why did you decide to use a broker? Or if you didn't use one after thinking about it, why not?
- Did it make it easier for you to get a policy that you were more confident suited your needs?

Northern Australia Insurance Inquiry Issues Paper 20

The ACCC received 280 submissions to issues paper in relation to the 41 questions put to the public, which it published online on 9 April 2018. Many of the responses highlight the mood of the public and its frustration with the price of insurance.

ACCC: Volume-based commission – a conflict of interest

In the summary of the November 2020 report, the ACCC made the following comment relating to broker commission:

> *"Insurance brokers can serve an important role in helping consumers to assess and understand their risk, source quotes and manage any claims. However their remuneration structures inevitably give rise to conflicts of interest, which consumers may not be fully aware of.*
>
> *"Despite an insurance broker owing a duty of care to the insured, most brokers are remunerated by insurers, and their remuneration is typically calculated as a percentage of the premium, or some other volume-based remuneration. There is little or no direct relationship between the size of the commission and the work undertaken.*

"We found commission rates of 15 to 20 per cent per year of the base premium to be common. Remuneration rates inclusive of all incentive payments can reach around 30 per cent of the cost of the premium.

"Strata managers were criticised heavily throughout our consultation. Strata property owners accused them of having no incentive to negotiate the best premium, again due to conflicted remuneration arrangements where they receive a share of insurance brokers' commissions, which are based on a percentage of the premium."

ACCC's Northern Australia Insurance Inquiry Report

To date the government has not implemented all recommendations from the final 28 December 2020, ACCC's Northern Australia Insurance Inquiry Report, in particular 19.1 (below). Therefore, there can be only one conclusion and that is that the government supports conflicted remuneration paid to insurance brokers.

What has been said in the past and has anything changed?

The issues of commissions and the potential conflicts to which they may give rise have been considered in previous reviews and inquiries.

In 2012, the House of Representatives Standing Committee on Social Policy and Legal Affairs described commission payments as having an extremely detrimental effect on the cost of a policy, especially when premiums are increasing:

> *As policy premium costs have increased, so have the commission costs (such as Body Corporate manager or insurance broker fees) that are added to premiums and then passed on to individual unit owners. While commission costs are not drivers of premium increases, their commensurate dollar value rises as premium costs rise, and so they therefore contribute to overall price increases.*[685]

▶ Recommendation 19.1

Extend the ban on conflicted remuneration to insurance brokers

The Corporations Regulations should be amended to remove the exemption for general insurance retail products from the conflicted remuneration provisions as they apply to insurance brokers.

Commissions and other benefits given to insurance brokers can give rise to an unacceptable conflict of interest. As is already the case for other financial products, insurance brokers should be prohibited from receiving commissions and other benefits where these create a conflict with a broker's obligation to act in the best interest of their clients. Disclosure alone is insufficient to address these conflicts.

Nothing has changed

On 21 August 2023, Marsh McLennan announced its intention to acquire Honan Insurance in a deal valued at $700 million. Honan is a leading specialist insurance broker in the areas of corporate risk, employee benefits, and strata and real estate insurance. That acquisition has now completed and Honan, like JLT, is a subsidiary of Marsh, the world's largest insurance broker.

Strata insurance, in addition to property and home contents, is already a challenge for many residents living in coastal and regional areas, and in particular residents in Northern Australia who now live with the effects of climate change and environmental hazards. For a growing number of people the cost of insurance is prohibitive, which the ACCC acknowledged in its final 28 December 2020, 560-page report [ACCC Northern Australia Insurance Inquiry Report](#).

If only Stephen Jones had read the ACCC's three-year, 560 page report

On 17 January 2024, Insurance News reported [Assistant Treasurer Stephen Jones](#) held an insurance roundtable in **Cairns** in response to Cyclone Jasper and subsequent flooding, and the design of the cyclone reinsurance pool. Minister Katy Gallagher, Queensland Senator Nita Green, as well as Queensland MPs and local mayors accompanied Jones.

It would be difficult to image that Jones and co would be met on favourable terms and the below comments from Twitter (X) indicate they weren't. Jones made the following statement on Twitter, *"The last thing people need after a disaster is issues with their insurance claims"*. His statement came across as virtue signalling—we've heard it all before. Nothing has changed.

In conclusion, I support the ACCC's Chair, Gina Cass-Gottlieb's proposed reforms to include, *"entrenching, materially increasing or materially extending a position of substantial market power"*.

It's not the ACCC that's the problem—it's the government's lack of reform. As we all remember, there was a period of time when Australia had five prime ministers in as many years. And as we say in insurance, *"What could possibly go wrong?"*

Thank you for your consideration.

Lyn Magree