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2 December 2013

Dear Ms Calder

**INSURANCE CONTRACTS REGULATIONS  
KEY FACTS SHEET (KFS): HOME BUILDING AND HOME CONTENTS POLICIES**

We understand from our recent discussions that Treasury will shortly deal with some minor issues relating to the KFS obligations under the *Insurance Contracts Regulations 1985* (as amended by the *Insurance Contracts Amendment Regulation 2012 (No. 2)*).

As foreshadowed, the Insurance Council considers it timely therefore to provide Treasury with details of those issues identified by our members which, we submit, should also be taken into account as part of your revision process.

Landlord policies, strata policies, bundled policies and the provision of a single KFS in situations where products are substantially the same are areas which could benefit from clarification. Details are provided in **Attachment 1**.

The relevant provisions of the Regulations are set out in **Attachment 2**. A draft KFS which illustrates how the KFS may simply cover more than one product where they are substantially the same is provided in **Attachment 3**.

We are advised the two KFS templates provided in the current regulation are of a low quality and unsuitable for reproduction. Given the high degree of prescription required, our members would appreciate if Treasury could provide a higher quality template for reproduction. In addition, when comparing the templates, some inconsistencies and errors are observed between the two, which Treasury will no doubt address as part of this revision process.

If you require any further information, please contact Mr John Anning, the Insurance Council's General Manager Regulatory Policy on tel: (02) 9253 5121 or email: [janning@insurancecouncil.com.au](mailto:janning@insurancecouncil.com.au).

Yours sincerely



Robert Whelan  
Executive Director & CEO

***Application of the obligation to Landlord policies***

The Insurance Council submits that Treasury should clarify that the KFS obligation does not extend to landlord policies. We understand that this was the policy intention at the time the KFS regulation was made. In any case, the prescribed KFS is not well suited to such policies which offer particular features not described on the KFS, such as rent cover. Also, the defined events which trigger rent cover are often entirely different from the defined events which trigger property cover. Consequently, the Insurance Council is concerned the KFS as prescribed could therefore be potentially misleading in relation to landlord policies.

Furthermore, given the definitions in the Insurance Contracts Regulations (see **Attachment 2**) whether or not a particular landlord policy will be a 'home building insurance contract' will depend upon the characteristics of:

- the insured 'rental property' (or, more accurately, the building which comprises, in whole or in part, the covered 'rental property'); and
- the insured.

By way of illustration:

1. A landlord policy issued in respect of *a property comprising a single building being a shop with a small apartment above it which is leased to a single tenant* will not constitute a 'home building insurance' contract because such building:
  - will not be 'principally and primarily' a place of residence; or
  - will be a building which is let or rented by the insured, as lessor, as a business and is not the principal place of residence of the insured.
2. A landlord policy issued in respect of *a property comprising a single building being a shop with a small apartment above it where the shop is leased to a tenant and the apartment is occupied by the insured* will not constitute a 'home building insurance' contract because such property will not be 'principally and primarily' a place of residence.
3. A landlord policy issued in respect of *a property comprising a single building being a residence occupied by the insured part of which also comprises a small shop which is leased to a tenant* will constitute a 'home building insurance contract' because such property will be 'principally and primarily' a place of residence.
4. A landlord policy issued in respect of *a property comprising two buildings, one being a residence occupied by the insured and the other being a small shop which is leased to a tenant, where the cover under the policy is provided only in respect of the tenanted building*, will not constitute a 'home building insurance contract' because the covered building will not be 'principally and primarily' a place of residence.

Where a single dwelling is wholly rented by the insured to a third party for residential purposes, it is not entirely clear whether such a building would fall within the definition of 'home building' or be excluded from that definition by part (n). The difficulty lies in the wording of part (n) which excludes:

*'a building that is let or rented by the insured, as lessor, as a business and is not the principal residence of the insured'*

It is also not clear whether the words 'as a business' refer to:

- the use of the building (or part of it) by the lessee for business purposes; or
- the leasing of the building (or part of it) by the lessor (insured) for the purposes of carrying on the business of deriving a rental income.

It is important to note that the regulations apply by reference to the proper characterisation of the whole of the 'building' which is the subject matter of the insurance. It does not matter that the policy may only cover that part of the building which comprises the 'rental property' (and not cover that part of the building used for residential purposes by the insured).

If the 'building' of which the insured rental property forms part is properly characterised as a 'home building' (because the building is primarily and principally residential and does not fall within one of the excluded property types) then it does not matter that the residential component of the building does not fall within the cover provided by the policy. That position follows from the choice of the 'building' as the relevant subject of the characterisation for the purpose of Regulation 9 combined with the stipulation '*(whether or not the cover is limited or restricted in any way)*'.

Similar principles to those outlined above apply to the characterisation of a Landlord Insurance Policy providing contents insurance as a 'home *contents* insurance contract'. This is due to the fact that Regulation 13 incorporates similar wording in respect of contents within a 'residential building' which is defined in a manner similar (but not identical) to 'home building'.

It is noted that the KFS obligation will not apply where the insured is not a natural person or, where there are multiple insureds and none of the insureds is a natural person (see Regulation 9 and 13 of the Insurance Contracts Regulations 1985).

#### ***Application of the obligation to Strata policies***

The Insurance Council would also like Treasury to clarify that the KFS obligation does not extend to strata policies. As noted above, the KFS obligation exists where the insured or one of the insureds is a natural person and this is not the case in relation to strata policies taken out on behalf of an owner's corporation.

However, a natural person may own both properties in a duplex and, therefore, could purchase a strata policy in their own name. If the deciding factor in whether a KFS should be given is whether a customer is an individual, there will inevitably be some, if only a minority, of strata policyholders caught.

#### ***Application of the obligation to Bundled Policies***

The Insurance Council submits that a KFS should not be required for sections of a bundled policy. The Explanatory Memorandum states:

*"If an insurer is providing the key facts sheet for a policy that contains a number of contracts, the name of the policy required to be inserted is the relevant section/part of the combined policy. For example, if the policy has six individual contracts of insurance that are listed as contracts A to F and the home contents insurance policy is contract D the insurer is required to insert contract D into the policy name section of the key facts sheet."*

Despite this, members are concerned that the provision of a KFS in its prescribed form with bundled products is practically difficult.

Business packaged products typically include cover for loss or damage to the 'business property' including stock. In the majority of cases, 'business property' will not fall within the definitions of prescribed contracts under 9 & 13 of the Insurance Contracts Regulations. However, in a small but significant portion of cases the opposite may also be true.

For example, a building may include a shop and residential dwelling above the shop. The entire building could be partly or even 'predominantly' a home building (or its contents, contents of a 'residential building') and could be owned by an individual. Business packaged property wordings do not lend themselves to being accurately represented by a KFS in its prescribed form. The language and terminology is very different and the property cover is often dispersed among various sections (for example property cover, portable valuables cover, theft cover and glass cover).

The Explanatory Memorandum appears to envisage an identifiable home/contents cover in a bundled package that can be identified and separately have a KFS applied to it. In practice, this is not the way business packages work. Given this, the Insurance Council submits that KFSs should not be required for business packaged products.

#### ***One KFS for products which are substantially the same***

The Insurance Council recalls that when the KFS requirements were initially being developed, the way in which policies that are substantially the same or documented in one Product Disclosure Statement (PDS) could be covered by one KFS was briefly considered. Treasury had some practical concerns as to how this could be achieved within the limited space available.

The Insurance Council submits that this issue should again be revisited as some insurers may have, for example, three products covered by one PDS, where there are only minor differences in cover between the products (so that one product effectively offers different levels of cover). The Insurance Council submits that the regulation could also provide a feasible way of facilitating the provision of one KFS in such cases – see the example provided in **Attachment 3**. This solution would provide a means of offering simple, easy to understand information to a consumer while providing cost savings.

#### ***A KFS being used for more than one PDS***

In line with the logic above, the Insurance Council requests that Treasury consider whether a KFS could be used for more than one PDS in situations where the different levels of cover occur in different PDSs rather than in one document.

#### ***Accidental damage***

The KFS in its current form does not provide an opportunity to distinguish between accidental damage cover and cover for accidental breakage as a defined event. The result is that a KFS for each of these types of policy can look exactly the same. However, the difference can be important as, in certain circumstances, cover may be excluded under an insured event while claimable under accidental damage.

It may be that Treasury considered this matter during development of the KFS regulation and there is an easy way for industry to deal with it within the existing KFS format. On the face of it however, we cannot see any option but an amendment to the regulation. ***The Insurance Council would therefore appreciate an opportunity to discuss this with Treasury.***

### *Timing and Delivery*

Subject to certain exemptions, a KFS must be provided:

- if the consumer requests information about the contract, and
- if the consumer enters into a contract with the insurer.

However, certain terms are not defined. For example:

- ‘Consumer’ is not defined. If the consumer requesting the information is not a “natural person” then is the obligation to provide a KFS triggered? What category of customer needs to be given a KFS?
- “Requests information about the contract” is also not defined, although a contract includes a reference to a ‘proposed or possible’ contract. Therefore, if a consumer makes an inquiry such as: “Does your home buildings/contents insurance cover X?” or simply “Do you offer home buildings/contents insurance?” will this constitute a request for information about the contract? If not, what is the trigger for a request for information about the contract? Is the trigger a request for some detail about the contract itself such as a quote or specifics of the cover?

Our members advise it can be difficult to provide a KFS outside of a quote situation (pre-contractually) without collecting the consumer’s address (raising privacy and systems issues). The Insurance Council therefore suggests that insurers should have the ability to satisfy KFS obligations by directing a non-customer to its website for the KFS.

The Insurance Council submits this would be sensible option for consumers who may be reluctant to provide an address (whether email or otherwise) when they are shopping around. This could prevent an unintended consequence of consumers indicating they do not want the KFS so as to avoid providing personal information to the insurer when they are merely obtaining a number of quotes.

### *Minor issues with KFS formatting*

There are some discrepancies between the home and contents KFSs which may be unintentional:

- a. The text “Prepared on” located under the policy name heading on the first page is in blue text on the home KFS and black text on the contents KFS.
- b. The first sentence under Step 1 reads: “This Key Facts Sheet sets out some of the **risks** covered ...” on the Contents KFS and “This Key Facts Sheet sets out some of the **events** covered ...” on the Home KFS. A consistent approach using the term ‘events’ is preferred.

We anticipate that Treasury will address these and similar issues when re-examining the KFS regulation.

**Relevant excerpts of the Insurance Contracts Regulations**

**Regulation 4A** of the Insurance Contracts Amendment Regulation 2012 (No 2) provides:

Each of the following class of contracts of insurance is declared to be a class of contracts in relation to which Division 4 of Part IV of the Act applies:

- (a) a **home buildings insurance contract**;
- (b) a **home contents insurance contract**.

In this Division, a reference to a contract includes a reference to a proposed or possible contract.

**Subregulation 2(1)** of the Insurance Contracts Regulations provides:

**home buildings insurance contract** means a contract referred to in **regulation 9**.  
**home contents insurance contract** means a contract referred to in **regulation 13**.

**Regulation 9** of the Insurance Contracts Regulations 1985 provides:

**'9 Prescribed contracts**

*The following class of contracts of insurance is declared to be a class of contracts in relation to which Division 1 of Part V of the Act applies, namely, contracts that provide insurance cover (whether or not the cover is limited or restricted in any way) in respect of destruction of or damage to a home building, where the insured or one of the insureds is a natural person.'*

**Regulation 13** of the Insurance Contracts Regulations 1985 provides:

**'13 Prescribed contracts**

*The following class of contracts of insurance is declared to be a class of contracts in relation to which Division 1 of Part V of the Act applies, namely, contracts that provide insurance cover (whether or not the cover is limited or restricted in any way) in respect of loss of or damage to the contents of a residential building where the insured or one of the insureds is a natural person, but does not include a contract that provides insurance cover only or primarily in respect of specified personal effects.'*

Regulation 2 of the Insurance Contracts Regulations 1985 provides the following relevant definitions of 'home building' and 'residential building':

**'home building** means:

- (a) a building used principally and primarily as a place of residence; and
  - (b) out-buildings, fixtures and structural improvements used for domestic purposes, being purposes related to the use of the principal residence;
- on the site and, without limiting the generality of the expression, includes:
- (c) fixed wall coverings, fixed ceiling coverings and fixed floor coverings (other than carpets);
  - (d) services (whether underground or not) that are the property of the insured or that the insured is liable to repair or replace or pay the cost of repairing and replacing; and

*(e) fences and gates wholly or partly on the site;  
but does not include:*

*(f) a hotel;*

*(g) a motel;*

*(h) a boarding house;*

*(j) a building that is in the course of construction;*

*(k) a temporary building or structure or a demountable or moveable structure;*

*(m) a caravan (whether fixed to the site or not); or*

*(n) a building that is let or rented by the insured, as lessor, as a business and is not the principal residence of the insured.'*

**'residential building** means:

*(a) a building used principally and primarily as a place of residence; and*

*(b) out-buildings used for domestic purposes, being purposes related to the use of the principal residence;*

*on the site but does not include:*

*(c) a hotel;*

*(d) a motel;*

*(e) a boarding house;*

*(f) a building that is in the course of construction;*

*(g) a temporary building or structure or a demountable or moveable structure;*

*(h) a caravan (whether fixed to the site or not); or*

*(j) a building that is let or rented by the insured, as lessor, as a business and is not the principal residence of the insured'.*

## **Strata policies**

**Regulation 2(2)** provides:

*'Where a residential building is part of a building that has been subdivided under a law of a State or Territory that relates to the subdivision of buildings into strata (however described), a reference in these Regulations to the contents of the residential building includes a reference to such of the fixtures and structural improvements in the part of the building as are not insured under a contract of insurance that provides insurance cover in respect of the destruction of, or damage occurring to, the building, being a contract under which the body corporate established by or under that law is the insured.*

# KEY FACTS ABOUT THIS HOME BUILDING POLICY

Acme Home and Contents Insurance – Good Cover, Better Cover & Our Best Cover

Prepared on: 18 November 2013  
THIS IS NOT AN INSURANCE CONTRACT

**Acme**

AFSL No. 123456

## Step 1 Understanding the Facts Sheet

This Key Facts Sheet sets out some of the events covered and not covered by ~~this policy~~ these policies and other information you should consider. This sheet does not provide a complete statement of the cover offered, exclusions, conditions and limits that apply under the ~~policy~~ policies. You should carefully read the Product Disclosure Statement (PDS) and all policy documentation for more details.

## Step 2 Check the maximum level of cover and the events covered

Under ~~this policy~~ these policies, you set the maximum level of cover and we provide you with some agreed extra cover above that amount (Sum insured plus safety net).

Event/Cover	Yes/No Optional	Some examples of specific conditions, exclusions or limits that apply to events/covers (see PDS and other policy documentation for details of others)*
Fire and Explosion	Yes	We won't cover loss or damage caused by scorching or melting where there was no flame.
Flood	Yes	We won't cover loss or damage to retaining walls, paths, driveways, bridges or landscaping.
Storm	Yes	We won't cover loss or damage caused by or resulting from gradual deterioration from rain.
Accidental breakage	Good Cover - No Better Cover & Our Best Cover - Yes	We won't cover accidental breakage of glass that's not broken through its entire thickness.
Earthquake	Yes	For every claim we agree to pay, your excess will be the greater of your basic excess or \$300.
Lightning	Yes	We won't cover loss or damage that is covered by a warranty, guarantee or service contract.
Theft and Burglary	Yes	We won't cover loss or damage if the theft or attempted theft is by you or someone who lives at the site.
Actions of the sea	Yes	We won't cover loss or damage caused by or resulting from actions of the sea or highwater, other than storm surge and tsunami.
Malicious Damage	Yes	We won't cover loss or damage if the malicious act is by you or someone who lives at the site.
Impacts	Yes	We won't cover loss or damage caused by falling trees or branches if tree lopping or felling is done by you or with your consent.
Escape of Liquid	Yes	We won't cover loss or damage to the item from which the liquid escaped.
Removal of debris	Yes	We pay up to 10% of the sum insured.
Alternative accommodation	Yes	Good Cover - We pay up to \$10,000. Better Cover and Our Best Cover - We pay up to 10% of the sum insured or the cost of accommodation for up to 12 months, whichever is the smaller.

\* This Key Facts Sheet is a guide only. The examples provided are only some of conditions, exclusions and limits in this policy. You must read the PDS and policy documentation for all information about this policy.



## Step 3 Other things to consider

### Limits

~~This policy has~~ These policies have restrictions that limit your cover for certain events and items. For example, we won't cover loss or damage caused by bushfire for at least 7 days from the date cover was initially provided by us, subject to limited exceptions. To find out these limits you need to read the PDS and other relevant policy documentation.

### Excesses

If you make a claim, the excess is the amount you may have to pay for each incident. A number of different excesses may apply in respect to ~~this policy~~ these policies, for example, for a claim for accidental loss or damage, your excess will be the greater of your basic excess or \$300. You may be able to increase these excesses to lower your premium. For more detail, please read the PDS and other relevant policy documentation.

### Legal liability

~~This policy covers~~ These policies cover your legal liability when you are found to be legally responsible for damage or personal injury to a third party or their property. It is limited to \$20 million in total for any one occurrence or series of occurrences. You should read the PDS carefully to determine the extent of this cover.

### Cooling off period

If you decide you don't want ~~this policy~~ any of these policies within 21 days of it being issued and you haven't made a claim, you can cancel it and receive a refund.

### Maximum level of cover offered by insurers

Insurers offer different maximum levels of cover in the event of the loss or destruction your home including where:

- you set the maximum level of cover and your payout is limited to that amount\* (Sum insured).
  - you set the maximum level of cover and the insurer may provide you with some agreed extra cover above that amount (Sum insured plus safety net).
  - the insurer will cover all the reasonable costs to rebuild your home (Total replacement).
- \* the insurer may provide some cover above this amount.

You should consider which type of cover is best for you.

Failure to adequately insure your home may result in underinsurance.

**Warning:** ~~this Key Facts Sheet sets out some of the conditions, exclusions and limits in respect to this policy~~ these policies. You should read the PDS and all policy documentation for all the conditions, exclusions and limitations of ~~this policy~~ these policies that limit or exclude cover.

## Step 4 Seek more information

If you want more information on ~~this policy~~ these policies contact us on 13 13 13 or visit [acme.com.au](http://acme.com.au)  
For more information on choosing insurance and to better understand insurance visit the Australian Government website: [www.moneysmart.gov.au](http://www.moneysmart.gov.au)

The ~~policy~~ policies this KFS relates to is/are:

- Provided/Distributed by Acme Bank Limited ABN 123 456 789, AFSL 654321
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