

23 April 2019

ACCC Northern Australia Insurance Inquiry
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Dear Sir/Madam

NORTHERN AUSTRALIA INSURANCE INQUIRY: FIRST INTERIM REPORT

The Insurance Council of Australia (Insurance Council) appreciates the opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) *Northern Australia Insurance Inquiry: First Interim Report*. The Insurance Council and its members have strongly supported this inquiry and have provided extensive information and data to inform its deliberations.

Recommendations

Recommendation 1: Abolish stamp duty on home, contents and strata insurance

The Insurance Council has consistently advocated for the abolition of stamp duty on insurance contracts. As the ACCC acknowledges, the economic case for the abolition of insurance-based taxes is widely accepted, having been canvassed in numerous Federal and State/Territory Government reviews and inquiries. These include the Australian Government's Review of Australia's Future Tax System (the Henry Tax Review), the NSW Independent Pricing & Regulatory Tribunal (IPART) Review into State Taxation, the Victorian Royal Commission into the 2009 Bushfires Royal Commission, the NSW Government 2012 review: Funding our Emergency Services, ACT Review of Taxation, the GST Distribution Review and various Productivity Commission reports.

Recommendation 2: Re-base stamp duty; use stamp duty revenue for affordability and mitigation

As the ACCC notes, removing stamp duties from insurance products would result in meaningful reductions in insurance premiums for the residents of northern Australia and should be a preferred option. However, if this is not possible, the Insurance Council and its members are open to the possibility of amending the stamp duty basis away from retail premiums towards some other metric. The ACCC suggests that stamp duties be levied with reference to the sum insured value. Care would need to be taken to ensure that such a change does not create an additional incentive for residents to underinsure (or even not insure) their properties.

Given the demonstrated benefits of mitigation in reducing potential losses across a community, if stamp duties in insurance contracts were to be maintained, the Insurance Council would support the use of the revenue to fund public mitigation works.

Recommendation 3: Insurers to report their brands and where they are writing new business

Many insurers already publish on their websites each of the brands under which they provide insurance. Insurance Council members undertake to do this as a matter of course and also to provide the information to ASIC for publishing on its MoneySmart website.

This commitment would not, however, extend to brands that are owned by another company but are underwritten by the insurer. This includes white labelled products, policies issued by underwriting agencies (both with their own AFSL and those acting as Authorised Representatives) that are underwritten by an insurer under a binding authority agreement, and broker-branded wordings that are underwritten by a panel insurer. Members are considering how this initiative should apply to broker branded PDSs where other underwriters would also have PDSs with the same brand.

The Insurance Council and many of its members do not support the proposal to report where new business is being written. This would introduce a significant anti-competitive element into the insurance market by revealing each insurer's capacity to supply their products in specific markets and their commercial strategy to competitors. In addition, we query the consumer benefit of this proposal.

Recommendation 4: Standardise definitions of prescribed events

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

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

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

Recommendation 5: Review and mandate standard cover

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

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

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

With product design and distribution obligations across financial services commencing in under two years, the Insurance Council suggests that any review of the standard cover regime needs to consider the relationship between standard cover requirements and the concept of a target market.

The Insurance Council considers that it is likely to be more productive to develop a core package of covers for home and contents insurance which would be common to all policies. It would be open to individual insurers how they dealt with the core set of covers, for example, a policy may only offer those protections. However, an insurer could include more features in its policy if it wanted. Insurance Council funded research into a core package of covers for home and contents insurance is well advanced in assessing consumer interest in this concept.

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

Recommendation 6: Unfair contract term protections should apply to insurance

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

However, this must be done in a way which does not weaken the basis on which an insurer agrees to provide insurance. Key to achieving this is providing an exemption from review for the main subject matter of the contract. The Insurance Council advocates this be done along the lines of the approach taken in the EU, otherwise the remedy will operate more severely, and create far more uncertainty, than the general UCT regime does for other sectors of the economy¹.

The Productivity Commission’s recommendation in 2008 was that the national generic consumer law should address unfair terms in standard form contracts in order to prevent a significant imbalance in the parties’ rights and obligations arising under the contract.² The same goal should guide implementation of the Government’s decision to apply UCT

¹ In the ASIC Act and the equivalent provisions in the Australian Consumer Law.

² Productivity Commission, Report into Australia’s Consumer Policy Framework, Recommendation 7.1, volume 1, page 69.

protections to insurance contracts. It should not seek to review the merits of the commercial bargain underlying the policy by applying a narrow interpretation of the exemption for terms which define the main subject matter or taking a restrictive view on the legitimate interests of the insurer.

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

The Insurance Council's concerns are explained fully in the Insurance Council's submission of 24 August 2018³ to the Treasury consultation on this issue. The Insurance Council is currently working with its members to quantify the impact on consumers of managing the uncertainty that would result from adoption of the FSRC's recommendation. The potential impact of a narrow definition of 'main subject matter' may include reluctance to cover some risks and higher premiums.

Recommendation 7: A link to MoneySmart should be on new quotes and renewal notices

Insurance Council members support initiatives to increase consumer understanding of insurance. However, the introduction of another mandatory disclosure requirement such as this needs to be based on hard evidence that it would help rather than hinder consumer decision making in relation to general insurance.

Recommendation 8: Better understand information that falls within "general financial advice"

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

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

RG244.47

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

and

³ Available at: http://www.insurancecouncil.com.au/assets/submission/2018/2018_08_24_ICA_SUB_UCT_FINAL.PDF

RG244.48

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

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

The Insurance Council advocates that, regardless of what else is amended, the Corporations Act should make it clear that general insurers can discuss with individual consumers key questions such as the most appropriate level of sum insured for them, appropriate levels of excess, and mitigation measures specific to a consumer’s property.

Recommendation 9: Disclose costs that count towards sum insured

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

Recommendation 10: Disclose the premium, sum insured and excess on a renewal notice

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

Insurance Council members have agreed to provide premium comparisons and explanation of premium changes for home and contents and motor vehicle policies from 1 July 2020, though some members will be able to do so earlier.

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

Recommendation 11: Extend the ban on conflicted remuneration to insurance brokers

The conflicted remuneration provisions were designed to create a market-based incentive for advisers to act in the interests of their clients by ensuring an adviser’s main source of remuneration was from clients, rather than from third parties (such as product manufacturers).

However, in considering the link between poor consumer outcomes and remuneration, it needs to be acknowledged that general insurance products are not like other financial products. As noted in the Explanatory Memorandum to the *Corporations Amendment (Future of Financial Advice Measures) Bill 2011*, “general insurance [products] are recognised as being simple in nature and are more widely understood by consumers.

This means that there is a lower risk of consumer detriment in relation to the provision of advice on these products”. It is typically the case that the consumer knows whether they want general insurance or not. Furthermore, general insurance products do not have an investment component; are usually subject to standard terms and conditions; are generally cancellable by the consumer; and are of limited duration, usually 12 months.

Given the unique nature of general insurance and the market structures within which it is sold, the Insurance Council does not support a ban on commission-based remuneration arrangements. The Insurance Council welcomes the Review to be undertaken by Government in consultation with ASIC in 2021 to ascertain whether the exemption from the ban on conflicted remuneration remains justified for general insurance.

As an alternative to a ban on commission-based remuneration, the Insurance Council and many of its members are open to reforms that would ensure commissions are not excessive. This, together with greater transparency and disclosure by brokers, would mitigate any potential conflicts of interest. Further, inappropriate sales conduct is directly addressed by the new product design and distribution obligations reforms.

Recommendation 12: Better information for consumers lodging a claim

Consumers already receive a substantial amount of information about lodging a claim. The creation of a prescriptive claims handling policy would result in a large volume of material being provided to consumers that may not be conducive to improved consumer understanding of the claims handling process.

Due to concerns about whether consumers satisfactorily understand what a scope of works is and how to engage in its development, Insurance Council members have agreed to include in the revised General Insurance Code of Practice that “If a quote or scope of works is needed, then we will explain to you their purpose and the process involved.” The Insurance Council is currently working on a draft document that could be used across the industry as an explanation for this purpose. The document will be shared with ASIC.

In addition, the Insurance Council notes Treasury’s consultation paper on removing the exemption for insurance claims handling from the definition of ‘financial service’, following recommendation 4.8 of the FSRC final report. The Insurance Council supports the proposed reforms that require insurers to act efficiently, honestly and fairly during the claims handling process.

Recommendation 13: ASIC approval for the General Insurance Code of Practice

The Insurance Council is working with ASIC and Treasury, following the release of the latter’s consultation paper on the “Enforceability of financial services industry codes”. In its response to the consultation paper, the Insurance Council highlighted that the new code approval regime should strive to preserve the benefits of self-regulation; clarify the enforcement and remedy framework with regards to code breaches; clarify the code monitoring framework; and maintain the flexibility for industry codes to adapt to changing requirements. The Insurance Council is keen to ensure that the new approval regime does not overly complicate the framework within which industry codes operate.

Recommendation 14: Public mitigation works and expected premium reductions

The Insurance Council supports the intent of this recommendation. The Insurance Council has consistently engaged with all levels of government with regard to the benefits of mitigation in general, as well as the specific premium potential benefits where specific mitigation projects are proposed.

In 2013 the Insurance Council established a process where governments considering public mitigation could engage with the industry to ascertain what premium effects would occur from implementation of different mitigation options. This process has been triggered a number of times since 2013, with the industry providing, through the Insurance Council, clear indications to mitigation planners of how premiums could be compressed, and in some rare instances how they might increase, for each mitigation option being considered. This data has been used by mitigation planners to contribute to the cost benefit analysis processes required as part of funding applications to other levels of government.

It is possible to measure the ultimate premium compressions offered once mitigation has been completed, against the industry median compression initially calculated. Mitigation will have a different impact on each individual address in the protected area and it is therefore not possible to provide individual policyholders with clear 'before and after' mitigation prices. However, an approximation is possible by using median compression rates for the area.

We note that the ability to calculate potential premium compressions as a result of mitigation requires high quality data being made available by the proposing agency as part of the mitigation planning process. Likewise, an insurer's ability to calculate the post-mitigation premium will be critically dependent on post-construction survey data being provided that confirms the performance of the mitigation.

Recommendation 15: Building code changes to better protect interiors and contents

The Insurance Council supports changes to the National Construction Code (NCC) to give greater consideration to the protection of building interiors and contents.

Over the last decade, the Insurance Council has consistently called for improvements to building codes to make buildings less brittle in the face of predictable natural and man-made hazards.

The NCC does not require construction beyond a minimum standard that will protect the life of any occupants. This level of performance does not include property protection (making the building fabric less brittle) except to the extent that doing so will achieve a life safety outcome. Ultimately, Australian buildings constructed to the minimum standards will be safe and survivable, but will suffer significant physical damage.

Unfortunately, even where the NCC requires (or advises) the use of building materials that will respond well to natural perils, other factors can intercede to negate the benefit that should be expected by policyholders, and in some instances potentially penalise them with higher future premiums.

If the NCC placed a greater emphasis on protecting a building's interior and contents, this would result in a reduced risk of damage and therefore, lower insurance premiums.

In order to most effectively achieve this recommendation, the Insurance Council considers that:

- The Council of Australian Governments (COAG) agreement defining the objectives of the NCC, should be amended to include a requirement for buildings to be resilient to predicted levels of natural hazards in the buildings planned location; and
- Consideration should be given to having the general insurance industry represented on the Australian Building Code's Board (ABCB) in order to ensure that insurance premium implications are adequately understood and considered in the NCC.

Draft Recommendations

Draft Recommendation 1: Insurers should estimate a sum insured for customers

The Insurance Council and its members support the objective of better informing consumers and reducing underinsurance. As the ACCC notes, industry has taken positive steps to help consumers by providing education to consumers about the risks of underinsurance and improving the availability of web based calculators.

While insurers are open to providing additional guidance to consumers on sum insured values, the decision on what value to insure at ultimately lies with the policyholder, given that policyholders are often better placed to assess the value of their property (for example, by taking into account the renovations and maintenance that they have undertaken). If this recommendation is adopted, it should be made clear that this does not constitute personal advice and that this does not transfer liability to insurers in the event that the customer is underinsured.

Draft Recommendation 2: Prominently publish PDSs and KFSs online with product offerings

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

Draft Recommendation 3: Disclose premium impacts of optional inclusions or exclusions

Currently, consumers are able to view the impact of optional inclusions or exclusions on premiums using the web based calculators provided by insurers. Insurance Council members are open to providing additional information, but any regulatory requirement to separately list out premium costs or savings relating to the many optional inclusions and exclusions requires careful consideration to avoid inundating consumers with too much information.

Draft Recommendation 4: National home insurance comparison website

The Insurance Council does not support the establishment of a national home insurance comparison website. As the ACCC notes, previous reviews including the Government's response to the 2017 Senate Committee⁴ report highlighted the number of commercial comparison websites already in place and the lack of market failure in either the insurance industry or comparison website market to justify government intervention.

Further, as highlighted by the UK Regulators Network and European Insurance and Occupational Pensions Authority, comparison websites typically focus consumers on price rather than the risks, needs and preferences of consumers. By focusing on price, there is also a risk that insurers will estimate a lower sum insured in order to quote the lowest premium, a practice that would exacerbate the problem of underinsurance.

Draft Recommendation 5: Renewal notices should give 28 days' notice

The Insurance Council recommends caution in considering this draft recommendation. We understand that the aim of this recommendation is to facilitate consumers in exploring their options and shopping around. In practice many insurers would already give 28 days notice of renewal. However, while members support the objective, providing notice too far in advance may exacerbate the possibility of the consumer disregarding or overlooking renewal.

The draft recommendation is framed in terms of the policy "expiration" date. The Insurance Council suggests that the "renewal" date would be more relevant since this is the point when consumers make their decisions.

In addition, extending the renewal notice period may raise operational problems for insurers. Insurers typically commence their internal processes many days before a notice is issued and this recommendation could, for example, leave less time for insurers to conduct manual reviews, address possible systems issues, and deliver to rural areas.

Draft Recommendation 6: Disclosure where premium increases are capped

The Insurance Council and its members have serious reservations about this recommendation. The risk assessments and datasets that underpin those assessments represent commercial assets for insurers and are the basis on which insurers compete against each other. Any regulatory requirement for insurers to disclose their future pricing strategies based on those risk assessments raises significant competition concerns.

This recommendation also raises practical difficulties. Many policies are designed to be priced on an annual basis using dynamic information including changes in market conditions, claims incurred by the insured, changes in the risk profile of the insured, and operational costs incurred by the insurer.

⁴ Senate Economic References Committee, *Australia's general insurance industry: sapping consumers of the will to compare*, August 2017

Draft Recommendation 7: Consider likely insurance costs before purchasing real estate

The Insurance Council supports changes to statutory information disclosure for a real estate transaction advising a potential purchaser to obtain an insurance estimate as part of their due diligence. Such disclosures would also assist those entering into lease agreements where insurance cover over contents will be the tenant's responsibility.

The Insurance Council does not support a requirement to disclose a specific premium at the time of purchase. There are significant challenges with requiring a specific premium to be disclosed as part of the purchasing or leasing process – including:

- Which insurer's quote should be provided and how is that insurer selected;
- Who is to arrange the quote and provide the underwriting information;
- Would that person be providing financial product advice in recommending a particular insurer;
- Would the premium provided be misleading for the purchaser or tenant, noting that underwriting factors applicable to the customer would be unknown. For example, the purchaser's previous claims history, criminal record, etc.;
- Would 'standard' cover be suitable in all circumstances, for example if the home is heritage listed or requires flood cover.

As a result, the Insurance Council believes that potential purchasers are far better placed to fully investigate insurance premiums as part of their own due diligence.

Draft Recommendation 8: Requesting personal information held by insurers

As the ACCC acknowledges, consumers are already able to access information that is held about them and this is explained in privacy policies. As such, an additional regulatory requirement for insurers to provide clear notice to consumers about this would be superfluous.

Draft Recommendation 9: Strata managers to be remunerated by body corporate only

Strata Managers operate under an agreement with their Bodies Corporate to perform services on their behalf. The agreement will typically reinforce statutory requirements for the Strata Manager to disclose any and all commissions or fees earned in the course of performing those services. The Body Corporate therefore already has oversight over the remuneration arrangements of the Strata Manager and can make decisions accordingly.

The Insurance Council understands that many Body Corporates agree to the Strata Manager receiving commission from an insurer, noting that this reduces the fees payable by the Body Corporate.

It follows that this recommendation may be unnecessary and unlikely to achieve the stated aim of better aligning the interests of the Strata Manager with the Body Corporate.

The Insurance Council also considers that, if the ACCC is to support this draft recommendation, it should first conduct an assessment of the impact of distribution costs on the market. The data collected by the ACCC as part of this Inquiry did not include data relating to intermediary costs and any additional fees. Nor did the ACCC assess the duties and obligations on brokers and strata managers in arranging a strata's insurance policies;

and the possible consequences of removing the existing remuneration model. It follows that the ICA believes this draft recommendation may be inappropriate without a more thorough assessment of the impact of distribution costs.

The Insurance Council submits that alternative options should be explored, which would assist to meet the aim without unintended consequences, most notably improving transparency of commissions paid to strata managers by brokers.

Draft Recommendation 10: Clear disclosure of products considered and remuneration

The Insurance Council and its members agree with the ACCC that comparison websites often lack transparency in regards to market coverage, value rankings, and undisclosed commercial relationships affecting recommendations to consumers. The Insurance Council supports this recommendation to increase transparency in the operations of comparison websites.

However, the Insurance Council does not support the recommendation that brokers disclose a list of every product under their consideration. Brokers typically conduct a detailed review of an individual's circumstances before recommending a product and may be faced with placing risks which are not covered by mainstream products.

Draft Recommendation 11: Consumer control over how claims are settled

The Insurance Council does not support draft recommendation 11 as the proposal does not take into account the many circumstances where cash settlements are the only available option and the draft recommendation would likely have an adverse impact on premiums.

As a general principle, the Insurance Council does not believe a customer will be best served by choosing a cash settlement in lieu of repairs to their property (or replacement of their contents) for the following reasons:

- They will not receive a lifetime guarantee on the workmanship of repairs from their insurer and they will need to manage the entire repair process, including managing any delays, dealing with issues relating to the quality of repairs, customer service and / or cost.
- Some customers may elect to not repair the damage (or replace the contents), resulting in future claims, arising as a result of repairs not being completed. These claims will usually be declined.

The Insurance Council submits that, if this draft recommendation is implemented, changes to the Insurance Contracts Act would need to acknowledge the many circumstances where a cash settlement is the only available option to finalise an insurance claim. For example:

- The property is underinsured: If a home is insured for significantly less than the cost to reinstate the property, the insurer will be unable to repair or rebuild the property without the homeowner contributing to the cost of the rebuild. If the homeowner is unwilling or unable to contribute to the cost of the rebuild, a cash settlement is necessary.
- Damage to the property is only partially insured: Occasionally, a property that is damaged may have additional pre-existing damage that is not covered by the insurance. In these circumstances, the insurer may not be able to repair the property until the pre-existing damage has been repaired. If the homeowner is unable or

unwilling to repair the pre-existing damage, the insurer cannot complete its repairs and must cash settle the claim.

- The homeowner seeks repair or rebuild that is materially different to the original design: Occasionally, a homeowner will seek to modify the design of their property as part of the repair or rebuild and the cost of this modification may be in excess of the insured loss. In these circumstances, the homeowner must contribute financially to the cost. In some circumstances, the insurer's builders may not be willing to construct the modified design or the insurer will be unwilling to warrant the works. In these circumstances, an insurer will cash settle the claim.
- The property cannot be rebuilt at the site: In some circumstances, following damage or total loss of a home, the site on which the property is located may be too unstable to support a rebuild due to ground subsidence. In these circumstances, an insurer will cash settle the claim.
- Where a financial institution has an interest in the property (such as a bank mortgage) and providing a cash settlement to the insured rather than reinstating the property may prejudice the financial institution.

It follows that the Insurance Council does not support this draft recommendation as there are many circumstances where a cash settlement is the only available option. If this draft recommendation were to be implemented, it would create uncertainty in the market which would likely lead to an increase in insurance premiums. It would also likely act as a barrier for new entrants in the market. These consequences would have the greatest impact on communities in Northern Australia where insurance affordability is already a significant issue.

Notwithstanding the above, were the draft recommendation to be implemented, it should only apply to home building claims and not contents claims. Content claims carry a higher risk of fraud, particularly if the claim can be cash settled. As a deterrent, insurers often will replace goods rather than provide cash. If, contrary to this practice, insured parties can elect for cash settlement in respect of contents claims, it may increase instances of fraud which would have an adverse effect on premiums.

The Insurance Council considers the intention of this draft recommendation may, at least in part, be achieved by the proposal to bring insurance claims handling into the definition of 'financial service' whereby insurers would be obliged to provide claims settlements efficiently, honestly and fairly.

Draft Recommendation 12: Clearly stated mitigation discounts

The Insurance Council does not support this draft recommendation due to the lack of clarity of its intended purpose and the potential adverse effects on the marketplace.

If mitigation has already been completed and the region protected, any mitigation effect will have been incorporated in the premium, according to the insurer's assessment of its efficacy. Insurers will price each component of risk in different ways - the only price that is comparable for the customer is the total premium.

The Australian insurance market remains free and competitive, and consumers benefit from insurers seeking to offer the most competitive product. An insurer's competitive advantage rests in its ability to most accurately price risk, including pricing discounts for mitigation. It

follows that, insurers will offer significantly different discounts for mitigation based on their analysis of the effectiveness of the mitigation.

If this draft recommendation were to be implemented, there is a significant risk that stating specific discounts for mitigation measures would operate as price signalling between insurers by expressly stating the discount applied for mitigation. This may damage an insurer's competitive advantage and undermine the competitive nature of the free marketplace.

Draft Recommendation 13: Information on mitigation works that could reduce premiums

The Insurance Council appreciates the intent of this recommendation, but cannot support it in its present form.

The insurance industry proactively encourages homeowners to undertake mitigation to improve the resilience of their homes. Some insurers, particularly in Northern Australia, already recommend mitigation measures that homeowners can take to reduce their risk. Additionally, the Insurance Council and insurers work closely with Governments to support resilience programs such as the Queensland Household Resilience Program and Queensland Strata Title Inspection Scheme. Where mitigation measures quantifiably reduce the risk of a property to natural hazards, insurers will seek to recognise this through reduced premiums.

However, this recommendation in its present form, risks misleading homeowners to a greater extent than any potential benefit. Experience gained through the Household Resilience Program shows that no two properties are the same. Mitigation undertaken on one home may have a negligible impact on the resilience of another. Therefore, the only way to accurately quantify the impact of mitigation on a particular home is with an inspection and assessment by a suitably qualified builder.

In the same way that no two properties are identical, the assessment and pricing process conducted by insurers will vary significantly. Each insurer has a different approach to pricing risk and what may be classed as a mitigation measure by one insurer may not be considered so by another insurer. It would therefore be difficult to make comparisons between insurers. The only way to resolve this issue would be to require each insurer to ask the same set of underwriting questions. This outcome is not consistent with the ideal of a competitive marketplace.

Insurers could provide general guidance on the types of mitigation measures that may result in a reduction in premium, for specific classes and archetypes of property. However, members advise that developing internal systems to support this activity would introduce additional cost and complexity, potentially further discouraging participation in these markets.

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

Yours sincerely



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