



Submission by the Financial Rights Legal Centre

Treasury

Disclosure in General Insurance: Improving
Consumer Understanding, Discussion Paper,
January 2019

February 2019

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters. Financial Rights took close to 25,000 calls for advice or assistance during the 2017/2018 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

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Introduction

Thank you for the opportunity to comment on Treasury's Disclosure in General Insurance: Improving Consumer Understanding, Discussion Paper, January 2019. The Financial Rights Legal Centre (**Financial Rights**) believes that this discussion paper is well over due and it is time for the government to intervene in a market that is failing consumers.

The general insurance market is a 'confusopoly'. A confusopoly is one in which a:

*group of companies with similar products who intentionally confuse customers instead of competing on price.*¹

Like the mobile phone market – where consumers are faced with various price plans with different combinations of available local and international minutes, texts, data plans, free services and other capabilities – the insurance market is similarly designed to confuse and overwhelm. Consumers are faced with an almost soul crushing amount of information and choice which is counterproductive, leads many to be unable to make a genuinely informed comparison and choice, reduces market transparency, and ultimately leads to poor consumer outcomes at claims time.

The Insurance market has long been recognised as a confusopoly by economists and consumer advocates.² Just taking home and contents insurance as an example, consumers are faced with:

- at least 52 insurance brands³
- at least 92 products with vary levels of coverage be they premium, standard, classic, elite or other levels.⁴
- multiple comparison websites and tools that inevitably focus on price rather than coverage;
- a vast variety of Product Disclosure Statement (**PDS**) forms, designs, and multiple additional or supplementary documents;
- PDS lengths that range between 27 to 128 pages;⁵

¹ First coined by Scott Adams in *The Dilbert Future*, 1997 p. 159

² Richard Cordray, Prepared Remarks by Richard Cordray Before the 2012 Simon New York City Conference, May 3, 2012, <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-by-richard-cordray-before-the-2012-simon-new-york-city-conference/>; Gans, J. (2005), "The Road to Confusopoly", available at <http://www.accc.gov.au/content/index.phtml/itemId/658141/fromItemId/3765>

³ CHOICE's most recent survey identified 29 consumer facing insurance brands CHOICE, Home and contents insurance reviews, 22 March 2018, <https://www.choice.com.au/money/insurance/home-and-contents/review-and-compare/home-and-contents-insurance> AAMI, Allianz, ANZ, Apia, Bank of Melbourne, Bank SA, Budget Direct, CGU, Coles, CommBank, Dodo, GIO, ING, NRMA, QBE, RAA, RAC, RACQ, RACT, RACV, SGIC, SGIO, St George, Suncorp, TIO, Virgin Money, Westpac, Woolworths, Youi. CanStar lists an additional 23 insurers available in NSW/ACT at https://www.canstar.com.au/compare/home-and-contents-insurance/?profile=Building+and+Contents&state_code=NSW+%26+ACT&age=Below+50+years&prod_type=Below+%24550k including Australian Seniors Insurance, Australia Post, BankWest, CGU, OziCare, Peoples Choice Credit Union, Real Insurance, 1st for Women, 1 Cover, AON, Aussie, Bendigo, Bupa, Catholic Church Insurance, Citi, CUA, HBF, HSBC, Hume Bank, Bank of Queensland, IMB Bank, National Australia Bank, Guild Insurance

⁴ As above

- at least 29 different types of excesses beyond the basic level;⁶
- multiple ways to pay out a claims⁷
- an overwhelming array of inclusions and exclusions⁸
- an overwhelming array of definitions such that no two definitions between policies are the same;⁹
- a variety of confusing naming conventions;¹⁰
- vastly different approaches to providing PDSs and Key Fact Sheets (KFSs) on websites, including downgrading its presence and effectively hiding this information.

The list goes on. Financial Rights has detailed these issues in its report *Overwhelmed, An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making*, September 2018, available at [Appendix A](#).

When there are too many choices, with too many potential outcomes and risks that may arise from making the wrong choice – risks that have huge consequences in the case of insurance – people become overwhelmed.¹¹ Throw information overload (from 100 page documents say) on top of choice overload and people can become bewildered, stressed and even experience a form of decision-making paralysis.

Most people make any choice or find short cuts to deal with the stress. Some, for example, take the recommendation of a trusted friend, colleague or family member. Others rely on the comfortingly simplistic and at times misleading messages presented in advertising or branding. Others end up subject to inertia and stick with the same company they always have. Most end up relying on price, to their peril, given its direct relationship to lower levels of cover.

This is not the result of a competitive general insurance market. This is a market and a consumer population being manipulated by cut price, low coverage insurers taking advantage

⁵ see [Table 1, Appendix A](#)

⁶ including everything from additional excesses based specifically on a risk assessed by the insurer to excesses for earthquake and/or tsunami claims and contents in storage cover excess

⁷ including paying a sum-insured; total replacement cover; “new for old” (which itself varies), legal liability cover (where potential costs for a claim and legal support are involved), or paying the costs for accommodation, the inclusion of professional fees and debris removal as well as other specific and different policy features.

⁸ See NSW Emergency Services Levy Insurance Monitor, Home insurance in same suburb more than twice the price depending on insurer, 21 March 2017 <https://www.eslinsurancemonitor.nsw.gov.au/home-insurance-same-suburb-more-twice-price-depending-insurer>

⁹ Page 10, Financial Rights, *Overwhelmed*, 2018. Financial Rights examined 28 definitions of Fire and Explosion and found that while there may be some superficial similarities there are a large number of nuances (subtle or otherwise) that would all become material in a claim and/or dispute: one insurer refers to the presence of “mineral spirits”; three refer to the use of “irons”; seven refer to exclusions arising from the use of heaters; five refer to “arcing”; four refer to “grassfires”; twelve insurers refer variously to cigarettes and/or cigars; most insurance products exclude the item that has exploded, but not all do so.

¹⁰ As one example Escape of liquid” is referred to as various “Water or other liquid damage”, “Water or liquid damage”, “Sudden and unexpected escape of liquid at the insured address ...” “Bursting, leaking or overflowing”, “Water and Oil leaks”, “Water or other liquid”, “Bursting, leaking, discharging or overflowing of water or liquid” “Liquid or water damage” and “Escaping water”

¹¹ There is extensive research into this phenomenon. Two recent books on the issue of choice overload are: Barry Schwartz, *The Paradox of Choice*, 2004, Sheena Iyengar, *The Art of Choosing*, 2011

of the confusion and complexity brought about by the lack of standard products and definitions.

But even when consumers are provided with the ideal conditions to make a rational or optimal choice across a range of choice conditions in purchasing an insurance product based on PDSs and KFS, we have found that there is no simple and consistent effect of disclosure – ie there is no clear pattern of understanding where people were provided more or less disclosure information using currently mandated disclosure documents.¹²

Originally, the *Insurance Contracts Act 1984* set out a disclosure regime based largely on a combination of standard cover for some domestic general insurance products as well as providing PDSs, and for home and contents insurance only, KFSs.

However the legislation allows insurer's to deviate from standard cover where they disclose this change in writing. What this means in reality is that consumers are merely provided with the PDS. The specific deviations are not required to be in any way highlighted and consumers are for all intents and purposes left in the dark as to whether their cover meets, falls below or exceeds minimum standards.

And the deviations are not insignificant nuances. They are all vital factors to understanding what product a consumer has purchased, what they are covered for, and how they will deal with when it comes time to claim. It leads to the random allocation of successful claims when disaster hits and financial ruin and other poor outcomes for consumers who wrongly believed they were covered.

Confusopolistic conditions in the insurance market led to the poor consumer outcomes following the floods in the first part of this decade. Government took some limited action at the time to address the issues regarding flood. Continuing confusopolistic conditions will lead to ongoing poor consumer outcomes as more and more natural disaster events occur.

It is not hyperbole to state that most clients that we speak to on the Insurance Law Service have very little idea of the cover they have purchased. Expecting consumers to identify a range of products with varying coverage, weigh this up and make a decision to purchase the most suitable product is unrealistic.

It is time to intervene in the insurance market to bring simplicity and transparency back to the market and assist consumers to more effectively insure for the risks that they face in a genuine partnership of risk mitigation with insurers.

Financial Rights accepts that disclosure remains important and can be effective in a number of circumstances including informing the purchase choices of highly literate and motivated consumers, guiding consumers through the claims process and ensuring they have a clear guide as to the limits of their policy in the event of a dispute. Improving disclosure through the

¹² See **Appendix B**: Professor Justin Malbon, Professor Harmen Oppewal, *(In)effective Disclosure: An experimental study of consumers purchasing home contents insurance*, September 2018 at <https://australiancentre.com.au/publication/ineffectivedisclosure>

nexus of behavioural economics, nudge theory and effective and ongoing consumer testing too has a role. However Financial Rights believes that fundamental reform is required to ensure that the policy intentions of disclosure are met – that is consumers are better informed in purchasing suitable insurance products that cover their risks.

Recommendations

In summary Financial Rights recommends the following:

Premium increases included in renewal notices

Insurers should be required to disclose the previous year's premium on insurance renewal notices including:

- the price of the new policy if the consumer renews (inclusive of taxes and charges);
- any difference between the new price and the previous year's price;
- every annual price charged presented in ways similar to that found on utility bills;
- the reasons for any change from the previous year;
- any substantial change to coverage;
- in a mandated, consumer tested form

Financial Rights believes insurers must provide an explanation for premium increases automatically, *not* simply when a request is received from a policyholder.

Component pricing included in renewal notices

A review should be conducted to establish a framework to provide component pricing of premiums to policy-holders upon them taking out or renewing an insurance policy. The components should include information regarding:

- controllable risks
- non-controllable risks
- acquisition and retention costs
- statutory charges

An effective standard cover regime

Financial Rights supports the introduction of a genuine standard cover regime that includes the following characteristics:

- a minimum set of core standards that meet community expectations below which insurers cannot fall;
- a minimum set of basic default standards that meet community expectations below which insurers cannot fall;
- a complete set of standard definitions for every standard risk inclusion, exclusion and commonly used term;

- a limited number of clearly defined levels of cover above basic, default standard cover which insurers can compete on, for example: basic default cover, premium cover and deluxe cover;
- an ability to cover specific risks in addition to that included in basic, premium or deluxe standards to ensure unique individual risks are insurable, if not available under standard cover;
- minimum amounts for claims;
- a limit to the number of excesses able to be imposed; and
- applied to all forms of general insurance; and
- legislated in accessible, plain English.

Standardised definition of key terms

Financial Rights supports the Government working closely with industry and consumer groups to develop and implement standardised definitions of key terms for general insurance.

Standard definitions must meet common sense, community expectations of coverage and exclusion.

Standard definitions must not be defined so narrowly as to exclude most claims nor should they subvert generally understood concepts. Standard definitions must be developed in line with the principles of risk pooling to ensure the costs of natural and non-natural perils are spread amongst all policyholder so that the claims of the few can be paid out of the premiums of the many.

All key terms under Part 3 of the *Insurance Contracts Regulations 2017* for five domestic insurances should be subject to standardisation, otherwise the problems currently faced by consumers due to inconsistency will remain, or at the very least shift to those areas that are left to be defined by insurers.

Develop an improved Key Fact Sheet

In the circumstance that the Government chooses not to take this new approach to insurance purchasing and continue to use the KFS, we support the following:

- prescription of KFS be maintained to ensure consistency and comparability;
- a new KFS be developed between government, industry and consumer groups to be consumer tested;
- KFS's include simplified set of information to be included:
 - What type of insurance it is (Home building, home contents or other, basic, premium or deluxe)
 - Who is offering the insurance (Brand and Underwriter)
 - What is insured (inclusions)
 - What is not insured (exclusions)
 - Are there sub limits
 - How much will the consumer pay when they claim (the excess)
- the form information takes under insured events in KFSs needs to be standardised
- directing to the PDS in the table needs to be banned

- reference to time limits should be mandated
- the use of logos should be enforced
- separate KFSs for home building and home contents should be mandated
- be more precise in mandating colour design
- placement of KFS and PDSs on insurer websites need to be regulated
- mandate consistent downloading protocol
- develop an online tool to assist in comparing KFS items

The government needs to examine the role of PDSs in disclosure and similar to KFSs:

- mandate a standard layout for PDSs
- standardise the form information is delivered in a PDS
- regulate the placement of PDSs on insurer websites to ensure that that are highlighted and easily accessible.

Premium increases and component pricing included in renewal notices

Treasury Recommendations

Strengthening the transparency of general insurance pricing by amending the product disclosure regime in the Corporations Act to require insurers to:

- Disclose the previous year's premium on insurance renewal notices; and***
- Explain premium increases when a request is received from a policyholder.***

Initiate a review of component pricing to establish a framework for amending the Corporations Act to provide component pricing of premiums to policy-holders upon them taking out or renewing an insurance policy, as well as an assessment of the benefits and risks to making such a change.

Financial Rights supports amending the product disclosure regime in the *Corporations Act* to require insurers to disclose the previous year's premium on insurance renewal notices. This however must include the following elements:

- the price of the new policy if the consumer renews (inclusive of taxes and charges);
- any difference between the new price and the previous year's price;
- every annual price charged presented in ways similar to that found on utility bills;
- the reasons for any change from the previous year;
- any substantial change to coverage.

Insurers must provide an explanation for premium increases automatically, *not* simply when a request is received from a policyholder.

Further the Government must establish a standardised design and consumer testing of the design must be undertaken to ensure the effectiveness of the measure.

Financial Rights supports a review of component pricing to establish a framework for amending the *Corporations Act* to provide component pricing of premiums to policy-holders upon them taking out or renewing an insurance policy.

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'?

When Financial Rights refers to 'component pricing,' at its simplest we are referring to providing consumers with information as to what makes up the price of their insurance premium. What makes up the price of an insurance premium is no doubt a complicated calculation, however broadly speaking, it can be broken down into four parts:

1. Risk
2. Expenses
3. Profit
4. Statutory charges

These four key components of a premium can be further broken down and can include some, if not all of the following:

1. Risk

- The expected costs of claims
 - The expected cost of non-natural peril claims (eg water leakage, theft, repair costs etc)
 - The expected cost of natural hazard claims (eg cyclone, floods))
 - Reinsurance costs of natural or extreme perils usually in the international market

It is worth noting with respect to natural and non-natural perils that these can be further broken down into controllable and non-controllable risks, as well as those risks for which some form of mitigation could take place to decrease risks. While the line between controllable and non-controllable can be blurry at times, it is a concept central to actuarial risk analysis.

2. Expenses

- Acquisition costs (including commission costs, new customer discounts, online discounts etc)
- Retention costs (including loyalty discounts, no claims bonus, multiple product discounts)
- Claims handling expenses
- Administrative and overhead expenses (corporate costs including legal, finance, actuarial, information technology etc)
- Price moderation and competition
- Cost of capital

3. Profit

- Target return on equity across the whole of an insurance portfolio.
- Allocated financial capital (monetary assets held to support risk)
- Economic capital (assets that help to allocate future sales of insurance policies)
- Investment income expected on positive cash flow balances¹³

4. Statutory charges

- taxes, including GST
- levies including emergency service and fire service levies, and

¹³ Darren Robb, Geoff Atkins, Andrew Doughman, Adrian Gould, Stewart McCarthy, Siddharth Parameswaran, Rick Shaw, David Whittle, *Profit Margins in Regulated General Insurance Markets*, Presented to the Actuaries Institute General Insurance Seminar 12 – 13 November 2012 Sydney
<https://www.actuaries.asn.au/Library/Events/GIS/2012/GIS2012PaperProfitMarginsWorkingParty.pdf>

- duties including stamp duties

The Australian Consumer and Competition Commission's (ACCC's) Northern Australia Insurance Inquiry Report also provides a breakdown of the components in a similar fashion to the above taxonomy.¹⁴

As Financial Rights understands it, the general insurance industry's position is that establishing a baseline for what makes up a premium poses "practical difficulties."¹⁵ In commenting on the Emergency Services Levy Monitor's survey of standard profile quotations – where the Monitor is seeking to compare premiums and the components of premiums for competition and comparison purposes – the industry questioned the ability to do so, asserting, in part:

insurance in NSW is not standardised across insurers. Product offerings can differ significantly. Large variations in the quotes can be because of a wide variety of factors

The ICA considered that the Insurance Monitor did not adequately take into account the different underwriting criteria and risk appetites of different insurers competing in the market.

In other words – the calculations involved in premium pricing are too complicated to be able to establish standard baselines.

Financial Rights rejects this attempt to further obfuscate and confuse the issue.

Actuaries and insurers know that the premiums are generally speaking made up of the above criteria. Any complexities, differing approaches, risk appetites, underwriting criteria and rating factors all fall within the above schema.

While consumers will be interested in all four categories and subcategories in the above taxonomy, what will be most useful for consumers when insuring for risk is information relating to controllable, uncontrollable, natural and non-natural risks. We expand upon this idea in answering Questions 2 and 6. Consumers will also be keenly interested in acquisition costs (including commission costs, new customer discounts, online discounts etc) and retention costs (including loyalty discounts, no claims bonus, multiple product discounts).

We note that insurers are always interested in revealing the statutory charges components of a premium to signal this information to consumers.¹⁶ Whether consumers are specifically interested in this beyond wishing them to be lower, we cannot say.

Profit and expenses too will be of interest to consumers in considering whom to purchase their insurance from. These have a significant bearing on the ultimate price. However given

¹⁴ Chapter 5, ACCC, Northern Australia Insurance Inquiry First interim report November 2018 <https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20-%20First%20interim%20report%202018.PDF>

¹⁵ Page 10, Treasury, Disclosure in General Insurance: Improving Consumer understanding Discussion Paper, January 2019

¹⁶ Para 3.36, Senate Economics References Committee Australia's general insurance industry: sapping consumers of the will to compare:

"Mr Whelan from the ICA told the committee: "Yes, I think that is possible. An interesting part of that is the amount that goes on top of the base premium, taxes, which we quite happily point out to consumers."

commercial in confidence concerns, we believe it may be reasonable to exclude this from and component pricing model.

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?

Developing an effective component pricing regime will:

- remove significant information asymmetries between insured and insurer;
- provide consumers with increased understanding about what effect mitigation strategies may have on reducing insurance premiums or what behaviours or conditions might increase premiums;
- potentially alert consumers to changes in the insurer's perception of their risk;
- increase the possibility for a genuine risk mitigation partnership between the insured and the insurer;
- benefit society as a whole from increased risk mitigation and decreased risk taking; and
- allow consumers opportunities to correct errors or misperceptions.

Consumers should be empowered to purchase insurance products on the basis of genuine risk mitigation partnerships with insurers. Component pricing would assist in the development of such a partnership by providing a signal to consumers of the risk factors taken into account when premiums are set.

Knowing what makes up the price of a premium – particularly the risk components of a premium – will better inform consumers about that risk and what effect mitigation strategies may have on reducing insurance premiums or what behaviours or conditions might increase premiums.

The signal would be particularly helpful in parts of Australia that face natural hazards and severe weather risks. Knowing that a large portion of your premium is made up of the cost of a fire, flood or storm risk is incredibly valuable information to a homeowner or prospective homeowner.

Insurance consumers are currently told very little if anything at all about the risks that they are insuring against. There are some risk mapping services available, for example the NRMA's Safer Homes initiative¹⁷ and Insurance Council of Australia's Building Resilience Rating Tool¹⁸. It is however unclear the extent to which these tools are currently used by consumers. It is clear though that insurance companies are not currently required to make this information available to consumers even when it applies directly to their premium price. It is also not clear how accurate and independent these services are and results can be contested if the rating doesn't take into account individual mitigation and resilience factor. Even if they are used, consumers are left in the dark with respect to how those risks identified impact upon the

¹⁷ saferhomes.nrma.com.au

¹⁸ <https://www.resilient.property/>

actual premium price they are charged. They are also largely not made aware of what actions they should or could take to lower these risks.

The Productivity Commission¹⁹ identified two forms of information asymmetry that impact upon a consumer's ability to make efficient and appropriate choices to their insurance. These were where:

- consumers have access to relevant information, but it is not in a usable format (e.g. it is too complex) or;
- consumers cannot access the information they need (e.g. insurers not providing information).

The former arguably applies to the provision of the risk mapping services that are currently in the marketplace, PDSs and other material provided by insurers.

The latter however relates directly to the issues at the heart of our component pricing ideas, that is, consumers are not provided with the information that insurers know about the specific (and general) risks the policyholder or a prospective policyholder faces.

The Actuaries Institute (AI) put forward the following definition for a fair premium:

A premium that reflects all that is known about a risk, together with an appropriate amount for costs and profit, can be said to be a "fair" premium.

The AI then ask whether this is in fact desirable since some will be paying higher or lower premiums because of increased information known about them. They ultimately argue that a premium may be considered fair if it reflects controllable risks and uncontrollable risks.

Some risks are controllable and premiums can be reduced or cover provided if appropriate mitigation action is taken. A reckless driver can take more care and reduce speeding; a sedentary office worker can exercise more often. If the customer responds appropriately to the right risk signals they can reduce risk and premiums. For controllable risks, there is a benefit for all of society from understanding big data trends and pricing at the individual level. Customers benefit from what they are learning from the insurers. Community benefits from less risky behaviour of these individuals could include fewer road accidents and lower health and welfare costs.

If society is therefore to benefit from the mitigation of controllable risks, consumers must know what those risks are to be able to act on them. Consumers are generally not made aware.

Ideally, component pricing will therefore identify and highlight those risks that can be controlled and mitigated and encourage consumers to act accordingly.

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

It is commonly argued by the industry that insurers' premium pricing information is "commercially sensitive" and if pricing is known it would somehow detrimentally affect their

¹⁹ Productivity Commission, *Natural Disaster Funding Arrangements—Inquiry Report*, Vol. 2, December 2014, p. 434.

ability to compete. This guarded approach has led to consumer suspicion, misunderstanding and sensitivity to price change. It undermines the insurance industry's credibility in being consumer-focused and drives the perception of gouging.

The insurance industry should not be able to shield relevant information on the grounds that they are using "commercially sensitive" rating factors and weightings. Consumers should have access to such information if they have a legitimate dispute about the reasons behind a premium or excess price or changes to their insurance policy conditions.

Even if "commercial sensitivity" is accepted to be an issue, Financial Rights does not believe that it is an insurmountable one and asserts that there are simple and creative ways to ensure such information is sufficiently obscured without denying homeowners the right to basic information about their insurance. For example, the component pricing could use percentage figures that are heavily rounded up or even display information using graphics and images only. The number of solutions available is, in our opinion, limited only by the willingness and creativity of the sector to develop solutions statisticians use every day.

"Commercial sensitivity" must no longer be used as an excuse to continue to keep homeowners in the dark about an essential and important product and should not be wielded as some sort of trump card to prevent any and all changes aimed at improving information asymmetry in the insurance market.

It is worth noting that, outside of market forces the only other mechanism available for consumers to contest premiums or insurers' decisions in relation to offering insurance is for an insured to make a request in writing under section 75 of the *Insurance Contracts Act 1984*. However this is limited to a few circumstances and the section provides no guidance as to what information the insurer is obliged to provide in its written reasons. There is also no mechanism for review in the event the decision of the insurer is erroneous or based on incorrect information.

It is Financial Rights' view that insurers should not be able to hide behind vague reasons and unsubstantiated assertions about how premiums are priced – either generally or under the current reforms.

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

Controllable risks should be highlighted in any component pricing model. It is these elements that will most likely lead to potential risk mitigation efforts by consumers.

As outlined above we do not believe that these should be the only components provided – all of those described above should be provided in some form to give insureds a full picture of why their premium is set at a particular level. However by highlighting controllable risks, this will ensure that there is a feedback loop leading to mitigation action and subsequent appropriate premium reductions.

If controllable risks were identified via component pricing, a consumer could either be explicitly or implicitly prompted to investigate or undertake risk mitigation work or to act in some other way – such as moving away from a flood zone.

Mitigation of these identified risks should then flow on to altered prices in to the future – in a similar way that excess adjustments and other limitations act upon prices.

There are a number of examples where risk mitigation feedback loops are already occurring.

Firstly NRMA recently conducted a 3 month trial of the Safety Hub which aimed “to see how safe we can make Australia.”²⁰ A select group of NRMA Insurance customers were invited to participate. The Safety Hub designed personalised safety tasks based on relevant risks, and then helped the user to complete them. For example, a home owner was asked to check for leaks. According to the app:

Frayed, rusted and kinked flexi hoses are one of Australia’s leading cause of water damage in homes between 5 and 30 years old

The user is then given an explanation of what a flexi-hose is and then directed on how to check for leaks. The user is also asked to introduce themselves to their neighbours:

Why it matters? You can’t be home every hour of every day. But if you neighbours are keeping an eye out while you’re away, you can reduce your risk of crime.

They are then prompted to let NRMA know if they know their neighbours.

According to IAG, undertaking these risk mitigation tasks would then lead to discounts and offers. While premium changes were not included in the trial, it is Financial Rights understanding this option is under a consideration moving into the future.

A second example is the use of technology to signal risk in motor vehicle insurance. QBE, for example, offers “Insurance Box for young drivers”. Here, drivers install an electronic device in their car that transmits back to the insurer a detailed breakdown of their driving habits in areas such as their braking, acceleration, steering, cornering, speed and night driving.²¹ QBE then calculate a “DriveScore” rating to evaluate the driver. The higher the DriveScore the less the policyholder will pay for insurance. The lower the score, the more the driver pays.

The policyholder for all intents and purposes enters into a risk or loss mitigation partnership with the insurance to alter behaviour for improved outcomes for the driver, the insurer and arguably society, through safer driving.

The technology enables the individual consumer to take greater responsibility for the risks in their lives (in this case their driving) while at the same time remaining covered for the important and unexpected risks they face. The price signalling motivates behaviour. How this is calculated is fairly opaque²² though with the price signal applied annually on a post-facto basis. Further benefits that QBE claim the use of the Insurance Box can include improved

²⁰ <https://itunes.apple.com/au/app/nrma-safety-hub/id1385354399?mt=8>

²¹ <https://www.qbe.com.au/news/car/how-insurance-box-works>

²² QBE state that “we will receive data about your car’s actual use and we will use this information to illustrate how you may save premium by driving more safely to minimise risk of collision. Information about your driving habits and your DriveScore are available in your dashboard and contribute to your premium calculation.”
http://www.qbe.com.au/content/idcplg?IdcService=GET_FILE&dDocName=PRODUCT048047&RevisionSelectionMethod=LatestReleased&Rendition=primary

social cache,²³ tracking of your car if stolen,²⁴ more detailed information in collisions,²⁵ and the maintenance of the car's value.²⁶

While the above example raises a number of significant questions²⁷ it is not inconceivable to develop similar, ethical ways to ensure that component pricing, risk mitigation and price signalling can develop feedback loops that ensure premiums are appropriately lowered.

Consumers regularly choose different excess options that adjust their premium. We would expect that insurers could easily identify what actions a consumer could undertake to mitigate a particular cost component.

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?

Yes, we believe breaking down the component of a premium for the five domestic insurances under Part 3 of the *Insurance Contracts Regulations 2017* has the potential to assist in price and risk signalling. If successful in improving competition and accountability, we see no reason not to extend it to other general insurance products

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

For full disclosure and addressing issues of information asymmetry, all the components of a premium should be provided to consumers in some form. Notwithstanding this, the following components are likely to be the most useful for consumers:

Controllable risks: The most important component that needs to be highlighted to consumers are those controllable risks that consumers have the potential to mitigate through action.

Uncontrollable risks: It is important for consumers to understand the components of their premium that they have no control over but that still make up their premium. Financial Rights regularly hear from consumers on the Insurance Law Service seeking information about their premium level and why it is so high. Inevitably, uncontrollable natural perils will make a large proportion of the risk component of a premium.

Expenses: The key elements for a consumer would wish to know are the

²³ "You can also proudly share your DriveScore with others to prove your driving skills. If you wish to cancel your insurance we will provide you with a Certificate that details your DriveScore and your claim free driving years."

²⁴ "Worried about your car being stolen? Insurance Box can even help recover your car if thieves strike."

²⁵ "The technology can also be a big comfort if you're involved in a collision. It'll alert us to what's happened so we can get on with helping you, whether the accident was your fault or not."

²⁶ "If you have a good DriveScore you can show the person buying your car that you've driven it smoothly – this could help with value retention"

²⁷ Including: Are their potential discriminatory impacts – for example against shift workers who need to drive at night? What are the consequences for privacy? Can the police access this information? Other insurers?

- acquisition costs (including commission costs, new customer discounts, online discounts etc) and
- retention costs (including loyalty discounts, no claims bonus, multiple product discounts)

The rest including claims handling expenses, administrative and overhead expenses, price moderation and competition and the cost of capital are less important. The difference is that acquisition and retention costs are direct price signals attracting consumers to a product, the others are simply the basic cost of doing business – something which most consumers understand implicitly.

Profit: It is important for people to understand that profit makes up a part of every premium however the exact figures or percentage are not necessarily required.

Statutory charges: This may be useful for transparency and accountability to ensure that consumers are not being overcharged. Presentation of these charges should be consistent across brands.

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

If insurers can introduce and implement telematics technologies recording and analysing every minute detail of policyholder's driving performance and fitness level, develop multiple consumer-facing apps and use the power of big data to influence their underwriting, product development and innovation, insurers can easily break down the data feeding into a premium into a standardised form to implement a component pricing regime.

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?

Financial Rights supports amending the product disclosure regime in the *Corporations Act* to require insurers to disclose the previous year's premium on insurance renewal notices including the following elements:

- the price of the new policy if the consumer renews (inclusive of taxes and charges);
- any difference between the new price and the previous year's price;
- every annual price charged presented in ways similar to that found on utility bills;
- the reasons for any change from the previous year;
- any substantial change to coverage;
- disclose the current and previous year's sum insured value; and
- disclose the current and previous year's excess value.

Insurers must provide an explanation for premium increases automatically, *not* simply when a request is received from a policyholder.

Further the Government must establish a standardised design and consumer testing of the design must be undertaken to ensure the effectiveness of the measure.

While this schema runs the risk of information overload (particularly by including prior year sum insured and excess figures) or potential misunderstandings (with consumers confusing last year's figure for this year's) we do not believe that these issues are insurmountable if designed and presented in a way that is simple, straightforward and clear.

Financial Rights provides further comments on elements of this below in answers to Questions 9 (reasons for any change from the previous year) and 10 (disclosing the current and previous year's sum insured value and excess value).

We however wish to make the following specific comments on the need for a year on year premium price disclosure and the need for multiple year premium price disclosure.

Year on Year Disclosure

While there does seem to be broad industry, government and public support for mandating the disclosure of past year's premiums, it is worth reiterating the key reasons for implementing this form of disclosure.

Consumer behavioural biases and inertia: Once a consumer has purchased an insurance product, consumers tend to disengage and at renewal time may not make a fully informed decision about the new policy being offered. This has meant that consumers repeatedly accept price increases rather than act to switch or renegotiate their insurance. The Financial Conduct Authority's UK's Occasional Paper²⁸ found that home insurance customers underestimated the benefits to shopping around and overestimated the time it takes to switch.

Averting price discrimination: The recent Discussion Paper from the NSW Emergency Services Levy Monitor regarding pricing differences²⁹ analysed data gathered from insurance companies detailing the total premium price per policy of home insurance over time. The discussion paper reported trends in average total premium per policy for new policies and renewing policies for the top 10 insurers in the combined home and contents insurance segment. It found that since July 2015, the gap in average total premium prices has fluctuated between \$201 and \$411. Renewing customers in June this year were paying around \$355 or 27% more than that charged for new customers in that month. Price discrimination based upon attracting new customers at the expense of existing ones is a significant problem that could be in part addressed by the disclosure of year on year premium price on renewal notices. It has the potential to both drive customers to shop around but also to drive insurers to look after their existing customers. This will lead to healthier competition in the insurance market.

Information asymmetry: If consumers are not provided with information regarding the previous premium price they paid they cannot make an informed decision. While some motivated consumers may hold on to previous premium notices or policy certificates in hard or soft copy,

²⁸ Occasional Paper No.12 Encouraging consumers to act at renewal Evidence from field trials in the home and motor insurance markets December 2015 <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-12.pdf>

²⁹ NSW Emergency Services Levy Monitor, Pricing Differences: New vs existing customers, Discussion Paper, November 2018, https://www.eslinsurancemonitor.nsw.gov.au/sites/default/files/DiscussionPaper_Pricing_New%26Renewals_FIN_AL.pdf

this is a minority. Insurers know that they can charge higher premiums for renewal policies if consumers are unlikely to engage with or know the size of any increase.

Reassessment prompt: If consumer do not check their premium coverage and it is not provided in a format that is easily accessible and engaged at the time of renewal, consumers will fail to reassess whether their policy still meets their needs. As referenced in the Discussion Paper disclosing the previous year's premium would allow a consumer to assess any increase and decide if they should seek an alternative quote.

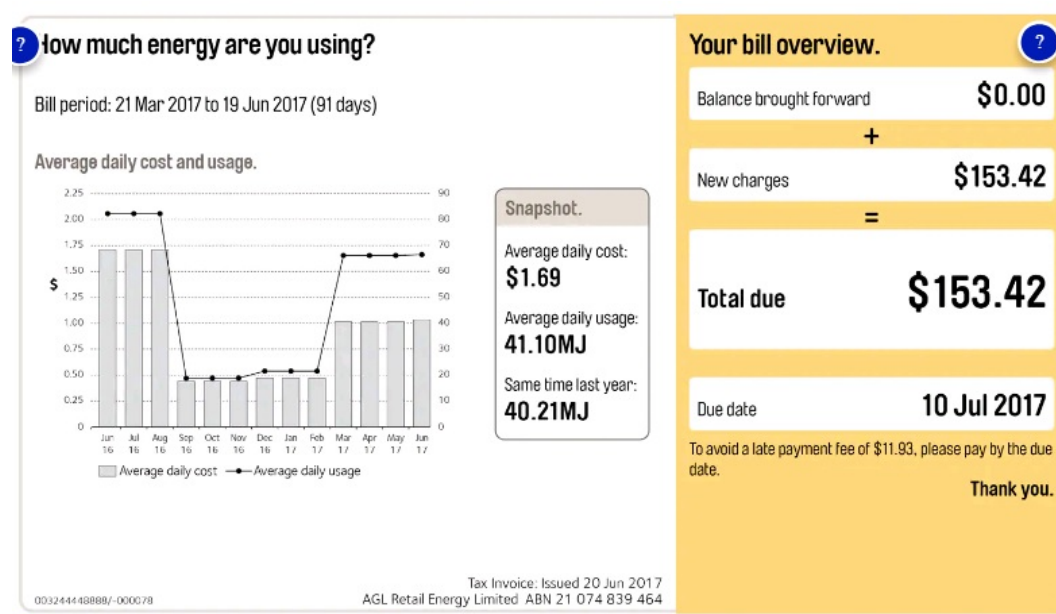
Risk mitigation partnership: Engaging with one's insurance in a more effective manner will strengthen the risk mitigation partnership between the consumer and the insurer. This can only be positive for the consumer and the insurer but also will lead to more improved outcomes for society and market efficiencies.

Every annual price charged

As mentioned above the NSW Emergency Services Levy Monitor has recently identified serious concerns with respect to price discrimination based upon attracting customers at the expense of existing ones.³⁰

In addressing such price discrimination, consumers may be better placed to identify such increases if insurers were required to provide the year on year disclosure beyond simply the previous year but to every premium payment the consumer has made.

Multi-period price/usage notices are used elsewhere – most notably in the energy market. An example AGL bill featured on its website features 14 periods on the front page of their bill.³¹



³⁰ NSW Emergency Services Levy Monitor, Pricing Differences: New vs existing customers, Discussion Paper, November 2018, https://www.eslinsurancemonitor.nsw.gov.au/sites/default/files/DiscussionPaper_Pricing_New%26Renewals_FIN_AL.pdf

³¹ <https://www.agl.com.au/help/payments-billing/your-energy-bill-explained>

Providing multiple annual prices in a separate, distinct box will present a clearer picture for people to see how, over time, their insurance prices have risen, or decreased as the rare case may be. The presence of a “loyalty” tax may present itself more clearly with this information being presented.

Such a visual/graphical description of this information would need to be consumer tested and its specification mandated to avoid presenting such information in a distorted manner.

We note that the FCA UK sought to address the same problem through other means. In its Occasional Paper the FCA found that:

...disclosing last year's premium had less effect on promoting engagement when price increases were small. Consumers renewing with the same provider for many years may pay significantly higher prices than if they shopped around, even if their most recent price increases were incremental or small. So we are proposing additional disclosure for consumers who have held an insurance product for five years.³²

Subsequently the UK introduced a rule that insurers must identify consumers who have renewed four, or more, consecutive times, and give consumers an additional prescribed message encouraging them to shop around. This approach has potential to be useful in an Australian context and should be considered.

We note that the preliminary results showed that insurers were failing to present the premiums and shopping around message clearly, accurately and in a way which draws the consumer's attention. We are not surprised by this finding. As detailed below, insurers regularly confuse consumers in presenting information and hide and obscure important information that would be of use to a consumer if they were able to engage with it properly.

If the Government were minded to introduce a similar rule in Australia, as with every other recommendation here, we would want such prompting additional messages to be standardised and consumer tested for effectiveness.

We also note that the UK considered other alternative approaches including:

For example, we considered whether to require disclosure of new business equivalent premiums or the lowest premium over time. These options are likely to show the large price differentials that appeared to prompt switching as we found with disclosing last year's premium. However, we decided against these options because, in comparison with last year's premium, they could be confusing for consumers, introduce practical implementation difficulties and higher costs for firms and give rise to potential unintended consequences.

Despite this, such an approach is also worth considering.

There is potential in all of these approaches but ultimately Financial Rights believes that the visual presentation of all premiums paid has the most potential – if only because Australian consumers are used to examining and understanding this information in other markets.

³² 2.10

Consumer testing

Consumer testing is essential to measure the effectiveness or otherwise of any standard. Neither Treasury, the Australian Securities and Investments Commission (**ASIC**), insurers or consumer representatives can know whether a proposal is truly effective in reaching the goals of the disclosure models put forward. Only by testing proposals with actual consumers will anyone ever know.

Consumer testing would assist to identify flaws and defects in the design in an unbiased manner and provide behavioural insights into insurance consumers' engagement with insurance and disclosure to improve consumer outcomes.

As an alternative Treasury could consider introducing an outcomes based approach to regulation. The current regulatory regime largely adheres to a prescriptive regulatory approach made up of by formal, concrete rules that dictate what entities must and must not do. This is clearly demonstrated in the KFS regulations prescribing everything down to which font to use (Arial 10 point).³³

The problem with this approach is, in short, that entities are able to more quickly evade prescribed regulation, meeting the letter but not the spirit of the regulations. For example, the KFS requires the insurer to provide "some examples of specific conditions, exclusions or limits that apply for events/cover" and "Insert policy specific condition, exclusion or limits". Insurers stick to this prescription but vary it in significant ways that confuse, obscure and ensure comparability is difficult if not impossible.

Regulated entities are able to evade prescriptive regulation in a swift manner, often outpacing the regulator's ability to act. Regulators ban one product feature only to have a similar but different feature pop up in its place – witness the development of buy now pay later services and debt management firms, or the hiding of mandated KFSs on insurer websites.

Performance or outcomes based regulation regulates the end result which a regulated entity must achieve. It sets a measurable standards related to the regulator's goal and allows the regulated entity itself to choose how to meet that standard. It is largely used in the regulation of the environmental sector. An example in the environmental space is that an entity must achieve a specific level of emissions. An example in the financial services space could involve an entity achieving specified minimum claims ratios in insurance or suitability or comprehension standards in relating to disclosure documents.³⁴

This move would shift the emphasis from an entity's actions per se towards consumer outcomes sought to be achieved by the regulator. Performance based regulation aligns the regulated entity more in line with the regulator's goals. The financial services entities are enlisted to internalise suitability standards and educate consumers in the products and services that they produce and provide.

³³ Reg 12(2)(c) Insurance Contracts Regulations 2017

³⁴ For further information on performance based regulation see Professor Lauren E Willis, 'Performance-Based Consumer Law', Loyola Law School, Legal Studies Paper No 2012-39, August 2014, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2485667.

Regulatory compliance can also be measured before, after, or during regular intervals of the performance target. Testing and consumer surveys can be conducted at any time. With increased access to RegTech discussed further below under Question 35, this will make things easier.

Consequently, if Treasury choose to neither standardise nor consumer test potential standardised approaches, then Treasury must implement a performance based regulatory model to ensure the outcomes sought by the policy are reached. If they are not insurers would be required to implement consumer tested models that are effective.

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?

Financial Rights supports further information being provided to the consumer about why their premium increased as a mandatory disclosure.

Consumers regularly call the Insurance Law Service experiencing “premium shock” from increases to their premiums that are unexplained. This causes significant stress and anxiety.

The information provided should be short, specific and presented in such a way that there is consistency in terminology across the sector. Financial Rights does not want the provision of such an explanation to be yet another opportunity to confuse and/or obfuscate through the use of weasel words or misdirection.

This may require the creation of a taxonomy of reasons that remains flexible enough to ensure that when new issues arise they can be included.

Financial Rights also supports consumers calling their insurer (through a contact centre or otherwise) in order to better inform themselves of the insurance that they have and/or plan to purchase. The principles of a genuine risk mitigation partnership between a consumer and an insurer require an ongoing relationship of information sharing and discussion.

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?

While being mindful of information overload, the inclusion of both the sum insured and the excess level along with the previous year’s premium would better serve consumer interests. It would enable consumers to compare apples with apples.

Sum Insured

Consumers set a sum insured at the beginning and then often forget these figures moving into the future until claims time. Consumers are also regularly confused about the differences between sum insured, market value, agreed value and their impact upon a claim.

Sum-insured valuations increase every year in home building policies reflecting increasing building and other costs. However we would also be concerned if these sum insured figures are increasing at a rate higher than what would appropriately be required, leading to over-insurance – a possibility considered by the NSW ESLIM.³⁵ Similarly we would be concerned if it wasn't rising enough leading to under-insurance.

For motor vehicle policies, agreed sum insured's can decrease whilst premiums increase. For a transparent playing field, this should be brought to a consumer's attention.

It is important to ensure consumers are not caught out at the time of a claim being underinsured, or significantly over-insured and feeling taken advantage of by an insurer. This can lead to perverse outcomes including future underinsurance.

Excess

Excesses are generally disclosed on premium renewal notices. The difficulty though is the insurance market has witnessed a proliferation of the number of excesses payable in general insurance. Financial Rights is aware of at least 29 different forms of excesses being applied across home and building contents insurance:

- additional excesses based specifically on a risk assessed by the insurer (e.g. AAMI, GIO, Suncorp)
- extra cover excess, (e.g. AAMI)
- unoccupied excesses (e.g. AAMI, GIO)
- excesses for earthquake and/or tsunami claims (e.g. Allianz, ANZ, Bank of Melbourne, CGU, GIO, Suncorp, QBE, RAA, TIO)
- imposed excess (e.g. ANZ, QBE, TIO)
- personal valuables excess (e.g. APIA)
- accidental loss or damage (e.g. Bank of Melbourne, QBE, RAA)
- domestic workers compensation (e.g. CGU, CommInsure)
- voluntary excess (e.g. Coles, RAA, TIO)
- special excess (e.g. Coles, NRMA)
- cover outside your home excess (e.g. Coles, Youi)
- portable contents excess/portable valuables excess (e.g. CommInsure, GIO, Suncorp, QBE, Woolworths)
- legal liability insured event excess (e.g. CommInsure, TIO)
- motor burnout excess (e.g. GIO, Woolworths, Youi)
- injury to pet dogs and cats excess (e.g. GIO, Suncorp, RAA, Youi)
- contents in storage cover excess (e.g. QBE)
- student accommodation contents excess (e.g. QBE)
- cycle cover excess (e.g. QBE)
- additional carbon fibre excess (e.g. QBE)
- fixtures and lighting excess (e.g. RAA)

³⁵ NSW Emergency Services Levy Monitor, Pricing Differences: New vs existing customers, Discussion Paper, November 2018, https://www.eslinsurancemonitor.nsw.gov.au/sites/default/files/DiscussionPaper_Pricing_New%26Renewals_FIN_AL.pdf

- non-removable endorsed excess (e.g. RAA)
- food spoilage excess (e.g. Woolworths, Youi)
- malicious acts and theft by tenants excess (e.g. Woolworths)
- rent default and legal expenses excess (e.g. Woolworths)
- business Item excess (e.g. Youi)
- landlord's furnishing excess (e.g. Youi)
- lock and keys excess (e.g. Youi)
- temporary accommodation: emergency evacuation excess (e.g. Youi)
- escaping water excess (e.g. Youi)³⁶

There is a significant lack of transparency in excess pricing. The excess payable is not usually one single excess: it is made up of multiple, complex excesses at different rates, so that it is not clear what the total quantum of excess is upfront because this will vary according to the claims scenario and which excesses are enlivened.

Our recommendation is that the basic excess should appear on a premium notice for any year on year comparison. We believe that consideration also needs to be given to limiting the large number of excesses and establishing consistent and transparent definitions for these excesses.

We draw your attention to the fact that premiums can be affected by a myriad of these "special excesses" and that their impact can be incredibly complex. We take the view that insurers who apply special excess to reduce the premium should make that clear and cross reference to the difference excesses that may apply.

Example 1, Woolworth Car Insurance

Take the Woolworths Car Insurance as an example:

- Basic Excess: between \$500 and \$5000

Customers have the ability to adjust the basic excess. This is relatively clear from the quote page:

³⁶ Page 7, *Overwhelmed: An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making.*

Your car quote

1 Choose your cover
Choose between Comprehensive or Drive Less Pay Less.

Cover start date: **10/07/2018**
Quote number: **248864290**

Annual Monthly

Comprehensive ✓

\$772.78

per year incl. GST and Gov't charges

Up to 13% Discount Included*

| | |
|-------------------|---------------|
| Cover | Comprehensive |
| Annual Kilometres | Unlimited |

[See what's covered](#)

Drive Less Pay Less

\$415.09

per year incl. GST and Gov't charges

Up to 13% Discount Included*

| | |
|-------------------|-----------------------------|
| Cover | Comprehensive |
| Annual Kilometres | 1000km Edit |

[See what's covered](#)

Need help?

Call us on:
1300 482 451 Quote Enquiries
1300 641 327 Customer Support

What is Woolworths
DRIVE LESS PAY LESS?
[Click here to read more](#)

Winners of the Outstanding Customer Satisfaction Award 2017

[See your quote breakdown, including Gov't charges](#)

2 Tailor your cover
Please note, making changes will affect the premium.

Change the agreed value ⓘ
Agreed value is how much you want to insure your car for.

\$3,150 \$5,850 **\$4,500**

Change the basic excess ⓘ
Basic excess is the amount you may be required to pay when you make a claim.

\$500 \$5,000 **\$500**

[See additional excesses](#)

3 Enhance your cover with optional extras

☐ **Excess-free windscreen cover** ⓘ
\$44.88 per annum

☐ **Roadside Assistance** ⓘ
\$92.40 per annum

☐ **Hire car cover 10 days** ⓘ
\$93.05 per annum

☐ **Hire car cover 20 days** ⓘ
\$139.57 per annum

⬆ [Back to top and review my cover](#)

[Back](#) [Email quote](#) [Buy Now](#)

Figure 1: Woolworths Car Insurance Quote: 10 July 2018

There are however additional excesses not presented on this quote page. In other words, these excess are not presented *upfront* to the consumer. To see these additional excesses one must click on the “See additional excesses” hyperlink: see Figure 2: Woolworths Car Insurance Quote: 10 July 2018. *If clicked, which is unlikely, a consumer will see the following excesses listed:*

- Age excess: -Under 21 years \$1,200
- Age excess: -- 21 - 24 years \$800
- Undeclared young driver excess \$800
- Learner driver excess \$800
- Inexperienced driver excess \$800

Customers do not have the ability to change these additional excesses.

Your car quote

1 Choose your cover
Choose between Comprehensive, Third Party Fire & Theft, or Third Party Only.

Cover start date: 10/07/2018
Quote number: 248864

Comprehensive
\$772.00 per year incl. GST and 13% discount
Up to 13% Discount

Cover
Annual Kilometres
[See what's covered](#)

[See your quote breakdown, including Gov't charges](#)

2 Tailor your cover
Please note, making changes will affect the premium.

Change the agreed value
Agreed value is how much you want to insure your car for.
\$3,150 \$5,850 **\$4,500**

Change the basic excess
Basic excess is the amount you may be required to pay when you make a claim.
\$500 \$5,000 **\$500**
[See additional excesses](#)

3 Enhance your cover with optional extras

| | |
|---|--|
| <input type="checkbox"/> Excess-free windscreen cover \$44.88 per annum | <input type="checkbox"/> Roadside Assistance \$92.40 per annum |
| <input type="checkbox"/> Hire car cover 10 days \$93.05 per annum | <input type="checkbox"/> Hire car cover 20 days \$139.57 per annum |

[Back to top and review my cover](#)

[Back](#) [Email quote](#) [Buy Now](#)

Additional excesses

The following excesses may also apply in addition to your basic excess:

Age excess:
- Under 21 years \$1,200
- 21 - 24 years \$800

Undeclared young driver excess \$800

Learner driver excess \$800

Inexperienced driver excess \$800

For Drive Less Pay Less cover only
If you have an incident and your car's odometer reading is either below your nominated start odometer or above the end odometer reading as shown on your Certificate of Insurance:
Outside odometer excess \$1,000

For full details, please refer to the [Product Disclosure Statement](#).

Figure 2: Woolworths Car Insurance Quote: 10 July 2018

As can be seen in the Woolworths additional excess section there is an Outside Odometer excess applying. The upfront explanation is:

For Drive Less Pay Less cover only

If you have an incident and your car's odometer reading is either below your nominated start odometer or above the end odometer reading as shown on your Certificate of Insurance:

Outside odometer excess \$1,000

This however is not enough for the customer to fully understand how the excess works. They must read the fine print in the PDS³⁷:

Your start and end odometer readings

When you choose Drive Less Pay Less cover, on your Certificate of Insurance we will show:

³⁷ Combined Product Disclosure Statement and Financial Services – Car Insurance, 15 January 2018
https://insurance.woolworths.com.au/content/dam/Woolworths/Insurance/Car/UsefulDocumentsCar/Woolworths_Car_Insurance_PDS.pdf

- Your start odometer reading – this is your car’s odometer reading that you advise to us before you enter into your period of insurance; and
- Your end odometer reading – this represents the maximum odometer reading for your car during your period of insurance

Your car’s start odometer reading will only be shown on your Certificate of Insurance for your first period of insurance. You have an obligation to ensure that the start odometer reading disclosed immediately before entry into the first period of your insurance policy was/is accurate. If you renew your policy with us, the start odometer reading will not be shown on your renewal Certificate of Insurance.

Outside odometer excess

The Outside odometer excess will apply, in addition to your basic excess and any other applicable excess(es) if an incident happens, and:

- Your car’s odometer reading is either higher than the end odometer reading, or below the start odometer reading (if you are in your first period of insurance), as shown on your Certificate of Insurance; and/or
- Your car’s odometer is faulty or non-functional and you have not had it repaired; and/or
- Your car’s odometer has been replaced and your odometer reading has changed as a result, and you have not contacted us to update your policy details.

The Outside odometer excess will be shown on your certificate of insurance.

Kilometre grace distance

If you have a claim and your car’s odometer reading exceeds the end odometer reading by no more than the number of kilometres (‘Kilometre grace distance’) as displayed on your Certificate of Insurance, we may at our sole discretion waive the Outside odometer excess.

This nuanced explanation continues for a further 2 pages of the PDS.

Such complex and confusing excesses are not the exception to the rule. To demonstrate this, we provide just two further examples.

Example 2 – NRMA Car Insurance

An NRMA quote highlights the Annual Premium with the excess below in a bar that can be changed.

Your car insurance quote

Thanks for all the details. Based on all your answers we have calculated the following cover for your car.

Comprehensive ?

Switch & compare all cover levels

Annual Premium

\$819.69

Paying annually saves \$128.46

Switch to

Monthly

All amounts displayed include GST and Stamp Duty. ?

Discounts applied ?

60% No claim bonus

Buy now

VISA

MasterCard

BPAY

Save

Email

SMS

Print

Policy options

☐ Hire car ?

☐ Windscreen ?

☐ No claim bonus protection ?

☐ Any repairer ?

OR

Upgrade to Comprehensive Plus

Change your excess amount

Excess is the amount you pay at claim time. A higher excess will reduce your premium.

\$1,000

\$0

\$300

\$695

\$950

\$1,000

\$1,500

\$2,000

The excess you have selected is high compared to the insured value of the car. You may wish to consider a lower excess.

Additional special excesses may apply ?

Figure 3: NRMA Car Insurance Quote: 10 July 2018

However it states in fine print below the excess section that “Additional special excesses may apply” To read these special excesses the customer needs to click on the very small question mark button next to the statement. Then in a pop window the site presents the additional excesses are shown.

Request Callback

Your car insurance quote

Thanks for all the details. Based on all your answers we have calculated the following cover for your car:

Comprehensive ⓘ
Switch & compare all cover levels

All Excesses

Excesses

Basic Excess: **\$1,000**

In addition to the basic excess, the following age excesses may apply when you make a claim.

Age Excess

If a driver under 25 years of age was driving the car at the time of an accident and no under 25 drivers are listed on the policy, an age excess of **\$1,600** applies.

Inexperienced Driver Excess

For drivers 25 years of age or over with less than 2 years' driving experience, an inexperienced driver excess of **\$400** applies if they were driving the car at the time of an accident.

Policy options:

- ☐ Hire car ⓘ
- ☐ Windscreen ⓘ
- ☐ No claim bonus protection ⓘ
- ☐ Any repairer ⓘ

OR

[Upgrade to Comprehensive Plus](#)

reduce your premium

\$1,000

The excess you have selected is high compared to the insured value of the car. You may wish to consider a lower excess.

Additional special excesses may apply ⓘ

Figure 34: NRMA Car Insurance Quote: 10 July 2018

There is fine print down the bottom of the page as well that presents the information:

OR

Not sure how much to insure for?

Switch to Market Value

- ✓ Accidental damage
- ✓ Theft or attempted theft
- ✓ Vandalism or a malicious act
- ✓ Storm, Fire, Flood, Earthquake, Explosion
- ✓ Tsunami

Back & Modify

Important information about this quote

Age Excess

If a driver under 25 years of age was driving the car at the time of an accident and no under 25 drivers are listed on the policy, an age excess of \$1,600 applies.

Inexperienced Driver Excess

For drivers 25 years of age or over with less than 2 years' driving experience, an inexperienced driver excess of \$400 applies if they were driving the car at the time of an accident.

About your Motor Insurance

[Product Disclosure Statement and Policy Booklet](#) which you should read before buying this policy. To view this PDF you will need [Adobe Acrobat Reader](#)

Terms of this quote

This quote is not a contract of insurance and does not provide you with any cover. This quote is valid for 7 days from the date it was generated.

Back To Top

Please refer to [Privacy & security](#) for details as to how we manage your personal information. Refer to [Terms of use](#) for details on use of this website.

© Insurance Australia Limited ABN 11 000 016 722
Insurance issued by Insurance Australia Limited ABN 11 000 016 722 trading as NRMA Insurance. When making decisions about the product you should refer to the [Product Disclosure Statement and policy booklet](#) available from NRMA Insurance.

Figure 5: NRMA Car Insurance Quote: 10 July 2018

However like Woolworths, the customer really needs to read the full explanation of these excesses in a separate booklet not available on the quote page, to fully understand what the excesses are and how they will work. Consumers are not directed to do this. The customer must know to scroll to the bottom of the page to find the “Product Disclosure Statement” and click on it.

From here the customer needs to look up both the PDS³⁸ and also Premium Excess and Discounts Guides³⁹ both of which have a number of explanations of when an excess is expected and when it will not be expected. For example: You don’t need to pay excess if you crash with

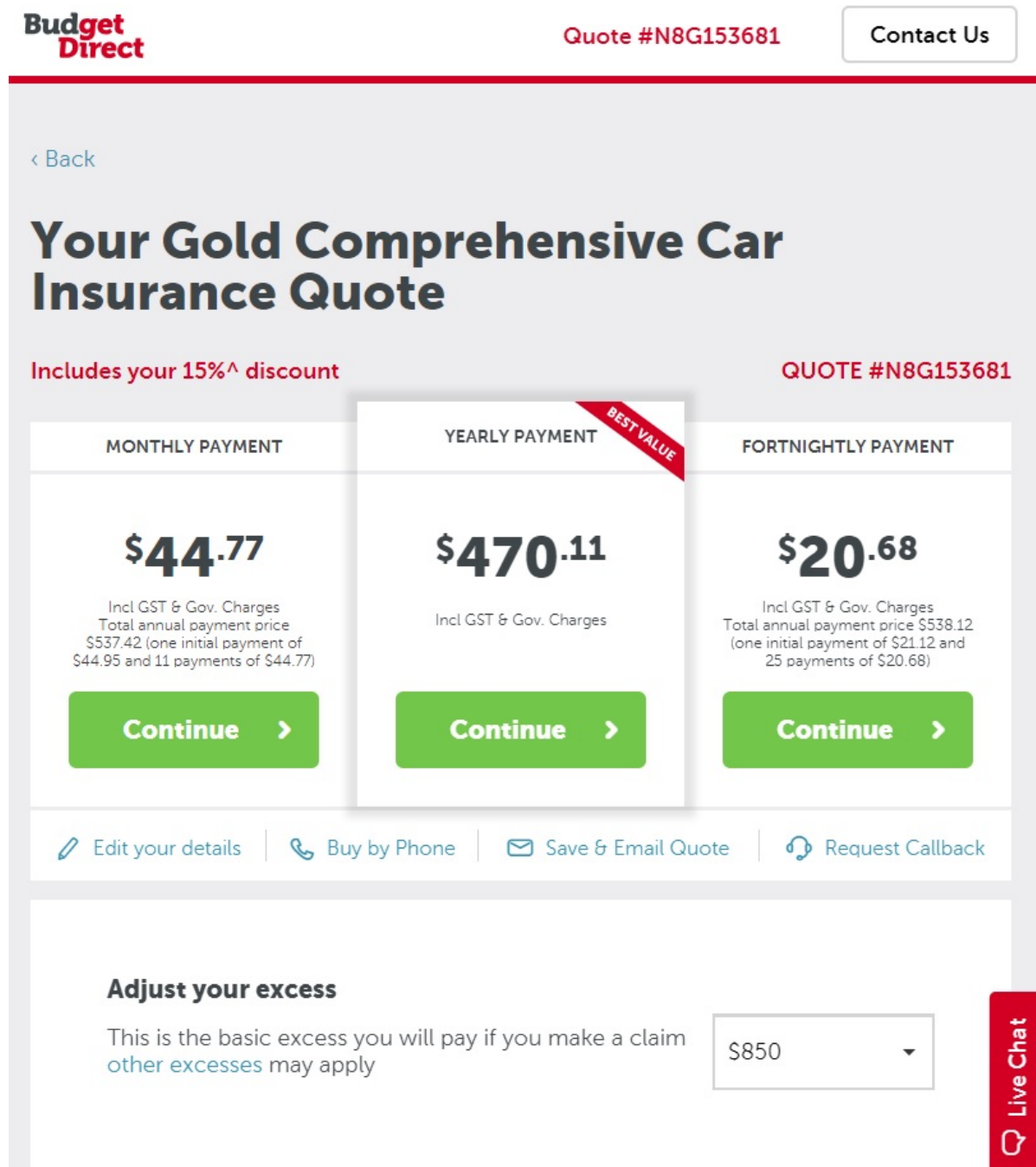
³⁸ *Motor Insurance – Product Disclosure Statement and Policy Booklet*, 27 July 2017
https://www.nrma.com.au/sites/nrma/files/nrma/policy_booklets/car_pds_0917_all.pdf

³⁹ *Motor Insurance Premium, Excess, Discounts & Helpline Benefits Guide*, 27 July 2018
https://www.nrma.com.au/sites/nrma/files/nrma/policy_booklets/car_ped_0917_all.pdf

an At-fault driver up to \$5000 in total damage to your vehicle. But if it is above \$5000, you will need to pay the excess.⁴⁰ This is inconsistent with common perceptions of how excesses will be applied.

Example 3 Budget Direct Car Insurance

Budget Direct quote highlights the monthly premiums. Below this as a customer scrolls down is the Excess:



The screenshot shows the Budget Direct website interface for a car insurance quote. At the top, the Budget Direct logo is on the left, the quote number #N8G153681 is in the center, and a 'Contact Us' button is on the right. Below the header, a 'Back' link is on the left. The main heading is 'Your Gold Comprehensive Car Insurance Quote'. Below this, it states 'Includes your 15%[^] discount' and 'QUOTE #N8G153681'. The quote is presented in three columns: 'MONTHLY PAYMENT', 'YEARLY PAYMENT', and 'FORTNIGHTLY PAYMENT'. The 'YEARLY PAYMENT' column is highlighted with a red 'BEST VALUE' banner. Each column shows a large premium amount, a breakdown of costs (GST & Gov. Charges, Total annual payment price, and a breakdown of the total), and a green 'Continue' button with a right arrow. Below the quote columns, there are four links: 'Edit your details', 'Buy by Phone', 'Save & Email Quote', and 'Request Callback'. At the bottom, there is a section titled 'Adjust your excess' with a text description and a dropdown menu showing '\$850'. A red 'Live Chat' button is on the right side of the page.

| MONTHLY PAYMENT | YEARLY PAYMENT | FORTNIGHTLY PAYMENT |
|--|--|--|
| \$44.77 Incl GST & Gov. Charges Total annual payment price \$537.42 (one initial payment of \$44.95 and 11 payments of \$44.77) | \$470.11 Incl GST & Gov. Charges | \$20.68 Incl GST & Gov. Charges Total annual payment price \$538.12 (one initial payment of \$21.12 and 25 payments of \$20.68) |
| Continue > | Continue > | Continue > |

[Edit your details](#) | [Buy by Phone](#) | [Save & Email Quote](#) | [Request Callback](#)

Adjust your excess
This is the basic excess you will pay if you make a claim
[other excesses](#) may apply

\$850

[Live Chat](#)

Figure 6: Budget Direct Car Insurance Quote: 10 July 2018

⁴⁰ Page 45 Motor Insurance – Product Disclosure Statement and Policy Booklet, 27 July 2017

Again to find out the full excesses due, the customer has to click on the other excesses hyperlinked in blue.

Budget Direct

Quote #N8G153681

Contact Us

Excesses

| | | | |
|--------------|-------|-------------------|-------|
| Basic excess | \$850 | Window glass only | \$650 |
|--------------|-------|-------------------|-------|

Additional excesses

| | | | |
|---|-------|--------------------------------------|-------|
| Drivers under the age of 21 | \$600 | Drivers between the age of 21 and 24 | \$500 |
| Drivers who haven't held a full Australian licence for at least 2 years | \$500 | Unlisted drivers | \$600 |

This quote is valid until 09/08/2018, is subject to meeting the insurer's underwriting criteria and may change due to other factors such as driver's history of offences, suspensions or claims and age or licence type of additional drivers, or residential status. This quote is based on market value, this is the reasonable cost to replace your car with one of the same make, model, age and condition as your car at the time of the loss or damage. It does not include any allowance for warranty, stamp duty or transfer costs. ^Online Discount [Terms & Conditions](#) apply.

Legal

Live Chat

Figure 7: Budget Direct Car Insurance Quote: 10 July 2018

We also note that when a Quote is emailed to the customer (see Figure 8) only the basic excess is quoted. There is no listing of additional excess nor any mentor or direct link to these excesses

on Repairs* guarantee* Service - Your choice of phone or online

Quote looks good?

Or want to change something? It's easy.

Quote Summary

| | |
|--------------------|--------------------|
| Date | 10 July 2018 |
| Quote Reference | #N8G153681 |
| Total Annual Price | \$471* |
| Cover | Gold Comprehensive |
| Vehicle | Toyota Yaris |
| Basic Excess | \$850 |
| Quote valid to | 10 August 2018 |

Call Us

Our friendly contact centre staff are here to help, call **1800 112 871**
With your Quote #N8G153681

Mon-Fri: 8am – 10:30pm AEST
Sat: 8am – 5pm AEST

View your Saved Quote

Figure 8: Budget Direct Car Insurance Quote: 10 July 2018

We present the examples above to demonstrate a number of points.

Firstly the excess payable is not usually one single excess. The excess payable is regularly made up of multiple, complex excesses at different rates, so that it is not clear what the quantum of excess actually is upfront. This makes product-to-product and/or year-on-year comparability difficult if there are undisclosed changes.

Secondly, additional excesses are rarely if ever highlighted. There is very little transparency with additional excesses, largely invisible to consumers. A customer must search for them and know to click on a number of links and know to read further documents to find out the full information and potential excess quantum.

Thirdly, the circumstances in which an excess is payable are not straightforward and are structured in complicated ways so that it is not clear upfront when an excess will be paid. To understand the way the excesses work, the customer must go digging in the PDS (or other documents).

Financial Rights makes further recommendations with respect to excess and standard definitions below.

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?

Financial Rights supports mandating link to the ASIC's MoneySmart website to assist the engaged consumers who require further information. We are not aware of the figures of how many consumers have opted into electronic communication, and the cost of embedding links ought to be negligible in the systems. Any assertions to the contrary should not be taken at face value. Full cost estimates and supporting documents should be provided to back any assertions of this kind from the insurance sector.

We note there is no one size fits all solution in relation to this issue, and this may assist consumers who are seeking reliable third party advice which Money Smart can provide. We believe there should be many pathways for consumers to engage and obtain information, including ASIC Money Smart, the insurer's own information and clear, consistent information on renewal notices.

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

We provide no specific comment here, however, we note caution should be exercised if industry raises it as a problem. Financial Right's position is information of risks in pricing can be provided generally enough so as to mitigate against any competition concerns. Keeping an eye on the bigger picture of increasing transparency to improve consumer financial literacy and price signalling is critical.

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

Yes, we are of the view information that relates to the risk insured is appropriate. However, we note, there is significant obscurity with respect to the calculation of a sum insured

Recent findings by the ACCC and ASIC that sum insured calculator results vary wildly:

Despite near universal reliance from insurers in Australia on the Cordell calculator for building sum-insured, the results can vary considerably—our own research confirmed this. ASIC even found that some home insurance brands within the same insurer group even differed in their estimates. (ASIC report 415, Review of the sale of home insurance, October 2014, p. 58)⁴¹ The ICA has suggested variations can also occur because:

- *the frequency of updates to data varies (quarterly/annually)*
- *the cost of rebuild differs from insurer to insurer based on individual arrangements with suppliers*

- *insurers' have their own intelligence about the cost of rebuild derived from previous claims costs in the area. (ICA Report Too Long; Didn't Read: Enhancing General Insurance Disclosure, October 2015, p. 36)*

There was also a high amount of distrust in sum calculators:

When a calculator suggested a sum insured higher than a consumer expected or variations occurred, ASIC reported that consumers had a tendency to assume the higher estimate was a deliberate sales tactic of the insurer to push up the premium, rather than an accurate reflection of current re-building costs. (ASIC report 416, Insuring your home: consumers' experiences buying home insurance, October 2014, pp. 14-15) The Effective Disclosure Taskforce made a similar finding, as did a subsequent ICA research report, which reported only 63 per cent of respondents find the home building/contents calculator trustworthy, although many consumers appear to be using them. 7 ICA Report Consumer Research on General Insurance Product Disclosures, February 2017, p. 32

During our consultation, consumers in northern Australia also shared their scepticism of calculators and similarly suggested that automatic indexing upwards of sum insured were both just tactics to raise premiums. Insurers seem well aware of such perceptions, and yet say indexing (for example with reference to CPI or an index of construction costs) occurs as a measure to account for inflation and new purchases. (See for example, ASIC report 89, Making home insurance better, January 2007.)⁴²

Ultimately the calculation of a sum-insured is a fairly opaque process and one based on algorithms that are far from transparent. The ACCC has recommended that:

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

The Insurance Contracts Regulations should be amended to require insurers to estimate an updated sum insured for their home insurance customers and advise them of this estimate on their renewal notice.

This estimate should note when the information used by the insurer to form the estimate was last updated by the consumer, and direct the consumer to contact the insurer if renovations/alterations to their home had occurred since then. Where the sum insured estimate is materially higher than provided for under the policy, the renewal notice should also include a warning to the customer about the dangers of their property being underinsured.

The ACCC states in support of this that:

We consider that estimating the sum insured is one area where insurers could, and should, provide better guidance to consumers to lessen the risk of underinsurance. Insurers are likely to already have access to the information necessary to estimate a sum insured in relation to their customers' insured buildings. As such, they should be in a position to understand if there are material differences between the sum insured a customer has selected and the amount suggested by their own sum insured calculators.

The ACCC also recommends the following:

Recommendation 9: Disclose costs that count towards 'sum insured'

The Insurance Contracts Regulations should be amended to require that insurers clearly disclose the types of costs that will count towards the sum insured amount for buildings (such as the costs of demolition, debris removal or for professional fees) where these are not provided for through a separate allowance under the policy. This information should be provided on any sum insured calculators used by the insurer and alongside the sum insured figure.

This will help consumers understand why and how calculator estimations can differ and empower them to make more informed decisions about their nominated sum insured. It should be provided alongside the sum insured amount for a property, including in quotes for new policies, renewals and on certificates of insurance.

We support both these recommendations.

The observations by the ESLIM too with respect to the sum insured reflect some of the issues raised by the ACCC and sum insured variability described above. It also goes directly to a real need to build greater trust in the use of sum insured calculators and the need for accuracy in these calculators. Financial Rights has argued in other for a – including the recent review of the General Insurance Code of Practice – that insurers should commit to regular reviews and independent auditing of the sum insured calculators. Where an error is identified with a calculator, insurers should commit to correcting the calculator and any affected consumers.

Another significant issue that is a headache for consumers (and regulators) in the use of sum insured calculators is the fact that the calculators do not provide an audit trail. Consumers regularly report that they cannot recall if they put in the incorrect information into the calculator (generating the wrong figure) or if a calculator provided them with an incorrect figure on correct information. To our knowledge calculators on insurers' websites or third party websites, generally do not currently allow for any recording of the information submitted or resulting, due to the perceived risk of the liability.

If an insurer has a calculator to be used by a consumer to determine their sum insured it should be entrenched into the sales process and the insurer should take some responsibility for any errors if an error is identified in the calculator (for example, outdated building estimates). If a sum calculator is used in the sales process, this information should be recorded and kept on a policyholder's file.

We believe transparency of premiums on renewal notices, component pricing and sum insured calculators all go hand in hand in shining a light on insurance practices and to improve consumer literacy and understanding.

In addition to the provision of sum insured on a premium notice, insurers should

- provide access to an accurate and informative sum insured calculator as part of the home building insurance application process;

- engage independent experts to undertake regularly reviews and audits of the sum insured calculators and where an error is identified with a calculator that the insurer commits to correcting the calculator and informing any affected consumers;
- record all information used in a sum calculator during the sales process and keep this information on a policyholder's file;
- standardise how extras such as removal of debris relate to the sum insured for greater ease of price comparison.

Standard cover

Treasury Recommendation

Initiate an independent review of the current standard cover regime with particular regard to the efficacy of the current disclosure requirements.

Financial Rights supports an independent review of the current standard cover regime in order to establish an effective standard cover.

The current standard cover regime is a failure. It is subject to regulatory arbitrage and has been completely ineffective in ensuring consumers are made aware of any deviations from basic coverage.

Financial Rights supports the introduction of a genuine standard cover regime that includes the following characteristics:

- a minimum set of basic default standards that meet community expectations below which insurers cannot fall;
- a complete set of standard definitions for every standard risk inclusion, exclusion and commonly used term;
- a limited number of clearly defined levels of cover above basic, default standard cover which insurers can compete on, for example: basic default cover, premium cover and deluxe cover;
- an ability to cover specific risks in addition to that included in basic, premium or deluxe standards to ensure unique individual risks are insurable, if not available under standard cover;
- minimum amounts for claims;
- a limit to the number of excesses able to be imposed; and
- applied to all forms of general insurance; and
- legislated in accessible, plain English.

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

The standard cover regime as currently legislated is not achieving its original purpose.

The reasons behind the introduction of a standard cover regime were to address difficulties caused by a lack of information available, the complexity in the use of multiple terms, and the widespread use of unusual terms that surprise consumers.⁴³

⁴³ ALRC Report 20, Insurance Contracts p.xxii and xxvi <http://www.alrc.gov.au/report-20>

The original vision for standard cover was one in which insurers could be free to market policies that offered less than standard cover provided that insurers would have to draw the insured's attention to that fact.⁴⁴ The problem with the implementation of this is that the *Insurance Contracts Act 1984* includes a "get out of gaol" clause stating that the standard cover regime:

*does not have effect where the insurer proves that, before the contract was entered into, the insurer clearly informed the insured in writing (whether by providing the insured with a document containing the provisions, or the relevant provisions, of the proposed contract or otherwise).*⁴⁵

Sections 35 (and 37) of Division 1 of Part V of the *Insurance Contracts Act 1984* allow insurers to contract out of standard provisions so long as they merely provide a PDS. In other words, insurers don't have to "draw the insured's attention" to the fact that they are providing less than standard cover – they just describe the actual cover in the PDS and contract. In practice all insurers contract out of the provisions, rendering them pointless and consumers don't know what is standard and what is not. Insurers therefore meet the letter but not the spirit of the regime.

Very few people use a PDS in their pre-purchase decision making: the ICA reports only 2 in 10 people.⁴⁶ While many consumers believe they are aware of the terms of their policy, actual tested comprehension levels were low in comparison to confidence levels.⁴⁷ Insurers can therefore offer less than standard cover simply by telling their customers in a document few read and even fewer understand.

Insurer advertisements also tend to obfuscate and rarely comprehensively capture the nuances of policies, presenting an image of insurance that is at best manipulative and at worst misleading. Consumers are consequently often left frustrated, angry and disappointed when their claims experience fails to live up to expectations.

The standard cover regime must be reformed to institute a more effective regime that ensures that consumers can more easily compare insurance products and decrease the possibility that consumers will end up with an unsuitable product.

A genuine standard cover regime should include the following characteristics:

- **a minimum set of core, default standards that meet community expectations below which insurers cannot fall**

⁴⁴ As above.

⁴⁵ Section 35

⁴⁶ ICA, *Consumer Research on General Insurance Product Disclosures: Research findings report*, February, 2017, at page 18.

⁴⁷ *Consumer Research on General Insurance Product Disclosures Research findings report*, February 2017, http://www.insurancecouncil.com.au/assets/report/2017_02_Effective%20Disclosure%20Research%20Report.pdf

What is required is a form of default cover that sets a minimum set of core standards that meet community expectations below which insurers cannot fall

We note that the ICA is currently undertaking significant work on developing a Core Cover default product to make it easier to compare policies and limiting variation to above the basic core coverage.

One of the key problems with variations made from the current set of standard terms is the ability to vary an insurance contract to remove a standard prescribed event – an event that would be expected to be included by the community.

Ensuring that insurers cannot vary out of a set of prescribed events will adhere to the principle of risk pooling and prevent consumers being surprised when they find that they are not covered for an event that they thought they were covered for or having a set of exclusions imposed which effectively render the coverage useless.

It will mean that insurers will only have to highlight and compete on variances above this level.

But prescribing the list of inclusions and exclusions is not enough. The nexus between the prescribed events and the definition of these prescribed events is critical since, as we have seen, insurers are also able to undertake a form of regulatory arbitrage by varying below the standard prescribed event through changing the definition.

- **a complete set of standard definitions for every standard risk inclusion, exclusion and commonly used term.**

The circumstances leading to the development of a standard definition of flood is a good example of what occurs when there is a variation below the commonly understood definition of a term.

Financial Rights has also identified differences between current prescribed events of fire and explosion and escape of liquid that will surprise a consumer and that would become material in a claim and/or dispute.

Defining all the terms commonly used will:

- a. prevent surprise on the part of the insured to an unusual term only considered at claims time;
 - b. remove the confusopoly borne of the sheer variety of term definitions; and
 - c. assist in laying the foundation for better understanding when considering purchasing insurance that it is above the minimum standard.
- **a limited number of clearly defined levels of cover above basic, default standard cover which insurers can compete on, for example: basic default cover, premium cover and deluxe cover;**

The confusopoly described above will be maintained if insurers are able to vary each and every term above or below the minimum at will, without recourse to individual negotiations specific and suitable to the circumstances of each insured. While consumers may understand the base

level of cover they will continue to be confused by the vast variety of terms and choices above the minimum.

In releasing the *(In)effective Disclosure Report* Professor Justin Malbon stated:

When you look at the fact that sectors like the shipping industry have simplified their own insurances down to a choice between three standard term policies for cargo insurance:- and these people live and breathe insurance risks – it is hard to understand why we expect everyday consumers to figure it all out. It may be time for a serious rethink on disclosure practices. We should consider requiring insurers to offer a standard set of gold, silver and bronze cover across the industry. That way the market can compete on price, and not confound consumers about what is covered and not covered when they make claims under their policy.”

Providing a limited number of coverage levels above a default basic standard – for example a standard set of basic, premium and deluxe options – will:

- simplify the insurance purchase experience for consumers;
- allow consumers to compare apples with apples by ensuring that all quotes provided by an insurer list a basic, premium and deluxe price; and
- permit additional coverage that may be pertinent to the individual consumer.

We would expect each level of coverage above the default basic standard cover to provide defined, incremental increases in a simplified form that will be clear to consumers. Such a regime could be implemented in a number of ways and should be considered by government in consultation with the insurance sector and consumer representatives. At a minimum though they should aim to meet the principles of consistency, transparency, simplicity and ease of comparability.

In order to further customise and compete we propose that insurers should be able to negotiate additional coverage of specific events that suits the individual needs of an individual consumer.

- **an ability to cover specific risks in addition to that included in basic, premium or deluxe standards to ensure unique individual risks are insurable, if not available under standard cover;**

Including the key risks for which people expect to be covered in a basic, default general insurance product (and premium and deluxe versions) is critical to ensuring that most people are covered for most risks and that people can compare apples with apples.

However each and every consumer will have a unique and specific set of circumstances and risks that they may want to insure that are not included in the basic, premium or deluxe versions. They could, for example, own a pet, a set of antiques above the limits in the standard policies or specific items of valuable jewellery that they may wish to be included in their home contents cover. It is unlikely that these would be included in any basic, premium or deluxe product.

Nevertheless having the ability to cover these additional risks is essential. People should therefore have the ability to negotiate with insurers to seek such additional cover but with the

benefit of having a better understanding of the cover they are adding to, and its comparative price.

Insurers may wish to prompt consumers to consider coverage for such items or events in the quote process. This has the potential to better inform consumers of what is and what isn't included in standard cover. It also creates a more engaged risk mitigation partnership between consumers and insurers at purchase time. Potential insureds would be encouraged to consider their risks more fully and have the terms of their insurance cover set out for them in a clear and transparent form, highlighting their specific needs.

Currently consumers cannot compare apples with apples. All insurance policies on the market vary significantly in what they will cover depending on the "risk appetite" of the insurer. Some insurers throw in bells and whistles such as pet cover or cover for jewellery items. But they generally do so at the expense of covering other, more common risks, by limiting the definition of the coverage somehow (eg by excluding say smoke damage from a fire) or lowering the amount that can be claimed. The consumer may own a pet, a set of antiques or specific jewellery and seek out an insurance product that specifically covers these risks. But they do so risking this lowered or limited coverage without being made aware of these limitations. In other words consumers are not made aware of what they have given up in order to select a product that covers their pet.

The proposed regime allows consumers to make better comparisons between insurance products (re: the basic, premium and deluxe versions) that cover the most common risks and ensures that their additional needs will be covered through specific discussion, negotiation, consideration and addition.

- **minimum amounts for claims;**

Minimum amounts are currently set under the standard cover regime and should remain but with indexed increases. We note, for example that the current standard cover sets a minimum amount of \$2,000,000⁴⁸ for Home Building where most standard policies will provide cover for \$20,000,000. Caps and limits should also be included.

- **a limit to the number of excesses able to be imposed;**

The insurance market has witnessed a proliferation of the number of excesses payable in general insurance. As mentioned above, Financial Rights is aware of at least 29 different forms of excesses being applied across home and building contents insurance.

There is also a significant lack of transparency in excess pricing. The excess payable is not usually one single excess it is regularly made up of multiple, complex excesses at different rates, so that it is not clear what the quantum of excess is upfront. Further the circumstances in which an excess is payable are not straightforward and are structured in complicated ways so that it is not clear upfront when an excess will be paid. To understand the way the excesses work, the customer must go digging in the PDS (or other documents).

⁴⁸ Div 2, 10(d)

It is therefore critical that the use of excesses be standardised in order to reduce confusion and to improve consumer understanding and comprehension.

- **applied to all forms of general insurance including initially motor vehicle insurance, home buildings insurance home contents insurance; travel insurance; sickness and accident insurance; and consumer credit insurance with a view to extending to other common general insurance products.**

The current standard contract regime is applied to the five major forms of domestic insurance: motor vehicle insurance, home buildings insurance home contents insurance; travel insurance; sickness and accident insurance; and consumer credit insurance. There are however a series of other common insurances that could be considered. These are: pet insurance; personal items insurance; bicycle Insurance; phone insurance; boat insurance; caravan insurance, strata insurance, farm insurance, landlord insurance, renters insurance, sports insurance, mortgage insurance and liability insurance. We see no reason why standard cover should over time be applied to all forms of general insurance.

- **legislated in accessible, plain English.**

The current standard form regime in the Act is not drafted with a consumer in mind. The words used in the legislated standard definition regime will be carried over into insurance PDSs and other material. The language in the legislation must therefore be accessible to and understood by consumers. Applying plain English principles to the language used in insurance and simplifying the concepts in the legislation will improve comprehension and insurance literacy.

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

It is likely that consumer expectations have move on from the terms included under standard cover in many instances. A few examples are set out below:

- **Minimum amounts:** As outlined above, the minimum amounts listed⁴⁹ are low and should be increased in line with CPI to meet today's expectations and costs.
- **Walls, gates and fences:** The exclusion of destruction of, or damage occurring to a free-standing or retaining wall (whether or not part of the home building), or to a gate or fence, as a result of a storm or tempest,⁵⁰ should be reconsidered. Many consumers would expect this to be a part of their coverage and would question why this is excluded.
- **Under the influence of intoxicating liquor:** Exclusions based on "being under the influence of intoxicating liquor"⁵¹ should be examined to ensure that insurers are not denying claims on the basis of one drink, a sip or below legislated blood alcohol limits⁵²

⁴⁹ As set under regulations 15, 20, 23, 26, 29 and 32, *Insurance Contracts Regulations 2017*

⁵⁰ Regulation 19(2)(g)(i) *Insurance Contracts Regulations 2017*

⁵¹ Regulations 16, 25, 28, 31 *Insurance Contracts Regulations 2017*

- **Damage arising out of express or implied consent in travel insurance:** Intravel insurance “financial loss, loss of or damage to personal belongings or death, sickness or injury, intentionally caused by... a person acting with the express or implied consent of the insured person or a member of the insured person’s travelling party” is excluded. This may need to be clarified regarding whether this meets current expectations considering the nature of travel.
- **Pre-existing conditions:** The following is excluded for travel insurance: “financial loss as a result of the insured person failing to commence or complete the specified journey ...because of a sickness, disease or disability to which a person was subject at any time during the period of 6 months before the contract was entered into and continues to be subject to after that time.”⁵³ This needs to be examined to ensure that this meets community expectations.
- **Exclusions’ impact on victims of domestic violence:** The exclusion of “destruction or damage intentionally caused, or a liability ... intentionally incurred, by the insured; or a residing family member of the insured”⁵⁴ should be considered in the light of its unfair impact upon victims of domestic or family violence.
- **Electrical machines:** Exclusion of “destruction of, or damage occurring to an electrical machine or apparatus as a result of the electric current in it”⁵⁵ should be reconsidered in the light of technological developments and the price of electronics.
- **Common goods:** Similarly the exclusion of “accidental breakage of a television picture tube or screen; or the picture tube or screen of an electronic visual display unit; or a ceramic or glass cooking top of a stove; or glass in a picture frame, a radio set or a clock” should be reconsidered in the light of technological developments and the falling price of materials and goods.
- **Transport and evacuation:** Consideration needs to be given to including the reasonable cost of transport and evacuation needs to be included in the minimum amount under travel insurance⁵⁶
- **Full indemnity:** Consideration needs to be given to whether full indemnity is required for funeral or cremation or transporting the remains in the minimum amounts section for travel insurance⁵⁷

⁵² We refer Treasury to *Sagacious Legal Pty Ltd v Wesfarmers General Insurance Ltd (No 4)* [2010] FCA 482 and FOS Case Number 328171.

⁵³ Regulation 31(2)(d)(ii) and (g) of the *Insurance Contracts Regulations 2017*

⁵⁴ Regulation 22(2)(e) of the *Insurance Contracts Regulations 2017*

⁵⁵ Regulation 19(g)(i) & 22(g)(i) of the *Insurance Contracts Regulations 2017*

⁵⁶ Regulation 32(3) of the *Insurance Contracts Regulations 2017*

⁵⁷ Regulation 32(2) of the *Insurance Contracts Regulations 2017*

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?

With respect to the areas that may be usefully added to standard cover, we believe community expectations and assumptions of what will be covered by an insurance policy have moved on significantly since standard cover was first introduced. This is largely due to changes in technology, building materials, building costs, lifestyles and social engagement.

Looking at home and contents insurance, for example, we believe consideration needs to be given to the following common areas of inclusion in the home and building contents insurance products we see. We believe that many consumers may assume that some, if not all of the following are basic inclusions and would expect these to be included in default standard cover:

- Volcano damage
- Smoke damage
- Damage to outdoor items on a property
- Temporary accommodation (as opposed to emergency accommodation)
- Coverage of a new and old home during a transition or move
- Storage of items following damage to a home
- Damage to an external garage
- Damage to garden and plants
- Portable contents like a phone
- Cover for online data hacked or attacked on a computer
- Loss of other people's items in one's home
- Damage caused by invited guests or family staying in your home

We recommend that the Government work with the insurance sector and consumer representatives to undertake consumer testing on their expectations of all standard general insurance products. We understand that the ICA are currently undertaking research into so-called "core cover" in order to gauge consumer sentiment in this regard. We support this work and believe it can be valuable in assisting government to developing default standard cover.

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

Yes. Financial Rights' standard cover proposal is based on the idea that standard cover must act as a basic default standard that meet's community expectations below which insurers cannot fall.

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

Yes. In fitting with the model proposed above, all insurers must be subject to the standard cover regime. If some insurers were able to provide products outside of the standard cover regime as proposed, there will be significant confusion amongst consumers who may assume a product meets the minimum standards required when it does not.

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?

As detailed above – the “clearly inform” requirement is not an appropriate threshold as it has been subject to significant acts of regulatory arbitrage. Financial Rights’ believes that this should be replaced by a genuine standard cover regime as outlined above, which would set a limited number of different levels of standard cover and require insurers to engage directly with individual consumers on variations above these levels.

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

If the recommendation of the mandated minimum above is not accepted, and “clearly inform” remains then yes express disclaimers should be required and specifically highlighted to the consumer when the cover is less than the standard. This needs to be embedded in the sales model, not hidden in disclosure. We also believe personal advice would be required as to why it should be suitable for an insurer to offer less than standard cover to the individual

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

Again Financial Rights has provided a detailed proposal above, however it would need to include consideration of standardised quotes, annual premium renewals, KFSs, PDSs and website design

Standardised definition of key terms

Recommendation

That the Government work closely with industry and consumer groups to develop and implement standardised definitions of key terms for general insurance.

Financial Rights supports the Government working closely with industry and consumer groups to develop and implement standardised definitions of key terms for general insurance.

Standard definitions must meet common sense, community expectations of coverage and exclusion.

Standard definitions must not be defined so narrowly to exclude most claims nor should they subvert generally understood concepts. Standard definitions must be developed in line with the principles of risk pooling to ensure the costs of natural and non-natural perils are spread amongst all policyholders so that the claims of the few can be paid out of the premiums of the many.

All key terms under Part 3 of the *Insurance Contracts Regulations 2017* for the five domestic insurance forms should be subject to standardisation, otherwise the problems currently faced by consumers due to inconsistency will remain, or at the very least shift to those areas that are left to be defined by insurers.

22. What is the goal of standardised definitions?

The lack of standardised definitions in insurances leads to a series of problems.

Inconsistent definitions risk misleading consumers into thinking they have cover for certain events when in fact they do not. Nuanced differences in each and every term have material impacts upon their coverage. PDSs are long, complex and confusing documents and it is almost impossible for a consumer to appreciate these nuances and their impact and take them into consideration in their purchase decision. Consumers can subsequently find themselves paying for illusory insurance – insurance they believe they have when in reality they do not have it.

For example, Fire and Explosions

Taking a look at 28 definitions, while there may be some superficial similarities there are a large number of nuances (subtle or otherwise) that would all become material in a claim and/or dispute. To demonstrate the variety:

- One insurer refers to the presence of “mineral spirits”: Woolworth
- Three refer to the use of “irons”: Only Coles, QBE and Woolworths
- Seven refer to exclusions arising from the use of heaters: Apia, ANZ, Coles, QBE, RAA, Suncorp and Woolworths

- Five refer to “arcing”: Apia, ANZ, Coles, QBE, RAA, Suncorp and Woolworths
- Four refer to “grassfires”: Allianz, Budget Direct, CGU and ING
- Twelve insurers refer variously to cigarettes and/or cigars: AAMI, Allianz, Apia, Budget Direct, GIO, ING, RAA, RACT, Suncorp, Virgin Money, Woolworths.
- While underwritten by the same insurer (IAG) and having substantially the same terms, NRMA states that the policyholder is not covered for: “loss or damage which results from scorching or melting where there was no flame” while SGIO and SGIC state that the policyholder is not covered for “damage which results from scorching or melting when your home or contents did not catch fire.” Both of these seem on the surface to end up at the same result but have arguably different applications if deemed material at claims time.

For full details: see [Appendix A](#)

Most people would believe that if a fire occurs in a home that it would ordinarily be covered. But inconsistent definitions ensure that insurers are able to develop nuanced exclusions. A fire arising out of say the use of a heater will therefore be covered for some people and not others. This is a game of chance that randomly and unfairly impacts consumers who believe they are simply covered for a fire.

Inconsistent definitions also make comparison and evaluation at the time of purchase almost impossible.

For example, Escape of Liquid

Financial Rights examined the definition of “Escape of Liquid” in 28 insurance PDSs and KFSs. We found that “Escape of liquid” was referred to in a multitude of ways including “Water or other liquid damage” (Allianz), “Water or liquid damage” (ANZ), “Sudden and unexpected escape of liquid at the insured address ...” (Budget Direct, ING, Virgin) “Bursting, leaking or overflowing” (Coles), “Water and Oil leaks” (NRMA, SGIO), “Water or other liquid” (QBE), “Bursting, leaking, discharging or overflowing of water or liquid” (RAA) “Liquid or water damage” (TIO) and “Escaping water” (Youi).

Once figuring this out a consumer then needs to examine the definitions to find what is covered and find that most insurers refer to a number of listed items. For example, AAMI provides an extensive definition of the items in which it will cover where there is any loss or damage to the building caused by liquid leaking, overflowing or bursting. It specifically refers, among things, to baths, sinks, toilets and basins, washing machines, refrigerators and waterbeds.

On the other hand, Allianz also refers to, among other things, washing machines and

waterbeds but it makes no reference to the other items provided for in AAMI definition. Those items are also not specifically excluded.

Further, for those insurers who seek to clarify what is covered under the policy for the Insured Event by listing items, there is no indication to the consumer as to whether those lists should be construed as exhaustive. The effect of this discrepancy means there is no meaningful way for a consumer to compare policies.

Beyond this there are significant discrepancies between insurers coverage of “exploratory costs,” “seepage of water” exclusions and even what the concept of liquid refers to – is it water and/or oil or any other liquid?

For full details: see [Appendix A](#)

Case study

Randy lived next door to Arnold. There was a severe storm and their dividing fence collapsed. Both were insured, Randy with Insurer A and Arnold with Insurer B. Randy claimed with his insurer and within 10 days was cash settled the 50% repair cost. Randy rang Arnold to see how he was going. Arnold’s insurer was refusing his claim. Insurer B accepted there was a storm and that his fence was damaged, but they applied an exclusion in the storm insured event his policy:

what you are not covered for:

- *loss or damage caused by flood unless you have selected and we have agreed to provide this optional cover.*
- *loss or damage caused by rain, hail, wind or dust due to:*
- *a design fault, structural defect or faulty workmanship*
 - *lack of maintenance (a defect that you knew about or should reasonably have known about and did not fix)*
 - *an opening that was not created by the storm*
 - *building additions, renovation or alteration work.*
- *loss or damage to:*
 - *fences and gates that are not structurally sound or well maintained*
 - *artificial grass or turf*
 - *garden retaining walls*
 - *garden borders, driveways, paths or gardens*
 - *.... (list continues)*

Unbeknownst to Arnold the fence was not structurally sound when the storm hit. The

fence was very old, but he had no idea that it wasn't structurally sound. The insurer agrees that it fell because of the storm.

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As the ALRC stated in 1982:⁵⁸

No insured could possibly be expected to be aware of variations in the definitions of 'buildings' and contents' between different policies with different insurers, let alone different policies with the same insurer. The possible results of the interaction between such policies is a matter for legal interpretation. It is not a responsibility which can be cast on the insuring public.

Inconsistent definitions empower insurers to deviate from standard cover, community expectations and normative notions of an insurance product. In other words, the ability to use inconsistent definitions is at the heart and centre of the confusopoly of the insurance market. What insurers euphemistically deem “risk appetite” is essentially gaming the system and subtly subverting common sense concepts to benefit their bottom line through reduced claims payouts. This does not serve the interests of consumer or the community as a whole.

Inconsistent definitions exacerbate the information asymmetry between the consumer and the insurer. The insurer, their actuaries and lawyers understand the nuances of a slightly different definitions of, for example, “fire and explosion”, however consumers do not. Full disclosure with definitions spread across 100s of PDS pages only serves to confuse and prevent genuine understanding. Expecting consumers to read the multitude of PDSs, note, understand and compare each and every definition is at best unrealistic and at worst, the entire point of the business model.

The recent Senate Economic References report into General Insurance upon which this Discussion Paper is based quoted consumer journalist John Rolfe in relation to the complexities involved in figuring out which is an appropriate product. He stated

*If you are in any doubt [of] the need for change, try finding the best-value insurance for your own car. It will sap you of the will to live. It shouldn't be that way.*⁵⁹

The quote led to the title of the Report: *Sapping the Will to Compare*

Taken as a whole, inconsistent definitions actively undermine the risk mitigation partnership between the consumer and the insurer and hands over all the power to the insurer.

Standardising definitions will:

- reduce consumer confusion regarding what is and what is not included in their insurance coverage;

⁵⁸ Para 59, ALRC Report 20, Insurance Contracts p.xxvi <http://www.alrc.gov.au/report-20>

⁵⁹ Senate Economics Reference Committee, Australia's general insurance industry: sapping consumers of the will to compare, 10 August 2017 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Generalinsurance/Report

- promote a shared understanding of each key element of coverage and improve financial literacy;
- decrease the chances of a bad surprise and poor outcome for insureds at claims time;
- reduce the lottery that occurs at claims time, where a similar event can impact upon a group of similarly placed Australians – e.g. a neighbourhood subject to actions of the sea where only some are covered for an event they believed they would be covered for and others are not; and
- remove many of the difficulties faced by consumers in comparing and evaluating insurance products and making purchase decisions based on that work. If all definitions for key events are the same across all the products – bar for the improved versions of those definitions highlighted under a “basic, premium, deluxe” model – and they meet basic community expectations for that event, then there is little reason for the consumer to need to go through the thousands of pages of documents they would need to in order to compare product coverage.

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

We are unable to provide quantitative data on this issue however we would note the following arising out of our casework experience on the Insurance Law Service.

Firstly, following the standardising of the definition of flood, flood cover is now included in home and contents insurance policies but consumers have the choice to “opt out”. Many consumers *are* opting out of flood cover for financial reasons, or simply finding it impossible to find cover at an affordable price. This means at flood time, the content of discussions with affected consumers has not been about a consumer thinking they were covered when they were not. In 2010-11 in the aftermath of the Brisbane floods consumers were generally unaware they were not covered for flood or had significant restrictions, such as a sub limit. The conversations since then in other disasters have instead focussed on what was the cause of the damage, was it flood water or an insured event such as storm surge or storm water run-off.

Second we note that the NRMA have recently changed the wording of its home contents policy so that it now says that they will automatically cover flood, rainwater run-off and storm surge.⁶⁰ However if a person opts out of flood cover, they are also automatically opting out of rainwater run-off and storm surge as well. The three are grouped in together.

You may be eligible to remove flood cover, and if you do so, you will also remove cover for rainwater run-off and storm surge.

This means that NRMA have undertaken a form of arbitrage to ensure that the definition of flood in practice includes storm surge and rainwater run-off. This is confusing, will disadvantage many unsuspecting consumers and not in the spirit of the law.

⁶⁰ NRMA Home Contents Insurance, 25 January 2018

Impact of standard definitions on pricing and risk pooling

The observations above point to the key objection to the use of standard definitions as referenced in the discussion paper, that standard definitions could effect pricing of an insurance product and thereby limit access to insurance.

This is an important issue and must be taken into account.

There is an expectation in the consumer movement that if standard definitions were to be introduced, the insurance industry will look to ensure that those definitions are set at levels which will be the most affordable but offer the least coverage. In other words the lowest stave of the barrel.

Financial Rights opposes this approach and takes the view that the default cover and standard definitions must meet normative, common sense, community expectations of the various terms in an insurance product. Insurance premiums should adhere to the principle of risk pooling to ensure the costs of natural and non-natural perils are spread amongst all policyholder to that the claims of the few can be paid out of the premiums of the many.

The Actuaries Institute note that there are three categories of pricing freedom within Insurance and the ability to use data for pricing purchases: community rating, restricted rating and unrestricted ratings.⁶¹

Community rating

where Government does not allow the insurer to vary the price between policyholders on grounds of risk e.g. health insurance

Restricted rating

where Government allows insurers to vary the price, with restrictions to ensure insurance premiums stay within a band and remain affordable to both low and high risk policyholders e.g. CTP, Workers' Compensation

Unrestricted rating:

a) At a grouped level – where insurers have the same the price for like members of a group, such as those of the same age, gender and smoking status, e.g. most elements of motor, life and home insurance.

b) Individual rating – where the insurer has access to enough relevant individual policyholder data to enable it to price insurance specifically for that individual e.g. motor insurance where the car is fitted with a telematics device

General insurance products are characterised as falling within the unrestricted rating category where insurance is “considered short-term” ie can be underwritten and re-priced each year.”

Given the importance of housing and the significant impact that risks to shelter can have upon consumers lives, a move to a more restricted rating approach to home and contents insurance

⁶¹ The Impact of Big Data on the Future of Insurance Green Paper, November 2016
<https://actuaries.asn.au/library/opinion/2016/bigdatagpweb.pdf>

should be considered to ensure that premiums stay within a band and remain affordable to both low and high risk policyholders.

Genuine risk pooling should enable strong, common sense definitions to be established with a reasonable range of prices without the extremes of the market being priced out altogether. This would also maintain the price signalling and risk mitigation principles we have argued for in component pricing for those who face extreme risks in particular areas. These groups would still face higher prices but not so extreme that it would force them out of insurance altogether.

24. Should the Government mandate standardised definitions for a menu of key terms?

Yes. Financial Rights believes that there are many terms used in the current standard cover regime for the five forms of domestic insurance that should be standardised. For example, the prescribed events and exclusions in each of those products.

25. 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?

Part 3 of the *Insurance Contracts Regulations 2017* provides an extensive list of prescribed events, exclusions and other common terms for each form of insurance. Each event should be standardised.

While Financial Rights does not have the data to provide insights beyond the anecdotal, it is our view that if prioritisation is required then the definitions generally presented in the current KFS namely:

- Fire
- Explosion
- Storm (including storm surge and run off)
- Accidental Breakage
- Lightning
- Theft
- Burglary
- Actions of the sea
- Malicious damage
- Impacts
- Escape of liquid
- Removal of debris
- Alternative accommodation

- High value terms and collection
- Items away from insured address

It should not however only be prescribed events. Other common terminology such as exclusion terminology should be standardised including:

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

With respect to what terms tend to be subject to dispute due to misunderstandings of meaning, insurances companies should hold data in relation to this. AFCA would also be able to quantify the disputes that reached external dispute resolution.

Financial Rights would only be able to provide anecdotal views as to the most common problematic terms, and would point to “wear and tear,” “structural damage”, “storm,” “accidental damage” “building,” “escape of liquid” “existing medical condition” as terms we regularly see disputed. However we see almost any and every key term disputed.

Financial Rights takes the view that simply because some terms are argued over more than others does not mean that these should be prioritised. They may be other factors at play here and the squeakiest wheel should not necessarily get the oil, the impact of storm and storm surge or actions of the sea may have a greater impact.

26. What impact would standardising some definitions have on underwriting?

Standardising all or some of the definitions will make underwriting easier, ensuring that most of the work of underwriting is focused on pricing variations and *increases* from the standard definition for premium and deluxe coverage as well as individually negotiated coverage outside of the standard cover and standard definitions.

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

Yes, as stated above.

Review of the Key Facts Sheet

Recommendation

The Government undertake a review of the utility of the KFS as a means of product disclosure, with particular regard to the effectiveness of the KFS in improving understanding of home building and contents policies, and merit of extending the use of KFS to other forms of general insurance.

While Financial Rights generally supports the government undertaking a review of the utility of the KFS as a means of product disclosure, we believe that the utility of disclosure as an effective tool at all to aid consumers in choosing an insurance policy is questionable.

We believe that a new approach needs to be taken to ensure good consumer outcomes with respect to the purchasing of insurance products. As described above, this approach centres on establishing a genuine standard cover regime with genuine set of standard definitions. KFSs would be required for basic, premium and deluxe products with specific information required to be included for individually negotiated coverage.

In the circumstance that the Government chooses not to take this new approach to insurance purchasing and continue to use the KFS, we support the following:

- prescription of KFS be maintained to ensure consistency and comparability;
- a new KFS be developed between government, industry and consumer groups to be consumer tested;
- KFS's should include simplified set of information to be included:
 - What type of insurance it is (Home building, home contents or other, basic, premium or deluxe)
 - Who is offering the insurance (Brand and Underwriter)
 - What is insured (inclusions)
 - What is not insured (exclusions)
 - Are there sub limits
- the placement, presentation and delivery of KFS and PDSs on insurer websites need to be regulated.
- the form information takes under insured events in KFSs needs to be standardised
- directing to the PDS in the table needs to be banned
- reference to any limitations including time limits should be mandated
- the use of logos should be enforced
- separate KFS's for home building and home contents should be mandated
- colour design should be more precise
- an online tool to assist in comparing KFS items should be considered.

The regulation of PDSs needs to be reconsidered to ensure that:

- layouts are standardised and mandated;
- the form information takes in a PDS needs is standardised; and

- the placement of PDSs on insurer websites is to be regulated to improve accessibility.

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

We do not believe that there is any benefit to be had in extending the KFS to a longer short form PDS style document. As will be discussed in further detail below, Financial Rights' experimental study into the effectiveness of the KFS found that there was no simple and consistent effect of disclosure – ie there was no clear pattern of understanding where people were provided with more or less disclosure information.

In short – length is not the issue.

If improvements are to be made to the KFS regime there are a significant number of other aspects of the KFS regime that Financial Rights has identified that should be examined and consumer tested for improvement. These are detailed in Financial Rights' answer to Question 34, below.

We would however note that there is another example of a KFS in use internationally and this is the Insurance Product Information Document (IPID)⁶² established by the European Insurance And Occupational Pensions Authority (EIOPA). The IPID aims to provide clearer information on non-life insurance products, so that consumers can make more informed decisions. Following consumer testing, EIOPA developed Implementing Technical Standards on a standardised presentation format for the IPID. The template is at [Appendix C](#) or can be downloaded at the EIOPA Homepage.⁶³ We note that the IPID is one page.

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

No. Financial Rights does not support removing the prescription under the law to ensure a consistent approach.

However we do support innovation and do not support the retention of the KFS in its current form.

While we understand that some consumer testing of a prototype KFS was undertaken, to our knowledge the effectiveness of the document in assisting consumer to shop around for the best insurance cover for their needs was not (and is not) adequately understood.

A key conclusion to the report *(In)effective Disclosure: An experimental study of consumers purchasing home contents insurance* was that there is considerable room for improvement in mandated insurance disclosure document. The results achieved in that experiment were based upon documents that were shorter, clearer and set out in a consistent manner for ease of comparison, in stark contrast to the documents currently in use. Even in these idealised

⁶² <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32016L0097>

⁶³ https://eiopa.europa.eu/Publications/Technical%20Standards/EN_EIOPA_IPID_template_Dec_2017.pdf

circumstances and the starker differences used there was no statistical reliable effect of disclosure on decision quality.

Mandated disclosure should be improved for other purposes including

informing the purchase choices of highly literate and motivated consumers, guiding consumers through the claims process and ensuring they have a clear guide as to the limits of their policy in the event of a dispute.

Further, innovation and consumer testing is highly recommended to achieve these outcomes but what should be not taken up is an ability for different insurers to create a hundred different KFSs. This will make comparability almost impossible.

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

No comment.

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

32. 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?

Financial Rights recommends the inclusion of the following elements

- What type of insurance it is (Home building, home contents or other, basic, premium or deluxe)
- Who is offering the insurance (Brand and Underwriter)
- What is insured (inclusions)
- What is not insured (exclusions)
- Are there sub-limits to the sum insured that may apply?

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

Yes. For policies where there are core comparable items we think there is potential for further exploration.

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

In short: make KFS's easily available. It is hard to compare products using KFSs if you cannot find them or only receive them after you purchase the product.

Consumers are faced with huge difficulties in finding PDSs and KFSs in the first place. Financial Rights examined 28 insurers KFSs in a research report titled: *Overwhelmed: An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making.*

The report identified and listed some of the almost innumerable real world factors that complicate the comprehension, comparability and decision making process of purchasing a home and contents insurance product with a particular focus on PDSs and KFSs.

We observed significant variability with respect to where KFS's and PDS's are found on websites. Finding a KFS is particularly difficult and is subject to a multitude of website designs, link designs, and different placements on website pages

Finding and accessing a PDS or KFS can take a number of clicks through an insurer's website. Some websites bundle the policy documents together on one page, others provide links on the policy's webpage that open up a new browser tab. Some links download the KFS into a download folder.

The links to KFSs and PDSs vary vastly. These can include simple coloured hyperlinks in large, bolded, underlined print, or very small, buttons, bars, lists or side bars.⁶⁴

Some websites highlight the PDS and/or KFS link somewhere in the middle of the page. Many others place the link to the PDS or KFS down the bottom of the page in fine print. Others still require a google search because they are so hard to find. For example, there is no reference to KFSs on Woolworths home building and contents web page. Many web pages link directly to a PDS or KFS .pdf. Others send the user to a separate page that bundle all the policy documents for the insurer together in a long list.

Many KFS links are visually secondary to the PDS by only appearing in fine print. Some websites do not even feature a link to a KFS, eg SGIC and Woolworths.⁶⁵

Some links download the documents to a user's download folder (eg RACQ), most other links create a new web page. Again – this variability does not assist comparability and usability.

We also note that the Financial Ombudsman Service have found that such disclosures are insufficient to meet the requirement under the Act to 'clearly inform' an insured.

FOS determination Case Number 4093316, 28 March 2018

"Section 22 of the *Insurance Contracts Act 1984* (the Act) states before a contract is entered into, an insurer must clearly inform the insured of the general nature and effect of the duty of disclosure. If the FSP does not comply with this statutory obligation, it cannot rely on non-disclosure to deny a claim.

The FSP says before proceeding with the insurance application, the applicant was advised of the nature and effect of the duty of disclosure. It says this important information was located at the footer of the page in hyperlinks.

Screenshots of the FSP's online quotation process shows the applicant was directed to a

⁶⁴ see **Table 2**

⁶⁵ see **Table 2**. St George includes a link to the Contents KFS however this incorrectly downloads the Building KFS. SGIC has an incorrectly labelled KFS, and could only be found via a google search.

hyperlink to the duty of disclosure at the foot of each page of the application process, along with links to other information. The information provided says:

‘Before you go ahead with your insurance application we draw your attention to the important documentation and information in the footer of this page.’

At the footer of each page were hyperlinks to the information including hyperlinks to the Duty of Disclosure and the Product Disclosure Statement (PDS).

This is insufficient to meet the requirement under the Act to ‘clearly inform’ the applicant of the duty of disclosure. This is because a mere direction to a link at the foot of the page along with links to other information does not sufficiently clearly inform a prospective insured of the nature of and effect of the duty of disclosure.”

FOS determination Case Number 4093845, 9 May 2018

“The FSP says it informed the applicant of his duty of disclosure via its online application process. Screen shots of the FSP’s online quotation and application system, show the applicant was presented with a link to the duty of disclosure.

The manner in which the link to the duty was presented, however, is insufficient to have clearly informed the applicant of his duty of disclosure. This is because:

- it was presented in small print at the top of the relevant page
- it did not explain the consequences of not complying with the duty
- it did not highlight the importance of the duty
- the duty was displayed with links to other items and could be easily missed

Financial Rights recommends that the placement, presentation and delivery of KFS and PDSs on insurer websites need to be regulated.

Overwhelmed: An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making also identified a series of other issues with KFSs that made comparability difficult. We have distilled these into the following recommendations:

- **the form information takes under insured events in KFSs needs to be standardised**

The information provided in the KFS table is by its very nature brief and limited (by regulation). Insurers are to provide against each covered event:

“Some examples of specific conditions, exclusions or limits that apply to events/covers.”

Insurers are instructed under Schedule 3 of the *Insurance Contracts Regulations 2017* to:

Insert policy specific condition, exclusion or limits. If the wording of events/cover in column one is not consistent with the wording in the PDS insert an explanation on how the event cover applies in respect to the policy.

There are however significant variance in the language used by insurers.

Different KFSs take different linguistic approaches to describe their coverage and exclusions on their KFS. Some use the form “Yes ... But we will not cover”⁶⁶ or “Excludes...”⁶⁷ to list only the exclusions. Others describe what is covered.⁶⁸

Many use personal pronouns eg, “We will cover” or “You’re not covered,”⁶⁹ others are impersonal, eg “No cover for.....”⁷⁰

Taking a look at the information provided under Fire and Explosion in the KFSs most are negative statements, ie they includes details on what is *excluded* or what is *not covered*. For example, Budget Direct’s KFS states:

Fire and Explosion: Excludes loss or damage caused by scorching or melting when there was heat but no flame. Excludes the cost of repairing or replacing an item that explodes.

But not all are like this. Some include a positive definition as well as a negative definition:

*Fire requires flames and excludes: ignition or combustion of a heat or fire resistant item; or a bush or grass fire within 48 hours of cover starting.*⁷¹

Furthermore the standard title used in a KFS is “Fire and Explosion.” Despite this, a significant number of KFSs only provide information about fire in the KFS and not explosions. For example, Allianz, ANZ, Coles, RAA, and SGIO do not refer to explosions despite most if not all brands including explosions in their policy.

It is also notable that RAC and RACT separate out ‘Fire’ and ‘Explosion’ as two separate distinct listed Insured Events in the structure of their KFS, as opposed to listing ‘Fire and Explosion’ as one category as all other KFSs that we examined do. The order of events/cover for the RAC and RACT KFSs is also very different to all other KFSs. Ambiguously, RACT leaves the specific conditions for the Explosion item blank.

- **directing to the PDS in the table needs to be banned**

The KFS table header states:

⁶⁶ Eg RAA, <http://www.raa.com.au/documents/contents-key-fact-sheet>

⁶⁷ Eg QBE, http://www.qbe.com.au/content/idcplg?IdcService=GET_FILE&dDocName=PRODUCT057982&RevisionSelectionMethod=LatestReleased&Rendition=primary

⁶⁸ Eg NRMA https://www.nrma.com.au/sites/nrma/files/nrma/policy_booklets/home_contents_kfs_0418_nsw_act_tas.pdf

⁶⁹ Eg CGU, <https://www.cgu.com.au/sites/default/files/media/personal/pds/908420a7-068c-4071-9f30-23534ec00588.pdf>

⁷⁰ Eg Youi https://www.youi.com.au/globalassets/documents/kfs_bui_20170615.pdf

⁷¹ Coles

*Some examples of specific conditions, exclusions or limits that apply to events/covers (see PDS and other policy documentation for details of others)**

It is therefore already clear that a customer should refer to the PDS for further details. The KFS is merely a short summary.

It is therefore redundant, and a waste of space and time to include in the wording for each event a reference to having to read the PDS. Despite this Financial Rights has seen a number of examples of KFSs directing the consumer to read the PDS, thereby wasting space.

RACQ references the appropriate page numbers, which could arguably be helpful. Others such as CGU refer merely to “Exceptions apply” forcing the consumer to seek out the PDS. RAC unhelpfully states:

No cover for bushfire for the first 48 hours after the start of this policy except in certain situations detailed in the PDS.

In the past, Financial Rights has identified an insurer who simply included a hyperlink to the PDS in each category of the KFS with no information at all included in the KFS. A complaint was made to ASIC and the insurer no longer does so.

- **reference to any limitations including time limits should be mandated**

A number of KFSs reference the time limit exclusion such as Allianz:

Not covered for loss or damage caused by bushfires and grassfires during the first 72 hours after you first take out or increase the cover under the policy.

ANZ, Coles, CGU, RAC refer to a 48 hour exclusion. Most other KFSs do not reference any time limit exclusion despite the fact that most insurance policies have a time limit exclusion in place under the PDS.

- **ensure logos are used**

According to Schedule 3 of the *Insurance Contracts Act Regulations 2017*, the logo should be inserted. Most follow this regulation and place their corporate logo on the KFS. However brands underwritten by Auto & General do not eg Virgin, ING etc. This may be a matter of enforcement.

- **mandate separate KFSs for home building and home contents**

Most insurers keep the Building KFS and Contents KFS in separate .pdfs. However RAC combines their two KFSs into one .pdf, but still separate KFSs within the .pdf.⁷² RACT combines the two KFSs into one .pdf document with a combined KFS in that document.⁷³

This variability does not assist in the process of comparison.

- **be more precise in mandating colour design**

The legislative requirement for KFS design is that the boxes should “alternate between black type on a white background and black type on a light blue background.”⁷⁴ However no two

⁷² <https://rac.com.au/products/insurance/policy-documents/building-contents-valuables-insurance>

⁷³ <http://www.ract.com.au/SiteCollectionDocuments/Key%20Facts%20Sheet%20BLD.pdf>

insurance companies use the same shade of blue. RAA however uses a dark grey background. While this may be of little seeming consequence, if consistency is the aim, consistency needs to be mandated in more detail if further changes are to be made.

- **develop an online tool to assist in comparing KFS items**

Technology should be harnessed to develop a tool – similar to other retail product websites. The online Apple store provides a useful example of comparison in practice⁷⁵ – to assist consumers to choose products that will better enable easier online comparison. See more below under Question 35.

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

The utility of disclosure as an effective tool to aid consumers in choosing an insurance policy is questionable: see **Appendix B**

We believe that a new approach needs to be taken to ensure good consumer outcomes with respect to the purchasing of insurance products.

Policy aims of the KFS and disclosure

The KFS for home and contents insurance was introduced in 2014 in response to the perceived problem of length and complexity of PDS's and their failure with respect to ensuring that consumers were covered for flood during the natural flood disasters in NSW, Victoria and Queensland in 2010-11. Many consumers during this period were astounded to find their insurance either did not include flood cover, or if it did, the policy's definition of flood did not cover the kind of flooding that caused their losses.

The explanatory memorandum for the amendments to the *Insurance Contracts Act 1984* states that:

there may be an amount of confusion regarding HBHC insurance products in respect to: – the extent of coverage (what is covered); – the exclusions that exist (what is not covered); and – other technical information such as the cooling off period.

some consumers may find it hard to access the key information regarding their HBHC insurance policies, as the information contained in the PDSs may not be readily accessible for some consumers.

the current disclosure requirements for HBHC may not be effective in providing consumers with the information they require in order to make effective decisions regarding their HBHC insurance policies; and

⁷⁴ Regulation 4B(d)(iii)

⁷⁵ <https://www.apple.com/au/shop/buy-mac/imac>

*if consumers make ineffective decisions regarding their insurance needs, adverse outcomes may arise for both the individuals affected and society as a whole.*⁷⁶

The underlying assumptions for the 2012 reforms that mandated the KFS appear to be that if the information is made clear and concise, and therefore (apparently) more comprehensible, it will increase the overall chances of consumers making 'effective', or rational, choices.

The current public policy assumption is that mandating disclosure is not at issue, rather it is the lack of comprehensibility of that information that is the problem. If we can improve disclosure, we can improve consumer outcomes.

Testing disclosure assumptions

Financial Rights sought to test these assumptions and partnered with Monash Professors Justin Malbon (Faculty of Law) and Harmen Oppewal (Monash Business School) to examine the effectiveness of home contents PDSs and KFSs in assisting consumers to select the best policy that suits their needs.

The study title *(In)effective Disclosure: An experimental study of consumers purchasing home contents insurance* sought to explore the relationship between the information being made available to consumers for insurance and their subsequent buying decisions.

We sought to find out the buying decisions participants of our study would make when they were either given access only to a KFS or a PDS, or where given access to both. We examined their buying choices when they were offered those disclosure documents for two or three hypothetical insurance policies. We also designed the study to find out whether participants would buy a relatively good, bad or okay product, or decide not to buy at all when offered such products.

In summary the study found that:

- up to 42% of participants chose the worst offer, despite being given the time and opportunity to review the disclosure information
- when able to choose from three policies, 35% chose the worse policy and only 46% found and selected the best policy;
- there was no simple and consistent effect of disclosure - while participants were more likely to forego purchasing an insurance policy when they had only access to the PDS the results did not find a clear pattern of understanding where people were provided more or less disclosure information
- purchasing decisions were not affected by the way in which the consumer viewed the disclosure (i.e. computer or smart phone).

It is important to note that the study was purposefully designed to test consumer behaviour in hypothetical 'best-shot' experimental scenarios. That is, the researchers decided to test

⁷⁶ Para 4.84, Commonwealth Senate, Insurance Contracts Amendment Bill 2012, Revised Explanatory Memorandum.

whether there were any reasonable prospects of disclosure ever being able to incline (or nudge) consumers towards making rational, or optimal, choices across a range of choice conditions. Put simply, we wanted to find out whether the mandated disclosure could be effective, even in the most ideal of circumstances.⁷⁷

The assumption underlying this approach was that once the complexity of real world factors enter the decision-making process, the choice becomes increasingly difficult. We would therefore expect the success rate of choosing the most appropriate insurance product would decrease once real world factors enter the fray.

On the release of the study, Professor Oppewal stated:

Mandated disclosure may serve other purposes, including informing the purchase choices of highly literate and motivated consumers, guiding consumers through the claims process or ensuring they have a clear guide as to the limits of their policy when there is a dispute, but the findings indicate that even in ideal circumstances, disclosure does not ensure that consumers make better decisions nor does it help their chances of obtaining suitable insurance cover.

Professor Malbon, went a step further and stated:

There is clearly considerable room for improvement in mandated insurance disclosure documents but when people keep making the wrong decision even in the most ideal of circumstances (and with starker differences in policy coverage than usually exists), you have to wonder if there is a better way.

We have detailed possible improvements to the KFS regime, however Financial Rights believes that what is required is a reconsideration of the entire disclosure and standard cover regime – as outlined above.

Product Disclosure Statements

One element of the disclosure regime that has not been examined under in the Treasury Discussion paper is the key disclosure document the PDS.

Financial Rights does not intend to go into great detail on the issues relating to the PDS, suffice it to say that the issues that this submission has raised with respect to KFSs apply equally if not more so to PDSs.

The work Financial Rights has undertaken in our *Overwhelmed* and *(In)Effective Disclosure* research find that PDSs are confusing, complex, overlong, set out in inconsistent ways, unable to be used to easily compare products and are generally not used by consumer unless at the time of a claim.

Insurers design PDSs in different ways and many are designed in a way that seems more like a sales document than a contract. PDS designs vary vastly from the order that the contents of the PDS are placed in, to the layout, use of graphics, colour, font... the list is endless. Even the shapes and sizes of PDS's can vary making comparability difficult. Some PDSs take the

⁷⁷ Page 14

standard DL (or “dimension lengthwise” format- or a third of an A4 page) others take on the A5 standard (or half an A4), others still have an A4 format. PDS document lengths range between 27 to 128 pages.

John Rolfe was quoted in the Senate General Insurance Report as stating:

There are novels that are shorter than product disclosure statements. It is extraordinary. They run to 30,000 words. It would take hours to read just one of them. So let's say you were going to look at half a dozen of them before you picked an insurer. It is beyond belief that anyone would do that. So no-one is ever really going to know the detail of their insurance product.⁷⁸

Then there are the multiple documents that a consumer receives. Most insurers provide more than one document but in some cases there can be an overwhelming number of documents. For example, AAMI⁷⁹ provides a total of nine:

- a PDS;
- two supplementary PDSs;
- an update pursuant to ASIC Corporations Instrument 2016/1055;
- an update pursuant to ASIC Class Order 03/237;
- a Home Building Insurance Premiums, Excesses, Discounts & Claims Payments guide;
- a NSW ESL reintroduction onto insurance premiums; and
- the KFS.⁸⁰

A number of insurers provide A and B PDSs, the B simply acting as an additional or supplementary PDS.

At a minimum the Government should review the tailored PDS regime for general insurance⁸¹ to examine whether a more appropriate framework is required to improve general insurance disclosure practices via PDSs.

We recommend that:

- PDS layouts be standardised and mandated;
- the form information is delivered in a PDS be standardised; and
- placement of PDSs on insurer websites be regulated to ensure that they are highlighted and easily accessible.

⁷⁸ Economics References Committee, Australia's general insurance industry: sapping consumers of the will to compare, August 2017
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Generalinsurance/~/_media/Committees/economics_ctte/Generalinsurance/report.pdf

⁷⁹ As of May 2018

⁸⁰ <https://www.aami.com.au/policy-documents/personal.html#home-contents-insurance>

⁸¹ under regs 7.9.15E and 7.9.15F of the *Corporations Regulations 2001* (Corporations Regulations)

A modern approach to disclosure

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

Financial Rights supports the use of technology to assist in supporting consumers obtaining insurance products that meet their needs. While technology should not be seen to be the solution to all the problems of disclosure there are ways that technology has the potential to assist.

In putting forward potential technological solutions, it is important to ensure that any application of technology should meet a set of basic ethical principles. While there may be a number of approaches to this we believe the Ethical Principles for Humane Technology can provide some guidance.⁸² These include:

Wellbeing

Wellbeing is about aligning system goals and incentives in the best interest of humanity. It examines which habits are promoted and how the business model supports the stated goals.

Wellbeing can be enhanced through the following principles:

- *The user's best interests guide the system goals.*
- *The user is informed and made aware of the system goals.*
- *Habits and user experiences are designed to enable competency and connection.*
- *The business model is built to support the human outcomes of the solution.*

In designing technology to enhance general insurance disclosure the focus should be on meeting the best interests of consumers. Disclosure should lead the consumer to an outcome that best suits their needs, covers their risks and adheres to a genuine consumer/insurer risk mitigation partnership. Consumers should have agency in a transparent process and not simply be used to meet and exceed insurer sales targets.

Inclusion

Inclusion is about adapting to the varied capabilities of the user, embracing diversity and creating a sense of belonging. This extends beyond the abilities of the user, adjusting for factors such as digital literacy, and structural inequalities.

Inclusion can be enhanced through the following principles:

- *Diverse capabilities of the target user base are mapped and accounted for in the system design.*
- *Different groups of users are represented in the dataset used to train the algorithm.*

⁸² Ethical Principles for Humane Technology, December 2018, <https://blog.prototypr.io/ethical-principles-for-humane-technology-19f4fb3b0ba2>

- *Extra attention is paid to addressing inequalities when incorporating vulnerable communities into a database or service.*
- *Target users' perspectives are sought and incorporated into the system design.*
- *The team has representatives from the target groups.*

In the general insurance context, disclosure technology should be promote accessibility to insurance for all Australians including vulnerable Australians such as those from a cultural or linguistically diverse background, those with physical disabilities, those experiencing financial hardship, those in remote and regional communities, older Australians and those suffering from a mental illness.

It also means treating Australians in all their diversity and varying needs in fair ways. It means removing price discrimination and other forms of discrimination in insurance products including the use of algorithms in selling, pricing and distributing.

Privacy

Privacy is about honouring the user's ownership of their information in the way it is collected, analysed, processed, interpreted and shared.

Privacy can be enhanced through the following principles:

- *The user owns their own data.*
- *The user controls who has access to their data.*
- *The user is informed about how their data is used.*
- *User's permission is acquired when access changes.*

Privacy by design needs to be built into any technological solution. There are seven foundation principles to privacy by design are summarised by the CPRC as follows:

- 1. Proactive not reactive; preventative not remedial:** *Be proactive rather than reactive, to anticipate and prevent privacy problems in advance.*
- 2. Privacy as the Default Setting:** *Personal data is automatically provided with the maximum degree of privacy protection in IT systems or business practices.*
- 3. Privacy Embedded into Design:** *Consider how to embed privacy in the design and architecture of IT systems and business practices rather than treating privacy protection as a subsequent add-on feature*
- 4. Full functionality – Positive-sum, not Zero-Sum:** *Accommodate all legitimate interests and objectives in a win-win manner, where privacy and security can both be achieved without unnecessary trade-offs.*
- 5. End-to-End Security – Full Life-cycle Protection:** *Ensuring strong security measures prior to collecting the first element of information, as well as securely retaining data, and destroying data at the end of the process.*

6. Visibility and Transparency – Keep it Open: *Businesses practices and technology involved should be subject to independent verification, to assure stakeholders they are operating according to stated promises and objectives.*

7. Respect for User Privacy – Keep it User-Centric: *Take a user-centric approach by protecting the interest of individuals, for example: offering strong privacy defaults, appropriate notice, and user-friendly options*

Security

Security is about protecting the user's psychological, emotional, intellectual, digital and physical safety.

Security can be enhanced through the following principles:

- *Sensitive data is stored in separate, highly secure databases.*
- *Failsafes are in place in the event of technical/system failure.*
- *Security vulnerabilities are proactively explored addressed.*
- *Measures and procedures are in place to alert users to help with contingencies in the event of a data breach or hack.*

General insurers must protect user's psychological, emotional, intellectual, digital and physical safety when implementing technological solutions to enhance disclosure. This means not unnecessarily collecting consumer's details or on-selling their data to third parties or related entities to market other products.

Accountability

Accountability is about creating transparency in how decisions are made, biases are addressed and creating pathways for the user to challenge such a decision.

Accountability can be enhanced through the following principles:

- *Biases are tested for and addressed.*
- *The decision-making process can be explained in a manner that the user can understand.*
- *Avenues are in place to challenge and counter the decisions*

The general insurance purchasing and decision-making process needs to be clear to consumer and be explained in a manner that the user can understand and constructively engage with.

Trust

Trust is about creating a reliable environment that promotes authentic engagement.

Trust can be enhanced through the following principles:

- *The content, entities or claims are verified for authenticity.*
- *The product or service is trustworthy in the eyes of the user.*
- *The company's stance or principles are accessible to the public.*

Trust in a digital environment is critical for consumers and general insurers alike. Consumers want to know that the sum insured calculator is independent and fair. They want to know that the insurer is highlighting and telling them the information that they need to know. They do not want to be tricked or shocked later down the track. They want to know that the fine print won't get them in the end and that nothing is being hidden from them.

Innovative ways to communicate information

With the above principles in mind, Financial Rights put forward the following ideas for consideration and discussion:

Take consumers on a risk mitigation journey

Rather than overwhelming consumers with a mountain of information at purchase time, consumers could be taken through a step by step process identifying the key risks that they are seeking to cover. Using elements of gamification (the application of game playing such as point scoring) and knock out questions, consumers could be assisted on a journey to both understand the risks they face and may need to insure against, but also lead them to a purchasing a suitable product.

Such a process could be used to establish and negotiate individual coverage variations above the minimum standards and higher levels of cover for individually significant risks as outlined above in Financial Rights' standard cover proposal.

Use technology to implement risk mitigation work and improved premium results

The work of Safer Homes above could be expanded to ensure that consumers engage more with their insurance and risks to promote mitigation and feedback into lower premiums.

Comparison tools

While most comparison tools focus on price, a tool could be developed to better compare the elements found in a KFS for easier comparability across a number of KFSs. This would require increased standardisation of information presentation and improved standard definitions.

Use RegTech to better monitor and enforce positive disclosure outcomes

RegTech could provide regulators with confidential and protected access to commercially sensitive algorithms and other black box technologies to examine automated decision making programs. This way they can interrogate such technologies more closely to identify price discrimination and discriminatory practices more generally.

RegTech can also be used to develop market analyses that examine actual consumer outcomes in the general insurance market. Regulators should be provided with detailed market monitoring tools with transaction detail data for everything including sales and quotes data. The information gathered by regulators could also be used to provide information to empower consumers and promote competitive markets.

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

No comment

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

Consideration could be given to developing a sandbox to allow insurers to implement new technological developments for disclosure. A sandbox would exempt insurers from some obligations in exchange for closer monitoring to examine outcomes for consumers and whether they meet set goals.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



Karen Cox
Coordinator
Financial Rights Legal Centre
Direct: (02) 8204 1340
E-mail: Karen.Cox@financialrights.org.au

Appendix A

Financial Rights Legal Centre, *Overwhelmed, An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making*, September 2018.

Appendix B


Professor Justin Malbon, Professor Harmen Oppewal, *(In)effective Disclosure: An experimental study of consumers purchasing home contents insurance*, September 2018

Appendix C – Template Insurance Product Information Document


Xxxxx Insurance
Insurance Product Information Document
Company: <Name> Insurance Company Product: <Name> Policy

[Statement that complete pre-contractual and contractual information on the product is provided in other documents]


What is this type of insurance?
[Description of Insurance]

**What is insured?**

- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx

**What is not insured?**


- ✗ Xxxxxx
- ✗ Xxxxxx
- ✗ Xxxxxx
- ✗ Xxxxxx
- ✗ Xxxxxx

**Are there any restrictions on cover?**


- ! Xxxxxx
- ! Xxxxxx
- ! Xxxxxx
- ! Xxxxxx

**Where am I covered?**


- ✓ Xxxxxx

**What are my obligations?**


- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx

**When and how do I pay?**

Xxxxxx

**When does the cover start and end?**

Xxxxxx

**How do I cancel the contract?**

Xxxxxx