



4 September 2019

Northern Australia Insurance Inquiry, Second Update Report
GPO Box 520, Melbourne, VIC 3001
by email: insurance@acc.gov.au

Dear ACCC

Northern Australia Insurance Inquiry, Second Update Report

Thank you for the opportunity to comment again on Northern Australia Insurance Inquiry. We strongly support all 28 recommendations that the ACCC has now made to governments and industry. We echo the ACCC's call for governments and industry to act quickly on all 28 recommendations that have now been made as a part of this inquiry.

Focus area 1: Measures to improve affordability and availability

The measures proposed in the Second Update Report are reminiscent of those measures discussed by the Northern Australia Insurance Premiums Taskforce (**NAIPT**) in its inquiry in 2015. Financial Rights has attached our submission to the NAIPT's interim report because our comments in that submission are very relevant to the ACCC's questions under Focus Area 1. Within that submission we comment specifically on the advantages and disadvantages of a reinsurance pool or a government funded mutual insurer.

In general Financial Rights only supports direct government intervention measures that are going to be sustainable and can be applied nationally.

We support the Government's examination of the difficulties faced by northern Australians in acquiring affordable insurance. Those in northern Australia face uniquely extreme risks by virtue of the climate, environment and geography of northern Australia. However, the presence of high frequency natural disaster events is not uniquely limited to this region. The problems faced by those in northern Australia in gaining affordable insurance premiums are also experienced by Australians in other regions of the country where they too faced with a unique set of geographical, environmental and climate-based challenges. While cyclone, storm surges and floods are the key issues in northern Australia, high level flood risk is a significant issue to those in for example, the Hawkesbury-Nepean Valley, the Gold Coast and the Northern Rivers, and extreme bushfire risk remains central to the lives of those in the Victorian Alpine region and the Blue Mountains.

Private and public mitigation measures

Financial Rights thinks mitigation measures (both public and private) are the most likely measures to improve affordability and availability of insurance that will be sustainable in the long term. As the ACCC explains, governments can support mitigation efforts by reducing the expense of undertaking private mitigation works through grants or interest free/low interest loans or through tax relief. Governments can also directly invest in large scale mitigation projects. We strongly support both examples of private natural disaster risk mitigation initiatives that are included in the ACCC's Second Updated Report.

However, as the ACCC points out, a major impediment to increased mitigation efforts is the uncertainty around how mitigation measures undertaken by residents or communities will impact on premiums. We agree that implementing recommendations 27 and 28 will go some way to achieving more certainty.

The following commentary includes points that we have made repeatedly over various inquiries, but they have yet to manifest into any clear recommendations from the ACCC, so they bear repeating.

Contestability

Financial Rights has advocated for many years now that there needs to be more contestability around insurance premiums, especially home building premiums. Homeowners should be empowered to contest decisions made by other parties with respect to their insurance interests including premium pricing and risk assessments and other information provided to and relied upon by insurers and homeowners. Enabling homeowners to challenge, for example, inappropriate, disproportionate or unjustified premium increases, will improve competition and increase knowledge of the risks and promote mitigation strategies.

Currently, the main way premiums or insurers' decisions in relation to offering insurance is "reviewed" is by consumers shopping around to see what other insurers are offering, a mechanism next to useless in northern Australia.

Outside of market forces the only other mechanism available is for an insured to make a request in writing under section 75 of the *Insurance Contracts Act 1986*. An insured however can only use section 75 when either their insurance is cancelled or by reason of some special risk relating to the insured or to the subject-matter of the contract, or when the insurer offers insurance cover to the insured on terms that are less advantageous to the insured than the terms that the insurer would otherwise offer.

However, the *Insurance Contracts Act* and section 75 provide no guidance as to what information the insurer is obliged to provide in its written reasons, and there is no mechanism for review in the event the decision of the insurer is erroneous or based on incorrect information.

In insurance markets with limited suppliers such as Northern Australia, competition is not an adequate mechanism for consumers to 'review' insurance premiums. If all insurers are using incorrect data or not taking into account localised factors, then competition fails.

As a possible alternative, a consumer may make an application to the Australian Financial Complaints Authority (AFCA). However AFCA has a very limited decision making power when it comes to reviewing premiums:

We also can't consider complaints that are only about the level of a fee, premium, charge, rebate or interest rate – unless your complaint is that the cost was not disclosed to you, was misrepresented to you, incorrectly applied, or if the complaint is about a breach of a legal obligation on the part of the financial firm. (AFCA Website describing Rule C.1.2)

and

AFCA must exclude: ... A complaint about rating factors and weightings an insurer under a General Insurance Policy applies to determine the insured's or proposed insured's base premium that is commercially sensitive information. (AFCA Rule C.1.4.c)

It is Financial Rights' view that insurers should not be able to hide behind vague reasons and unsubstantiated assertions about how premiums are priced. They should have to substantiate premium pricing across all forms of insurance. In the home and contents space it is essential.

The failure of industry to have any mechanism of review of the accuracy of premium calculations is of significant detriment to consumers. This failure also provides no guarantee that any household mitigation strategies or idiosyncratic household conditions are taken into account when determining premiums. Consequently, premium prices cannot be said to be "accurate" signaling of risk as there is no contestability or transparency in their calculation.

A consumer may reject the premium as an inaccurate reflection of their risk, and where there are few insurers in the market place (or they are all relying on the same incorrect information) a consumer may decide to self-insure or be forced to be uninsured not only for the risk of the hazard but for all claims (where they cannot get any level of cover).

If a robust dispute mechanism was in place creating greater transparency and contestability of premium pricing, Financial Rights expects the following benefits to arise:

- a) consumers may be persuaded they are at risk, and decide to incur the cost to insure;
- b) consumers may undertake personal mitigation strategies; or
- c) consumers may lobby local government for local mitigation strategies.

In the absence of this information, consumers are in the dark and may be making poor decisions. If they could have a premium pricing decision reviewed by an independent body, consumers may be more likely to believe the risk assessments on their properties.

Recommendations

1. The Financial Rights Legal Centre recommends the following approaches to promote pricing contestability, disclosure and transparency:
 - a. Amend s 75 of the Insurance Contracts Act 1984 requiring insurers to provide written reasons for why premiums were increased on request in writing from a policy holder.

These reasons should include any increased risk factor that the insurer has become aware of.

- b. Alternatively, if legislative change is not feasible, the General Insurance Code of Practice should be amended to include a requirement for the insurer's IDR team to provide reasons for significant premium increases after a request in writing by the policy holder.
- c. Change AFCA Complaint Resolution Scheme Rules to allow disputes about the level of a premium if there has been an unfavourable change to an insurance policy (or if the insured has recently undertaken mitigation strategies on their home which have not resulted in a reasonable reduction of premiums) and the insurer's IDR response has failed to include adequate reasons for the change.

Independent Assessment

Financial Rights supports the development of an independent assessment process to determine the vulnerability of a house to cyclone or other damage arising out of an extreme weather event and to verify what mitigation work has been undertaken.

The biggest advantage of establishing an independent assessment process is that it will give insurers the verification they need to reduce premiums, which will in turn incentivise mitigation action by homeowners. Again, homeowners will only be incentivised to undertake mitigation projects on their own properties if there is some certainty around a corresponding reduction in insurance premiums.

Consumers respond very positively to independent assessment and review mechanisms. Consumers will not always trust an insurer to give them an honest answer about their risk or the corresponding cost of indemnification. An independent process is often seen as much more reliable.

The disadvantage of a scheme like this is that it would cost money. Would it be industry funded, Government funded, or funded by homeowners that want to use it? If the answer is the latter, this will not help with affordability issues, and it is not much different from a homeowner paying for a builder to come assess their property. Financial Rights recommends that an independent assessment process be at least partially funded by industry or the Government.

Recommendations

2. The Financial Rights Legal Centre supports:
 - a. the development of an independent inspection process to determine the vulnerability of a property to extreme weather events;
 - b. an independent assessment process at least partially funded by industry or Government;

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,



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About Financial Rights

Financial Rights 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.