

5 February 2018

Via website portal

Dear Sir/Madam

**ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND  
FINANCIAL SERVICES INDUSTRY**

**SUBMISSION FROM THE INSURANCE COUNCIL OF AUSTRALIA**

The Insurance Council of Australia (the Insurance Council) is the representative body of the general insurance<sup>1</sup> industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. They provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, professional indemnity, commercial property, and directors and officers insurance).

The industry employs approximately 60,000 people and on average pays out about \$132.8 million in claims each working day. September 2017 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$45.1 billion per annum and has total assets of \$118.1 billion.

Through the efficient management of risk, the general insurance industry plays an essential role in supporting the everyday activities of individual Australians, communities and the broader operation of the Australian economy. In particular, the industry plays a critical role in protecting the financial well-being of individuals, households and communities by restoring their standard of living and helping communities recover following natural catastrophes.

The role of the general insurance industry in helping communities recover from natural catastrophes in recent years is significant not only in terms of the billions of dollars of claims paid, but also because of the evolving risk mitigation and emergency management initiatives that make for more resilient Australian communities. The Insurance Council estimates that insurance losses from declared catastrophe events in Australia over the past 2 decades total around \$25 billion.<sup>2</sup>

The role of the Insurance Council is:

***“... to influence, ethically and expertly, the political, social, business and economic environment in order to promote members' roles in providing insurance protection and security to the community.”***

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<sup>1</sup> General insurance is a different set of products to life and health insurance and is subject to very different regulatory regimes.

<sup>2</sup> Insurance Council of Australia, [Catastrophe Database](#). Estimated loss value from 1997 to 2016 inclusive (in original dollars).

An important part of fulfilling this mission is the support provided by the Insurance Council to members as they work to improve consumer outcomes. To this end, the Insurance Council's operational priorities for 2018 include:

- assisting consumers through improved disclosure;
- supporting market efficiency; and
- building trust in the insurance market.

These initiatives reflect the blend of industry innovation and self-regulation with the formal regulatory framework which strongly underpins the provision of general insurance in Australia. While the regulatory regime provides an important guarantee of consumer protections, industry because of its closeness to the consumer is better placed to pursue improved consumer outcomes in light of evolving community needs and expectations.

In recent years, technological change has driven transformation of the consumer experience when buying general insurance. Widespread use of the internet, interactive digital mobile technology and social networks is changing the ways consumers want to engage with insurers. These changes, coupled with the expanding role the industry has in building more resilient communities through its unique holding of risk data, have shifted consumer expectations around the role of the insurer.

The longstanding General Insurance Code of Practice (the Code) embodies the industry's commitment to service standards which go beyond the law in meeting the needs of insureds. The Code is intended to be a living document that reflects changes in community expectations over time. The Code has been reviewed and amended four times since its inception in 1994, and the Insurance Council is currently conducting a wide-ranging review to ensure it remains fit for purpose.

In view of the significance of community standards and expectations in the terms of reference of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission), the Insurance Council would like to outline to the Royal Commission the many industry initiatives undertaken in the last decade to promote better consumer outcomes and the reviews and inquiries which formed the background to this work.

The attached submission covers four broad areas:

- disclosure and advice;
- distribution;
- premium value; and
- vulnerable consumers.

While recognising that the Royal Commission is free to inquire into any matter relevant to its terms of reference, the information in this submission may be relevant to its decision whether in relation to general insurance, a matter:

***“... has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.”<sup>3</sup>***

If you have any questions or comments in relation to this information, please contact Mr John Anning, the Insurance Council’s General Manager Policy, Regulation Directorate, on tel: (02) 9253 5121 or email: [janning@insurancecouncil.com.au](mailto:janning@insurancecouncil.com.au).

Yours sincerely



Robert Whelan  
Executive Director and CEO

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<sup>3</sup> Letters Patent for the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 14 December 2017, page 3.

**INQUIRIES, REFORMS & INITIATIVES  
TO IMPROVE CONSUMER OUTCOMES IN  
GENERAL INSURANCE**

Submission from the  
Insurance Council of Australia

5 February 2018

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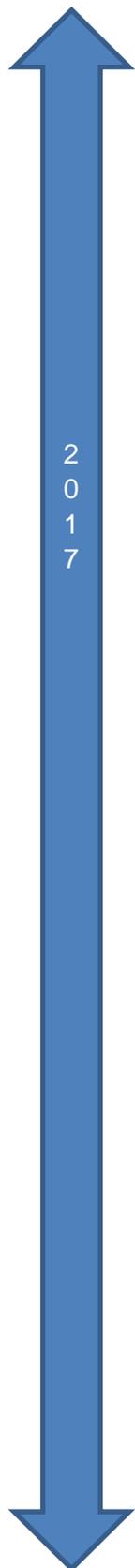
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## 1. TIMELINE OF RECENT REVIEWS AND INQUIRIES

In recent years, there has been numerous government, regulator and industry initiated reviews and inquiries aimed at improving outcomes for consumers of general insurance products. The timeline below summarises some of the key reviews that have resulted in significant reforms and initiatives.

	<b>Inquiry/initiative</b>	<b>Key reforms/outcomes</b>
2 0 1 1	Natural Disaster Insurance Review	<ul style="list-style-type: none"> <li>• A legislated standard definition of flood</li> <li>• A legislated requirement for insurers to provide Key Facts Sheet (KFS) disclosure documents for home building and contents insurance policies.</li> </ul>
	Review of the Sale of Consumer Credit Insurance	<ul style="list-style-type: none"> <li>• ASIC recommendations and ongoing monitoring on improvements to sales processes for CCI.</li> </ul>
	Review of Strata Title Insurance Price Rises in North Queensland, AGA	<ul style="list-style-type: none"> <li>• Concluded that strata insurance premium increases leading up to 2011-12 are actuarially justified.</li> </ul>
2 0 1 4	Financial System Inquiry	<ul style="list-style-type: none"> <li>• Draft legislation currently under consultation to introduce product design and distribution obligations for issuers and distributors.</li> <li>• Draft legislation currently under consultation to provide ASIC with product intervention powers.</li> <li>• ASIC Enforcement Taskforce has proposed wide-ranging enhancements to ASIC's powers over 2017, including increasing civil and criminal penalties and the extension of ASIC's powers to make directions.</li> </ul>
	Review of Home and Contents Prices in North Queensland, AGA	<ul style="list-style-type: none"> <li>• Concluded that home and contents insurance premium increases since 2005-06 are actuarially justified.</li> <li>• Establishment of a North Queensland Comparison website run by ASIC.</li> </ul>
2 0 1 5	Review of the Sale of Home Insurance, ASIC	<ul style="list-style-type: none"> <li>• Improvements to insurer sales processes, including incorporating sum insured calculators into point of sale processes for home insurance.</li> </ul>
	Northern Australian Insurance Premiums Taskforce	<ul style="list-style-type: none"> <li>• Government provision of \$12.5 million for the development and management of a strata title inspection scheme in north Queensland.</li> </ul>



Effective Disclosure  
Taskforce, ICA

Inquiry into General  
Insurance, Senate  
Economics References  
Committee

Review of the General  
Insurance Code of  
Practice, ICA

Own Motion Inquiry into  
CCI and Add-on  
Insurance, Code  
Governance Committee

Review of Competition in  
the Australian Financial  
System, Productivity  
Commission

Inquiry into the Supply of  
Insurance in Northern  
Australia, ACCC

Australian Consumer Law  
Review

- ACCC tasked with the monitoring of home, contents and strata insurance premiums in Northern Australia.
- Industry-wide work program being developed to enhance the effectiveness of disclosure, including to facilitate consumer comparison of products across the market.
- Benchmarking of consumer experiences with disclosure through research.
- Treasury has been tasked with exploring law reform to require insurers to disclose the previous year's premium and the potential extension of the KFS to other insurance products.
- The General Insurance Code of Practice is being reviewed with key proposals to strengthen standards relating to vulnerable consumers, disclosure, product design and distribution, third party distributors and investigations.
- Outcomes pending.
- Self-initiated review by the Code Governance Committee currently underway to explore any gaps in the Code regarding the distribution of products.
- Outcomes pending.
- The Government has commissioned the Productivity Commission to review competition in Australia's financial system with a view to improving consumer outcomes.
- Outcomes pending.
- The Government has commissioned the ACCC to review the pricing and availability of home, contents and strata insurance to consumers in northern Australia.
- Outcomes pending.
- The Government has announced that Treasury will consult in early 2018 on applying unfair contract terms protections to contracts regulated by the *Insurance Contracts Act 1984*.
- Outcomes pending.

## 2. EXECUTIVE SUMMARY

In sections 4 to 7 we address in detail the work of previous reviews and inquiries in each of the key focus areas, relevant outcomes and the status of the current, ongoing initiatives. This work is also summarised below.

### Disclosure and Advice (Section 4)

Issues around adequate disclosure have been the subject matter of a number of reviews and inquiries:

- (2011) Natural Disaster Insurance Review (see 4.2.1);
- (2013) Consultation on Information Sheet for Lenders' Mortgage Insurance (LMI) (see 4.2.2);
- (2014) Financial System Inquiry (FSI) (see 4.2.3);
- (2014) ASIC Review of the Sale of Home Insurance (see 4.2.4);
- (2015) Productivity Commission Inquiry into Disaster Funding (see 4.2.5);
- (2015) ICA Effective Disclosure Taskforce (see 4.2.6);
- (2017) ICA Research into Consumer Behaviour (see 4.2.7); and
- (2017) Inquiry into General Insurance by the Senate Economics References Committee (see 4.2.8).

We also note that the Insurance Council is in the process of developing a program of industry-wide changes to secure better disclosure (ICA Work on Effective Disclosure (see 4.3.1)). Further, the Insurance Council is considering changes to the General Insurance Code of Practice (the Code) which would include specific guidance on how to maximise the effectiveness of product disclosure (see 4.3.2).

### Distribution (Section 5)

In recent years, distribution issues have been the subject of close scrutiny and regulatory action, particularly by ASIC:

- (2011) ASIC Reviews into the Sale of Consumer Credit Insurance (CCI) (see 5.2.1);
- (2016) ASIC Review of General Insurance sold through Car Dealerships (see 5.2.2);
- (2017) Draft Legislation on Product Design and Distribution (see 5.2.3);
- (current) Review of the GI Code (see 5.3.1);
- (current) Review of CCI and Other Add-on Insurance by the GI Code Governance Committee (CGC) (see 5.3.2); and
- (current) ASIC Consideration of the Regulation of General Insurance sold through Car Dealerships (see 5.3.3).

Following its extensive work on this area, ASIC has sought to implement a number of changes including in relation to CCI and general insurance products sold through car

dealerships (see pages 21-23 for a summary of these initiatives). A number of remediation programs have also been put in place (see details at page 24). Additionally, the review of the Code is considering specific changes to address the distribution issues already identified by ASIC.

### **Premium Value (Section 6)**

Issues of premium price levels and affordability have been pursued through a number of reviews:

- Reviews by the Australian Government Actuary (AGA) of Insurance Pricing in Northern Australia (see 6.2.2):
  - (2012) Report on Investigation into Strata Title Insurance Price Rises in North Queensland (see 6.2.2.1);
  - (2014) Second Report on Investigation into Strata Title Insurance Price Rises in North Queensland (see 6.2.2.2); and
  - (2014) Report on Home and Contents Insurance Prices in North Queensland (see 6.2.2.3).
- (2016) Northern Australian Insurance Premiums Taskforce (see 6.2.3); and
- (2017) Inquiry into General Insurance by the Senate Economics References Committee (see 6.2.4).

The Government is currently proceeding with a set of reforms to place downward pressure on premiums through increased accountability and transparency within the industry, together with proposals to increase consumer understanding of insurance products. The Government has also acted on a number of recommendations from previous inquiries (see details in section 6).

### **Vulnerable Consumers (Section 7)**

The accessibility of insurance to vulnerable consumers and consumers with specific needs have been the subject of various Government and industry led reviews:

- (2009) Senate Economics Legislation Committee: Consideration of Unfair Contract Terms (UCT) Protections and Insurance Contracts (see 7.2.1);
- (2011) Realising the Economic Potential of Older Australians (Advisory Panel on the Economic Potential of Senior Australians) (see 7.2.2);
- (2012) Senate Legal and Constitutional Affairs Committee: Comment on Mental Health and Insurance (see 7.2.3);
- (2012) Consultation Process on UCT under Assistant Treasurer Bradbury (see 7.2.4);
- (2013) Access All Ages – Older Workers and Commonwealth Laws (ALRC) (see 7.2.5);
- (2013) Volunteers, Age and Insurance (Anti-Discrimination Commissioner Tasmania) (see 7.2.6);
- (2013) Insurance Reform Advisory Group (see 7.2.7);

- (2015) Age Discrimination and Insurance (Australian Human Rights Commission – AHRC) (see 7.2.8);
- (2015) Australian Consumer Law (ACL) Review (see 7.2.9);
- (current) Review of the GI Code (see 7.3.1); and
- (current) Victorian Equal Opportunity & Human Rights Commission (VEOHRC) investigation into potential unlawful discrimination of people with mental health issues in Victorian travel insurance industry (see 7.3.2).

In response to these reviews, the Insurance Council is undertaking a number of initiatives, including exploring how unfair contract terms could be incorporated into the *Insurance Contracts Act 1984 (C'th)* (the Insurance Contracts Act) and how to strengthen standards in the Code in relation to vulnerable customers (see details in section 7).

## Conclusions

In our respectful submission, these reviews and outcomes are consistent with the Royal Commission's terms of reference and demonstrate the commitment of the insurance industry to understand and respond to issues and community concerns, to implement reform and to provide all stakeholders with a high standard of service in line with community expectations.

We therefore request the Royal Commission takes these outcomes into account when considering if any matter has been sufficiently dealt with in any another inquiry or investigation.

### 3. REGULATION OF GENERAL INSURANCE IN AUSTRALIA

#### 3.1. Legislative Protections

##### 3.1.1. Insurance Contracts Act

Australian consumers when purchasing general insurance benefit from robust protection provided by the detailed provisions of the Insurance Contracts Act. When it was introduced into Parliament in December 1983, the Act's purpose was expressed as:

- to improve the flow of information between the insurer and insured so that the insured can make an informed choice as to the contract of insurance he enters into and is fully aware of the terms and limitations of the policy, and
- to provide a uniform and fair set of rules to govern the relationship between the insurer and insured.<sup>4</sup>

The preamble to the Insurance Contracts Act describes it as:

*"An Act to reform and modernise the law relating to certain contracts of insurance so that a fair balance is struck between the interests of insurers, insureds and other members of the public and so that the provisions included in such contracts, and practices of insurers in relation to such contracts, operate fairly, and for related purposes."*

Insurance is a rare but important example where, decades ago, Parliament had the forethought to establish a comprehensive set of rights and obligations specifically around the insurance contract. Importantly, amendments made to the Insurance Contracts Act in 2013 strengthened the protections available to insureds. In particular, the changes:

- removed impediments to the use of electronic communication for statutory notices and documents;
- gave increased powers to the regulator, the Australian Securities and Investments Commission (ASIC), to take action to address breaches of the duty of utmost good faith by insurers, including in respect of claims handling; and
- made the duty of disclosure easier for consumers to understand and comply with, especially at renewal of household/domestic insurance contracts.<sup>5</sup>

For more details see 7.2.8.

##### 3.1.2. Australia's Conduct Regulation Framework

As well as the obligations under the Insurance Contracts Act, general insurance products are also subject to the comprehensive financial services regulatory regime under chapter 7 of the *Corporations Act 2001 (C'th)* (the Corporations Act).

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<sup>4</sup> See Senate Hansard, 1 December 1983, pages 3134-3138.

<sup>5</sup> The Hon. Bill Shorten, Minister for Financial Services, [Media release](#): 'Less red tape for insurers, better protection for consumers', 20 June 2013.

Importantly, the Corporations Act requires all providers of financial services to obtain an Australian Financial Services Licence (AFSL). The obligations applying to Licensees include to:

- do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly (section 912A(1)(a));
- have in place adequate arrangements for the management of conflicts of interest that may arise (section 912A(1)(aa));
- ensure that its representatives are adequately trained, and are competent, to provide the financial services covered by the licence (section 912A(1)(f));
- have a dispute resolution system if providing services to a retail client (section 912A(1)(g)); and
- have arrangements for compensating retail clients for loss or damage suffered because of breaches to financial services law (section 912B).

In granting an AFSL, ASIC is empowered to impose, vary or revoke conditions on a licence – ASIC may also suspend or cancel a licence.

A significant part of the conduct regulation framework aims to ensure transparency in the sale of financial products through a comprehensive disclosure regime. General insurers are required to provide consumers with a Product Disclosure Statement (PDS) outlining information about any significant benefits, costs, terms and conditions of the policy.

This obligation is in addition to the Insurance Contracts Act, which requires the disclosure of any non-standard term as well as any unusual term in policies. For home building and home contents insurance products, insurers are also required to provide a Key Facts Sheet (KFS) providing a summary of a policy's coverage in respect of key prescribed events (such as flood, storm, actions of the sea, etc.).

### **3.1.3. Australia's Prudential Regulation Framework**

Additionally, the prudential regulation framework overseen by the Australian Prudential Regulation Authority (APRA) provides an important mechanism for protecting insurance policyholders.

The FSI Interim Report emphasised<sup>6</sup> that prudential regulation is a fundamental consumer protection mechanism, which operates as a preventative measure to promote sustainable financial institutions that can deliver on their financial promises.

APRA promotes safety and soundness in business behaviour and risk management by the institutions it supervises. It establishes and enforces prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by the institutions it supervises are met within a stable, efficient and competitive financial system.<sup>7</sup> If an APRA-regulated institution becomes financially distressed, APRA has the primary responsibility for ensuring its return to health or managing its orderly failure.

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<sup>6</sup> Financial System Inquiry [Interim Report](#). Page 3-50, refers. Released July 2014.

<sup>7</sup> APRA [website](#), 'APRA Vision, Mission and Values'.

APRA also has responsibility for administering the Financial Claims Scheme (the Scheme), which is an Australian Government scheme of last resort for compensation that applies to depositors of authorised deposit-taking institutions and general insurance policyholders.

The purpose of the Scheme is to protect depositors of authorised deposit-taking institutions (banks, for example) and general insurance policy holders from potential loss due to the failure of these institutions.<sup>8</sup> In the unlikely event that a general insurer fails and cannot meet its financial obligations, such as to payout claims to its policy holders, the Government may activate the Scheme to provide general insurance policyholders and other claimants with access to funds to meet insurance claims.

#### **3.1.4. State and Territory Regulation**

General insurance is also impacted by regulation at the State and Territory level. Some insurance covers such as Workers' Compensation and Compulsory Third Party motor vehicle insurance are provided in accordance with State and Territory government mandated schemes. Consumer protection legislation and some specific insurance laws also apply (to the extent not inconsistent with Commonwealth law). Furthermore, general insurance is also usually subject to State and Territory stamp duties and in NSW, an Emergency Services Levy.

### **3.2. Industry Self-regulation**

The objectives of the Code are:

- commitment to high standards of service;
- promotion of better, more informed relations between insureds and insurers;
- maintenance and promotion of trust and confidence in the general insurance industry;
- provision of fair and effective mechanisms for the resolution of complaints and disputes; and
- promotion of continuous improvement of the general insurance industry through education and training.

As emphasised by ASIC<sup>9</sup>, codes sit at the apex of industry self-regulatory initiatives. A code is a set of enforceable rules that sets out a progressive model of conduct and disclosure for industry members that are signed up.

A distinct advantage of a code is that it is a living document, with inherent flexibility, enabling it to respond quickly to changing consumer expectations and needs. For example, after the significant impact of natural disasters in 2010-11 (most notably the Queensland floods and Cyclone Yasi), improvements were made to the catastrophe provisions in the Code in response to public feedback. The quick revision of Code provisions delivered enhanced

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<sup>8</sup> Reserve Bank of Australia, Council of Financial Regulators [website](#), 'Financial Claims Scheme'.

<sup>9</sup> Australian Securities and Investments Commission [Regulatory Guide 183](#), 'Approval of financial services sector codes of conduct'. Page 4 refers. Released March 2013.

consumer protection at a speed unlikely to have been achieved through legislative or other regulatory mechanisms.

In 2017, the Insurance Council commenced a targeted review of the Code to ensure the standards it sets are aligned with community expectations (see section 7.3.1). The Insurance Council has released, for consultation, an Interim Report proposing a number of amendments to the Code to strengthen standards in relation to:

- vulnerable consumers;
- product disclosure;
- product design and distribution;
- third party distributors; and
- investigations.

### 3.3. External Dispute Resolution

As part of their licensing, the Corporations Act requires general insurers to be a member of an external dispute resolution scheme. Almost all general insurers choose to be members of the Financial Ombudsman Service (FOS).

The FOS is an independent umpire that provides free, fair and accessible dispute resolution for consumers that are unable to resolve a dispute directly with their general insurer.

External dispute resolution processes can help to resolve disputes through negotiation or conciliation as an alternative to court proceedings and can make decisions which are binding on participating general insurers. In dealing with disputes, the FOS:

- *“must do what in its opinion is appropriate with a view to resolving disputes in a cooperative, efficient, timely and fair manner;*
- *shall proceed with the minimum formality and technicality; and*
- *shall be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations.”<sup>10</sup>*

Clause 8.2 of the ASIC-approved FOS Terms of Reference states that in deciding a dispute:

*“... FOS will do what in **its opinion is fair** [our emphasis] in all the circumstances...”<sup>11</sup>*

In this regard, the FOS has to have ‘regard’ to the law, industry codes, good industry practice and previous FOS decisions; but is not bound by them. In this sense, FOS has a de-novo jurisdiction to review contract terms that might be unfair.

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<sup>10</sup> Financial Ombudsman Service [Terms of Reference](#), effective from January 2015. Clause 1.2 refers.

<sup>11</sup> Financial Ombudsman Service [Terms of Reference](#), effective from January 2015. Clause 8.2 refers.

## 4. DISCLOSURE AND ADVICE

### 4.1. Background

The financial services regime which was introduced into the Corporations Act by the *Financial Services Reform Act 2001 (C'th)* sought to gain advantages from applying a general model of regulation across all regulated financial services. This was soon recognised as being problematic for general insurance in relation to disclosure of product information to consumers and the provision of financial advice. The regime focuses too much on the provision of information without enabling a fuller consideration of an individual's specific insurance needs.

In a comprehensive industry-initiated review of the effectiveness of disclosure in 2015 (see 4.2.7), the industry found several key challenges in meeting the objectives of disclosure, including:

- consumer distrust of insurers, leading to disengagement with disclosure documents (Insurance Council research confirmed that only 2 in 10 consumers referred to the PDS prior to purchasing a policy);
- the length and complexity of disclosure (including the complexity of insurance policies themselves);
- the difficulty for consumers in making product comparisons, particularly due to variations in terminology and definitions used;
- identified information gaps, particularly in relation to natural hazard risk data;
- consumer behavioural biases that leads to poor decision-making; and
- low levels of financial literacy impeding comprehension of basic insurance concepts.

The numerous reviews and inquiries relevant to disclosure have attempted to address some of these challenges. Despite various reform efforts (such as allowing PDSs and Financial Services Guides to be combined), dissatisfaction both by industry and consumer advocates with the operation of the regulatory regime continues, and the Insurance Council and its members have engaged since 2015 in a major project to improve consumer outcomes.

### 4.2. Past Reviews/Inquiries

#### 4.2.1. *Natural Disaster Insurance Review (NDIR)*

<http://www.ndir.gov.au/content/Content.aspx?doc=home.htm>

Following strong public and political dissatisfaction with the response by the general insurance industry to the flood and cyclone events of 2010 and 2011, as part of its remit, the NDIR considered whether the effectiveness of product disclosure was a contributing factor to non-insurance and underinsurance for flood and other natural disasters in Australia. Its Final Report was publicly released on 14 November 2011.

It recommended and the Government acted to legislate a standard definition of 'flood'. The Government's response of 14 November 2011 (the same day as release) also accepted the recommendation to require insurers to provide their customers with a Key Facts Sheet (the KFS) for all home and home contents policies. The KFS sets out, on a single page, all key information about the features of the policy. It complements the existing PDS. The KFS was

introduced prior to comprehensive consumer testing and a review has been recommended to verify whether it serves a useful purpose in its current form.<sup>12</sup>

#### **4.2.2. Information Sheet for Lenders' Mortgage Insurance (LMI)**

On 4 April 2013, the Australian Treasury released for public comment a Discussion Paper on possible changes to the format, content and timing of disclosure requirements under the *National Consumer Credit Protection Act 2009 (C'th)* for both credit providers and lessors. It included a proposal for an Information Sheet to be provided to borrowers explaining how LMI works. The initiative was not pursued with the change of Government following the 2013 election.

However, the Insurance Council continued the work that had taken place and, with the co-operation of both Treasury and ASIC, in February 2014 finalised an LMI information sheet. This is available on the Insurance Council and ASIC websites<sup>13</sup> and was provided to the Australian Bankers' Association (ABA) for use by its members.

The Review of the Code of Banking Practice which reported in early 2017 recommended that:

*The ABA and signatory banks should develop a fact sheet that explains lenders mortgage insurance to home loan borrowers. The Code should require this to be provided to a Code customer who is required by a signatory bank, as a condition of their home loan, to obtain lenders mortgage insurance.*<sup>14</sup>

The Insurance Council notes that ABA members accept additional information on LMI would be useful. However, the preference, given the differences that exist between LMI policies, is for lenders to develop their own fact sheet templates.

#### **4.2.3. Financial System Inquiry (FSI)**

<http://fsi.gov.au/>

By laying out a 'blueprint', the FSI sought to establish a direction for the future of Australia's financial system. Finding the regulatory regime for general insurance to be overall satisfactory, a small number of the FSI's recommendations released on 7 December 2014 dealt with product disclosure and advice for general insurance:

- *Recommendation 23 Facilitate innovative disclosure* – Remove regulatory impediments to innovative product disclosure and communication with consumers, and improve the way risk and fees are communicated to consumers.
- *Recommendation 26 Improve guidance and disclosure in general insurance* – Improve guidance (including tools and calculators) and disclosure for general insurance, especially in relation to home insurance.

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<sup>12</sup> Senate Economics References Committee, Inquiry into General Insurance [report](#), 'Australia's general insurance industry: Sapping consumers of the will to compare'. Pages 39-42 and Recommendation 7 refer. Released August 2017.

<sup>13</sup> Insurance Council of Australia [website](#). Australian Securities and Investments Commission's MoneySmart [website](#).

<sup>14</sup> Insurance Council of Australia, General Insurance Code of Practice 2017 Review, [Interim Report](#). November 2017.

The Government's response of 20 October 2015<sup>15</sup> endorsed the Insurance Council's proactive initiative of establishing an Effective Disclosure Taskforce:

In relation to Recommendation 23:

*"The Government agrees that regulatory impediments to innovative product disclosure should be removed. We note efforts led by ASIC and the industry to promote innovative product disclosure. With the benefit of information received from these processes, we will develop legislation to remove any regulatory impediments identified when those processes are complete in 2017."*

In relation to Recommendation 26:

*"The Government agrees to support industry-led initiatives, including supporting specific proposals put forward by industry, to increase guidance and disclosure in general insurance, recognising that work is already underway."*

Another of the FSI's recommendations dealt with financial advice:

- Recommendation 40 *Provision of financial advice* – Rename 'general advice' and require advisers and mortgage brokers to disclose ownership structures.

The Government agreed to consult with a wide range of stakeholders on renaming general advice and to conduct consumer testing. However, the Australian Treasury has not yet undertaken this consultation.

#### **4.2.4. ASIC Review of the Sale of Home Insurance**

<http://www.asic.gov.au/media/2195188/rep415-published-28-october-2014.pdf>

The recent natural disasters in Australia revealed a gap between a consumer's understanding of the scope of their home insurance and the actual terms of their policy. In 2013, ASIC examined the experience of consumers when inquiring about or purchasing home insurance.<sup>16</sup>

ASIC's report of 28 October 2014 made a number of observations on good practice which would reduce the risk of consumers buying insurance that does not meet their needs. These covered:

- telephone sales calls and scripts;
- online sales;
- online calculators;
- advertising;
- staff training; and
- staff monitoring.<sup>17</sup>

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<sup>15</sup> The Hon Scott Morrison, Treasurer; the Hon Malcolm Turnbull, Prime Minister; and the Hon Kelly O'Dwyer, Minister for Small Business and Assistant Treasurer, [Joint media release](#): 'Government response to the Financial System Inquiry', 25 October 2015.

<sup>16</sup> Australian Securities and Investments Commission, [Report 415](#): Review of the sale of home insurance, 28 October 2015, page 4.

<sup>17</sup> Australian Securities and Investments Commission, Op. cit., page 7.

A follow up review conducted by ASIC in March 2016 found insurers had made significant changes in line with ASIC's recommended good practices.<sup>18</sup>

#### **4.2.5. Productivity Commission Inquiry into Disaster Funding**

<http://www.pc.gov.au/inquiries/completed/disaster-funding#report>

As part of the Productivity Commission's Final Report for this inquiry released on 1 May 2015, Recommendation 4.9 proposed:

*"Insurers should provide additional standardised information to households regarding their insurance policies, the natural hazards they face and indicative costs of rebuilding after a natural disaster. This work should be led by the Insurance Council of Australia developing guidelines within one year, to ensure consistency in the provision and presentation of this information across insurers."*<sup>19</sup>

The Government's response of 22 December 2016 supported the recommendation that the industry lead this work.<sup>20</sup> This work has been taken up in looking at the issues considered by the Senate Economic References Committee inquiry into General Insurance (see 4.2.8).

#### **4.2.6. ICA Effective Disclosure Taskforce**

<http://www.insurancecouncil.com.au/issue-submissions/reports/too-long-didnt-read-enhancing-general-insurance-disclosure>

While the comprehensive product disclosure regime provides the foundation for transparency, the industry has recognised that the provision of mandated disclosure documents, without a clear objective to aid decision-making, has not always effectively engaged consumers. This is a challenge for consumer contracts of all kinds around the world. While the regulatory consumer protections are essential, the industry has recognised the importance of empowering consumer decision-making to help prevent poor consumer outcomes from occurring in the first instance. (This matter was also identified by the FSI – see 4.2.3 above.)

Taking on this challenge, the Insurance Council Board established an independent Effective Disclosure Taskforce (the Taskforce) in 2015 to assess the effectiveness of, and recommend initiatives to enhance, disclosure. The Taskforce consisted of experts from the industry, consumer movement, academia and the field of behavioural sciences. The report<sup>21</sup> handed down by the Taskforce in 2015 made 16 recommendations, which were endorsed in full by the Insurance Council Board. Key recommendations include:

- an industry shift from a minimum mandated disclosure approach to best practice transparency to better assist consumers to choose a product that meets their needs;
- that insurers explore and adopt new forms of electronic disclosure that enable information to be delivered in more relevant and personalised ways;

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<sup>18</sup> Australian Securities and Investments Commission, [Media release](#): '16-053MR ASIC calls for further improvements from home insurers'. 1 March 2016.

<sup>19</sup> Productivity Commission, [Final Report](#): Inquiry into Disaster Funding, 1 May 2015, page 45.

<sup>20</sup> Australian Government, [Response](#): 'Australian Government response to the Productivity Commission Inquiry into Natural Disaster Funding Arrangements', 22 December 2016, page 4.

<sup>21</sup> Insurance Council of Australia, Effective Disclosure Taskforce, 'Too Long; Didn't Read. Enhancing General Insurance Disclosure', [Report](#) to the Board of the Insurance Council of Australia. October 2015.

- the Insurance Council and industry should work with ASIC and the Government to improve the advice regime in order to enable the disclosure of more targeted information to consumers; and
- the Insurance Council and the industry should conduct a review of product comparability options to identify methods of improving consumer understanding of coverage differences between products.

To ensure that future reforms have positive impacts, the Insurance Council has conducted comprehensive research to better understand how consumers use insurance disclosures and the impact of these disclosures on decision-making at the point of sale (see 4.2.7).

#### **4.2.7. ICA Research into Consumer Behaviour**

<http://www.insurancecouncil.com.au/issue-submissions/reports/consumer-research-on-general-insurance-product-disclosures>

Research<sup>22</sup> conducted by the Insurance Council in late 2016 confirmed that the often subjective process of selecting “the right” policy is tackled by consumers in varied ways, and the industry needs to be nimble and innovative in engaging with a diverse range of consumers. The research also suggests that the industry needs to do more to ensure that consumers are not just focused on the price of a policy, but are cognisant of the importance of selecting the right type and level of cover.

Throughout 2017, the Insurance Council workshopped these research findings with members and is in the process of developing a work program of initiatives to improve the effectiveness of disclosure (see 4.3.1).

#### **4.2.8. Inquiry into General Insurance by the Senate Economics References Committee**

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Generalinsurance](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Generalinsurance)

On 22 November 2016, the Senate referred several matters to the Senate Economics References Committee. In relation to disclosure and transparency, the Committee was to look at:

- transparency in Australia’s home, strata and car insurance industries;
- the effect in other jurisdictions of independent home, strata and car insurance comparison services on insurance cover costs;
- the costs and benefits associated with the establishment of an independent home, strata and car insurance comparison service in Australia;
- legislative and other changes necessary to facilitate an independent home, strata and car insurance comparison service in Australia; and
- any related matters.

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<sup>22</sup> Insurance Council of Australia, [Research report](#): ‘Consumer research of general insurance disclosures’. February 2017.

In its report released on 10 August 2017, the Committee made the following recommendations relevant to disclosure (recommendations relevant to other aspects of general insurance are covered elsewhere in this submission):

- Recommendation 3: The Government strengthen 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.
- Recommendation 4: The Government initiate a review of component pricing to establish a framework for amending the Corporations Act to provide component pricing of premiums to policyholders upon them taking out or renewing an insurance policy, as well as an assessment of the benefits and risks to making such a change.
- Recommendation 5: The Government initiate an independent review of the current standard cover regime with particular regard to the efficacy of current disclosure requirements.
- Recommendation 6: The Government work closely with industry and consumer groups to develop and implement standardised definitions of key terms for general insurance.
- Recommendation 7: The Government undertake a review of the utility of KFSs as a means of product disclosure, with regard to the:
  - effectiveness of KFSs in improving consumer understanding of home building and contents policies; and
  - merit of extending the use of KFSs to other forms of general insurance.
- Recommendation 8: The Government to complete a detailed proposal for a comparison tool for home and car insurance.
- Recommendation 9: ASIC to undertake a comprehensive review of the efficacy of the North Queensland home insurance website.
- Recommendation 10: The Government consider introducing legislation to mandate compliance with the ACCC's good practice guidance for comparison website operators and suppliers.
- Recommendation 12: The Government strongly consider introducing legislation to require all insurance intermediaries disclose component pricing, including commissions payable to strata managers, on strata insurance quotations.
- Recommendation 13: State and territory governments to strengthen disclosure requirements in relation to the payment of commissions to strata managers.

In its response of 21 December 2017, the Australian Government:<sup>23</sup>

- agreed there was merit in considering further recommendations 3 to 7 and Treasury was tasked with doing so;
- Recommendation 8: noted the limited evidence of the benefits of a government funded comparison website;
- Recommendation 9: undertook to reconsider a review of the NQ home insurance website managed by ASIC after the ACCC had reported on the northern Australia insurance market;
- Recommendation 10: the recommendation was noted;
- Recommendations 12 and 13: The Government noted the responsibilities of the States and Territories in these areas.

### 4.3. Current Reviews/Inquiries

#### 4.3.1. ICA Work on Effective Disclosure

As explained in 4.2.6 and 4.2.7, the Insurance Council continues to work with members to develop a program of industry-wide initiatives to:

- better assist consumers to compare products, including standardising definitions where appropriate;
- better enable consumers to tailor products to suit their individual needs;
- provide more targeted and relevant information to individual consumers, including the provision of more interactive information and tools; and
- better engage consumers and the community about risk and resilience.

The Insurance Council intends to consult widely this year with key stakeholders, including ASIC and consumer advocates in designing and implementing these initiatives.

#### 4.3.2. Review of the General Insurance Code of Practice (GI Code)

<http://codeofpracticereview.com.au/>

In recognition of the work done so far in identifying the components of effective disclosure, the Interim report for the Code Review suggested that principles be included under the Code to guide members on how to maximise the effectiveness of their product disclosures.<sup>24</sup>

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<sup>23</sup> Australian Government, [Response](#): 'Government response to the Senate Economics References Committee report: Australia's general insurance industry: sapping consumers of the will to compare', December 2017.

<sup>24</sup> Insurance Council of Australia, General Insurance Code of Practice 2017 Review, [Interim Report](#). November 2017, pages 16, 17.

## 5. DISTRIBUTION

### 5.1. Background

There have been public and political concern that a combination of factors has led to unsatisfactory outcomes for consumers when purchasing insurance either through third party distributors authorised as representatives of the licensed insurer (for example a motor dealer) or other licensed financial service providers (such as a bank). Key concerns identified by ASIC include:

- monitoring of authorised representatives – whether compliance controls and processes are sufficiently robust to ensure products are sold appropriately;
- training of authorised representatives – whether authorised representatives are sufficiently trained to provide the necessary product information and identify where the sale of a product would be inappropriate;
- sale incentives – that incentives provided by insurers to product distributors do not in certain circumstances motivate inappropriate sales behaviour; and
- alignment of product design and distribution – that products are distributed in accordance with its design, particularly niche products that are designed to meet specific needs of consumers.

This issue has been the subject of intense industry and regulatory scrutiny in recent years.

### 5.2. Past Reviews/Inquiries

#### 5.2.1. ASIC Reviews into the Sale of Consumer Credit Insurance (CCI)

<http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-256-consumer-credit-insurance-a-review-of-sales-practices-by-authorised-deposit-taking-institutions/>

ASIC reviewed CCI policies sold in 2009 by 15 Authorised Deposit-taking Institutions (ADIs) and examined:

- sales and distribution practices;
- sales and claim volumes;
- training and monitoring systems; and
- complaints and breaches.<sup>25</sup>

ASIC Report 256 released in 2011 made a number of recommendations for the sale of CCI in relation to:

- formal sales scripts;
- evidence of consumer consent to purchase CCI;
- disclosure of interest payments;

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<sup>25</sup> Australian Securities and Investments Commission, [Report 256](#) Consumer credit insurance: 'A review of sales practices by authorised deposit taking institutions', 19 October 2011, page 4.

- separate quotes for repayments to the underlying loan and the CCI premium;
- consumers being informed of the duration of a CCI policy where it is not linked to the duration of the underlying credit product;
- PDSs being provided to consumers at the appropriate time;
- consumers being provided with ongoing information about their CCI policy;
- distributors reviewing training programs to ensure they are provided on an ongoing basis and are adequate; and
- monitoring systems to be placed to detect non-compliant sales of CCI.<sup>26</sup>

While these recommendations were directed at ADIs, Insurance Council members undertook to co-operate fully to ensure their implementation.

The Insurance Council is aware that after extensive work on CCI, ASIC has recently brought together representatives from the banking industry and consumer advocates to improve outcomes for consumers, with the establishment of a CCI Working Group. This Group will progress a range of reforms, including a deferred-sales model for CCI sold with credit cards over the phone and in branches.<sup>27</sup>

### **5.2.2. ASIC Review of General Insurance sold through Car Dealerships**

#### 5.2.2.1. Report 470 Buying add-on insurance in car yards: Why it can be hard to say no (released 26 February 2016)

<http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-470-buying-add-on-insurance-in-car-yards-why-it-can-be-hard-to-say-no/>

Due to concerns about the design, cost and sale of add-on insurance products through car dealerships, ASIC undertook consumer research to understand the experience of consumers who bought add-on insurance products through this channel in 2014.<sup>28</sup>

Key findings of the research were:

- many consumers had no awareness of add-on insurance products before entering a dealership to buy a motor vehicle;
- many consumers were actively sold, and sometimes pressured to buy, add-on insurance products both through explicit sales techniques and how the sales process is structured;
- many consumers had a very poor recollection of which policies they purchased, how much each policy cost and what it covered.<sup>29</sup>

A number of observations relevant to behavioural insights were made during the research:

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<sup>26</sup> Australian Securities and Investments Commission, [Report 256](#) Consumer credit insurance: 'A review of sales practices by authorised deposit taking institutions', 19 October 2011, pages 10, 11.

<sup>27</sup> Australian Securities and Investments Commission, [Media release](#): '17-255MR Banks to overhaul consumer credit insurance sales processes', 1 August 2017.

<sup>28</sup> Australian Securities and Investments Commission, [Report 470](#): 'Buying add-on Insurance in Car Yards: Why it can be hard to say no', page 4. 26 February 2016.

<sup>29</sup> Australian Securities and Investments Commission, Op. cit., Table 1.

- Priming – consumers were only offered add-on insurance at or after the point of sale of the vehicle;
- Decision fatigue – the insurance was offered at the end of a long day;
- Information overload – Many consumers received a lot of information and had to make multiple decisions at or around the same time;
- Anchoring – the insurance offered was substantially cheaper than the cost of the vehicle; and
- Price framing/mental accounting – the cost of the insurance was often reported to be promoted in monthly rather than annual terms.<sup>30</sup>

5.2.2.2. Report 492 A market that is failing consumers: The sale of add-on insurance through car dealers (released 12 September 2016)  
<http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-492-a-market-that-is-failing-consumers-the-sale-of-add-on-insurance-through-car-dealers/>

Building on its Report 470 (detailed above) and its work on life insurance products sold through car dealerships, ASIC reviewed the sale of add-on general insurance products sold through this channel.<sup>31</sup> The key findings were:

- consumers receive low claim payouts relative to premiums;
- consumers receive much less in claims than dealers receive in commissions;
- lack of price competition results in poor consumer outcomes;
- insurers sell products that are poorly designed;
- single premium policies increase the cost for consumers; and
- sales processes inhibit good decision making.

Alerted in early 2016 (before release of Report 492) to ASIC's concerns, the Insurance Council and its members sought to address the source of poor consumer outcomes. Members expended considerable time, effort and money on developing an application to the Australian Competition and Consumer Commission (ACCC) for authorisation to cap commissions at 20 percent on add-on insurance products sold through car dealers.

While not the sole remedy being pursued by industry, the Insurance Council and members saw a commission cap as a key component of any changes designed to reduce incentives to mis sell insurance. However, the ACCC declined the application, considering that it did not resolve the vulnerability of the consumer purchasing insurance at the car dealership point of sale. Nevertheless, insurers have since individually lowered commissions in the absence of a uniform industry approach.

On 23 October 2017, in its response to ASIC's Consultation Paper 294, *The sale of add-on insurance and warranties through caryard intermediaries*, the Insurance Council and

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<sup>30</sup> Australian Securities and Investments Commission, [Report 470](#): 'Buying add-on Insurance in Car Yards: Why it can be hard to say no', Table 2. 26 February 2016.

<sup>31</sup> Australian Securities and Investments Commission, [Report 492](#): 'A market that is failing consumers: The sale of add-on insurance through car dealers', 12 September 2016, page 4.

members agreed with ASIC’s proposals to implement a deferred sales model and to strengthen requirements for the supervision and monitoring of insurers’ authorised representatives. This is in addition to a comprehensive range of initiatives to improve consumer outcomes, outlined in the following table:

<b>Industry Initiatives</b>	
<b>Product design and distribution arrangements</b>	<ul style="list-style-type: none"> <li>• Insurers that offer a single premium loan financed premium will also offer a non-financed payment option.</li> <li>• Insurers will provide clear information about payment options, including a comparison of the indicative costs of the premium at the point of sale.</li> <li>• Consumers paying for a policy through a single loan financed premium are required to acknowledge they have selected a finance option and they understand interest will be payable on the financed premium.</li> <li>• The Insurance Council will consider incorporating into the General Insurance Code of Practice obligations and best practice principles on product design, as developed through the ASIC Add-on Insurance Working Group.</li> </ul>
<b>Point of sale practices and conduct</b>	<ul style="list-style-type: none"> <li>• Insurers will implement additional/new systems to ensure that the minimum customer information is collected.</li> <li>• Systems are strengthened so that they can identify and prevent the sale of insurance to consumers who would not be eligible to make a claim for substantial components of the cover offered.</li> <li>• Insurers will reimburse consumers who purchase an add-on product through a dealership and are ineligible, at policy inception, to make a claim for substantial components of cover.</li> <li>• Insurers will review, and strengthen where necessary, dealership training on compliance and systems to ensure that appropriate conduct is clearly defined.</li> <li>• Insurers will conduct an independent review of their compliance and risk management procedures relating to products distributed through the dealership channel. This review should also assess the adequacy of changes made to processes and systems, such as client validation, in response to the industry initiatives presented in this submission.</li> <li>• The Insurance Council will consider providing guidance under the General Insurance Code of Practice to clarify how signatories to the Code should comply with the obligation to monitor the performance of authorised representatives.</li> </ul>
<b>Post sale engagement</b>	<ul style="list-style-type: none"> <li>• Insurers will, as soon as practicable following a purchase, make available to the consumer a confirmation of the purchase and provide a reminder of cooling off rights.</li> <li>• Insurers will voluntarily implement annual reminders to consumers that have purchased multi-year policies through a motor dealer.</li> </ul>

### **5.2.3. Draft Legislation on Product Design and Distribution**

<https://treasury.gov.au/consultation/c2017-t247556/>

The FSI recognised that the shortcomings of the disclosure and financial advice regimes and recommended the introduction of a targeted and principle-based product design and distribution obligation. The obligation is to assist consumers to select appropriate financial products by requiring issuers and distributors to appropriately market and distribute financial products.<sup>32</sup>

The Australian Government accepted this FSI recommendation. Treasury is currently consulting on draft legislation which would insert four design obligations and five distribution obligations into the Corporations Act. The distribution obligations are:

- not to deal, or provide financial product advice, in relation to a product unless a target market determination has been made;
- not to deal, or provide financial product advice, where a target market determination may no longer be appropriate;
- to take reasonable steps to ensure that products are distributed in accordance with the target market determination;
- to collect information related to the distribution of a products; and
- to notify the issuer of a product of any significant dealings in the product that are not consistent with the products target market determination.<sup>33</sup>

While urging that the drafting of the target market determination obligations recognise that most general insurance products are designed for a mass market, the Insurance Council supports in principle the introduction of design and distribution obligations as being consistent with the behaviour of a general insurer focused on achieving good consumer outcomes.

## **5.3. Current Reviews/Inquiries**

### **5.3.1. Review of the GI Code**

<http://codeofpracticereview.com.au/>

In recognition of changing community expectations and distribution issues identified by ASIC, particularly in relation to add-on insurance, and regulatory developments such as the impending introduction of product design and distribution obligations, the Interim Report for the Code Review proposed the adoption of principles to guide member practice on disclosure and product design and distribution.<sup>34</sup> These principles and the supporting materials were developed by ASIC after a series of workshops it convened with industry and consumer advocates to comprehensively analyse the causes of poor consumer outcomes.

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<sup>32</sup> Commonwealth Parliament, Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 Exposure Draft Explanatory Memorandum, 21 December 2017, page 5.

<sup>33</sup> Commonwealth Parliament, Op. cit. pages 13, 14.

<sup>34</sup> Insurance Council of Australia, General Insurance Code of Practice 2017 Review, [Interim Report](#). November 2017, pages 18-21.

### **5.3.2. Review of CCI and Other Add-on Insurance by the GI Code Governance Committee (CGC)**

Conscious of the work being undertaken by ASIC on the sale of insurance through motor dealers, the GI CGC commenced in late 2017 an “Own Motion Inquiry” to:

- obtain a comprehensive picture of distribution channels and sales practices used by Code Subscribers, including distribution channels that currently fall outside the scope of the Code;
- assess the level of compliance and identify areas that need improvements;
- provide recommendations to Code Subscribers about how to improve compliance and service standards to consumers;
- potentially inform the CGC’s ability to provide feedback to the Insurance Council’s Code Review; and
- provide information to enable the (CGC) to include other third party distribution channels.

### **5.3.3. ASIC Consideration of the Regulation of General Insurance sold through Car Dealerships**

<http://www.asic.gov.au/media/4422973/cp294-published-24-august-2017.pdf>

As referred to in 5.2.2.2, on 24 August 2017, ASIC released Consultation Paper 294, *The sale of add-on insurance and warranties through caryard intermediaries* which examined how best to regulate the sale of these products. ASIC is currently considering the submissions received from the Insurance Council and other stakeholders.

An important part of ASIC’s work on add-on insurance has been its discussion with individual insurers on specific remediation programs to redress poor consumer outcomes. Five programs have been publicly announced with payments totalling over \$100 million.<sup>35</sup>

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<sup>35</sup> Australian Securities and Investments Commission, Programs communicated through Media releases: [17-189MR](#) 20 June 2017; [17-258MR](#) 2 August 2017; [17-446MR](#) 19 December 2017; [18-008MR](#) 17 January 2018; and [18-009MR](#) 17 January 2018.

## 6. PREMIUM VALUE

### 6.1. Background

Australia's susceptibility to natural catastrophe has heightened consumer attention to the value provided by their property insurance; considering the premiums they pay and other living costs.

Insurance premiums have been a subject of a number of recent public inquiries. In particular, this matter was explored in the Senate Inquiry into Australia's general insurance industry, to which the Insurance Council made a formal submission and also appeared as a witness.

Variations in general insurance premiums are driven by a multitude of factors, such as the number of natural disasters, higher claim volumes and amounts and costs associated with meeting those claims, higher asset values and sum insured amounts, higher rebuilding costs and changes to regulatory requirements.<sup>36</sup>

Indeed, weather-related and other natural catastrophes in Australia and in other regions around the world over recent years have had huge flow-on consequences for the insurance and re-insurance sector globally. In 2011 for example, cyclones, severe storms, floods and bushfires ravaged many parts of Australia, which led to record claims levels. The estimated insurance losses from declared catastrophe events in Australia that year was around \$4.5 billion.<sup>37</sup>

### 6.2. Past Reviews/Inquiries

#### 6.2.1. *Natural Disaster Insurance Review*

<http://www.ndir.gov.au/content/Content.aspx?doc=home.htm>

(For background see 4.2.1)

The NDIR considered several specific issues, including:

- the extent of, and reasons for, non-insurance and underinsurance for flood and other natural disasters in Australia;
- the ability of private insurance markets to offer adequate and affordable insurance cover for individuals, small businesses and governments for flood and other natural disasters;
- factors that may impede the private insurance market in offering such cover;
- measures that could improve the ability of the private insurance market to offer such cover and the take-up of such cover by individuals, small businesses and governments;
- whether there is a case for subsidising insurance premiums for individuals and small businesses in the areas of highest risk facing the highest premiums;
- whether there is a role for the Australian Government in providing disaster insurance or reinsurance to the private sector, through mechanisms such as a national disaster insurance program, and, if so, what are the best options;

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<sup>36</sup> Such as, the full implementation of Australian Prudential Regulation Authority's Life and General Insurance Capital Standards (LAGIC), January 2014.

<sup>37</sup> Insurance Council of Australia, [Catastrophe Database](#). Estimated loss value for 2011 (original dollars).

- the impact or likely impact of any Australian Government intervention in disaster insurance on the private insurance market; and
- the relationship between disaster mitigation measures taken by State and local governments against flood risks, and the impact of such measures, or the lack of them, on the availability and affordability of flood and other disaster insurance.

Apart from its acceptance of the NDIR's key recommendation to introduce a standard definition of 'flood', the Government's response of 14 November 2011 undertook to give detailed consideration to the series of recommendations in relation to the provision of affordable flood insurance to those at high risk of flood, in particular the creation of a reinsurance pool of funds that will enable insurers to provide discounted flood coverage to eligible high-risk households.

The issues of premium price levels and affordability have been pursued through a number of subsequent reviews.

### **6.2.2. Reviews by the Australian Government Actuary (AGA) of Insurance Pricing in Northern Australia**

- 6.2.2.1. Report On Investigation into Strata Title Insurance Price Rises in North Queensland (released 19 October 2012)  
[http://www.aga.gov.au/publications/Strata\\_Title\\_Insurance\\_Price\\_Rises/default.asp](http://www.aga.gov.au/publications/Strata_Title_Insurance_Price_Rises/default.asp)

The AGA investigated the causes of premium increases for residential strata title insurance in North Queensland (NQ). The AGA's report concluded that a number of inter-related factors and a convergence of events led to the premium outcomes:

- historical under-pricing;
- global movements in the cost of reinsurance; and
- recent losses caused by natural disasters and the associated accumulation of risk in NQ.

The AGA also found that while there was limited commercial competition in the NQ strata insurance market, it was not clear that this had resulted in prices which were unreasonably high when assessed against the underlying risk.

- 6.2.2.2. Second Report On Investigation into Strata Title Insurance Price Rises in North Queensland (released 6 June 2014)  
[http://www.aga.gov.au/publications/Strata\\_Title\\_Insurance\\_Price\\_Rises\\_2014/default.asp](http://www.aga.gov.au/publications/Strata_Title_Insurance_Price_Rises_2014/default.asp)

In December 2013, the Government asked the AGA to conduct an expanded study into strata insurance pricing in NQ. The expanded study was intended to put the NQ experience into a broader context. Specifically, the AGA was asked to:

- consider the causes of premium increases in NQ, taking into account an 8 year timeframe beginning in 2005-06 (the earlier study had considered a 6 year timeframe commencing in 2006-07); and

- compare strata insurance pricing across Northern Australia and other east coast centres and consider the reasonableness of any significant variation in pricing across geographic areas.

The report:

- confirmed that the steep premium increases experienced in NQ, particularly over the few years leading up to 2011-12, were a result of:
  - historical under-pricing;
  - global increases in the cost of reinsurance and a shift towards a more risk-based allocation of the cost of reinsurance; and
  - losses caused by a number of natural disasters which highlighted both the extent of the under-pricing issue and the challenges associated with an accumulation of risk that a strata insurance portfolio in a weather-exposed region entails.
- found that prices being charged in east coast centres (Brisbane/Gold Coast, Sydney, Melbourne and Adelaide) are lower than NQ prices.
- found the actual claims experience data provides evidence of a substantial difference in insurance risk between NQ and these other east coast centres. This difference explains most of the price variation with a reasonable likelihood that a small part of the difference can be attributed to the presence of competitive pricing pressure in east coast centres and the absence of competitive pricing pressure in NQ.
- found the difference in premium rates between Darwin and NQ is therefore consistent with the differences in the observed claim cost experience and the estimated cost of catastrophe reinsurance.

6.2.2.3. Report on Home and Contents Insurance Prices in North Queensland (released 5 December 2014)  
[http://www.aga.gov.au/publications/home\\_contents\\_nth\\_qld/downloads/Home-Contents-North-QLD.pdf](http://www.aga.gov.au/publications/home_contents_nth_qld/downloads/Home-Contents-North-QLD.pdf)

The AGA was asked by the Australian Government to investigate home and contents insurance pricing in NQ. The AGA found:

- NQ home and contents insurance premium rates have increased by around 80 per cent over the eight years beginning in 2005-06;
- cyclone risk is likely to be the main reason why NQ premium rates are, on average, significantly higher than premium rates in most other parts of Australia;
- cyclone risk can have a substantial regional impact on premiums; and
- other perils such as flood can have a substantial impact on individual policyholder premiums.<sup>38</sup>

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<sup>38</sup> Australian Government Actuary, [Report](#): 'Report on home and contents insurance prices in North Queensland', 5 December 2014, page 7.

### **6.2.3. Northern Australian Insurance Premiums Taskforce**

<https://treasury.gov.au/review/northern-australia-insurance-premiums-taskforce/>

On 30 March 2015, the Australian Government established the Northern Australia Insurance Premiums Taskforce as part of its response to the rapid rise of insurance premiums in areas of northern Australia subject to cyclone risk. The Taskforce was asked to explore the feasibility of options to address insurance affordability concerns arising from cyclone risk. Specifically, it was to assess two options: a mutual cyclone insurer and a cyclone reinsurance pool.<sup>39</sup>

The Taskforce Final Report released in March 2016 found:

- the mutual and reinsurance pool options generate a similar premium reduction and similar potential cost to Government over 10 years.
- if either option were to run along commercial lines, there would be no reduction in premiums.
- in order for a cyclone insurer or reinsurer to provide a reduction in premiums, the Government would have to provide a subsidy through the use of its balance sheet.
- the larger the reductions in consumer cyclone premiums, the larger the likely cost to Government from taking on increased risks from cyclone damage.<sup>40</sup>

The recommended way forward involved the following components:

- A sustainable way of reducing premiums over the long run is through mitigation.
- Governments can take a range of relatively low-cost measures to promote mitigation.
- The insurance industry should develop insurance pricing systems that provide greater recognition of mitigation action and be more proactive in offering a range of policy options that provide increased scope for policyholders to assume more responsibility for risk of cyclone damage in return for lower premiums.
- The insurance industry should engage more effectively with property owners in northern Australia. This requires improved disclosure of risks and greater responsiveness of policyholder concerns.
- Some property owners may not be able to realise premium reductions from mitigation because they do not have the financial capacity to undertake the necessary work. One option to address this situation is governments directly subsidising the cost of mitigation for low income households.
- Of the two insurance options the Taskforce was asked to assess, a reinsurance pool represents a more feasible approach than a mutual.<sup>41</sup>

In its response to the Taskforce's Final Report<sup>42</sup>, the Australian Government accepted that mitigation activities to reduce the risk of damage from cyclones are the only way to reduce premiums on a sustainable basis and stated it would not intervene directly in the insurance market.

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<sup>39</sup> Northern Australian Insurance Premiums Taskforce, [Final Report](#), 16 March 2016, page ix.

<sup>40</sup> Northern Australian Insurance Premiums Taskforce, *Op. cit.*, page x.

<sup>41</sup> Northern Australian Insurance Premiums Taskforce, *Op. cit.*, pages xvi and xvii.

<sup>42</sup> The Hon Kelly O'Dwyer, Minister for Small Business and Assistant Treasurer, [Media release](#): 'Government responds to Northern Australia Insurance Premiums Taskforce and General Insurance Senate Inquiry', 18 December 2017.

Instead, the Government is proceeding with a set of reforms to place downward pressure on insurance premiums through increased accountability and transparency within the industry, as well as proposals to increase consumer understanding of insurance, which were recommended as part of the Senate Inquiry into the General Insurance Industry. (See 6.2.4.)

Furthermore, the Government explained that it had already acted on a number of recommendations in the Northern Australia Insurance Premiums Taskforce Report by:

- establishing a North Queensland Insurance Comparison Website, announced in the 2014-15 Budget and operational since March 2015;
- providing \$12.5 million for the development and management of a strata title inspection scheme in North Queensland, announced in the 2014-15 Budget, which will be undertaken by James Cook University and commencing in 2018; and
- providing \$7.9 million to the ACCC to undertake an inquiry into the monitoring of insurance premiums in northern Australia (see 6.3.2).

**6.2.4. Inquiry into General Insurance by the Senate Economics References Committee**  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Generalinsurance](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Generalinsurance)

On 22 November 2016, the Senate referred the following matters relevant to premium value to the Senate Economics References Committee:

- the increase in the cost of home, strata and car insurance cover over the past decade in comparison to wage growth over the same period; and
- competition in Australia's \$28 billion home, strata and car insurance industries;

In its report released on 10 August 2017, the Committee made the following recommendations (recommendations on other matters are covered elsewhere in this submission):

Recommendation 1: The Government release its response to the final report of the Northern Australia Insurance Premiums Taskforce.

Recommendation 2: The Government conduct a review into competition in the strata insurance market in North Queensland to establish a fact base and explore avenues to improve insurer participation in this region.

Importantly, directly relevant to the issue of premium value, the Report stated:

*"... the committee also notes that there have been several government and industry reviews relating to premium increases in home and strata insurance. These reviews have consistently found that, despite notable increases, premiums remain commensurate with the level of risk. Given this, the committee does not propose to examine premium increases or their justification further; however, it acknowledges the increased financial pressure that these increases can and has placed on many consumers. The role of disaster mitigation in reducing insurance premiums is discussed in chapter 5."*

The Government response of 21 December 2017 noted that it had released its response to the Taskforce on 18 December 2017 and noted that it had directed the ACCC to monitor the insurance market in northern Australia for home, contents, and strata insurance.<sup>43</sup>

### **6.3. Current Reviews/Inquiries**

#### **6.3.1. Productivity Commission Review of Competition in the Australian Financial System**

<http://www.pc.gov.au/inquiries/current/financial-system#draft>

Commissioned by the Australian Treasurer on 8 May 2017, the Productivity Commission is to review competition in Australia's financial system with a view to improving consumer outcomes, the productivity and international competitiveness of the financial system and economy more broadly, and supporting ongoing financial system innovation, while balancing financial stability objectives.

This inquiry is broad ranging, and will take a holistic view of the financial system — including products and services provided to households, small businesses and large corporations, as well as financial system infrastructure. To avoid overlap with other active reviews, the inquiry will consider superannuation and insurance products only in so far as they affect competition between banks and other financial service providers, including as part of vertically and horizontally integrated business models.

The Insurance Council and members have met with Productivity Commission staff to provide information and the Insurance Council has provided two formal submissions to the inquiry. The first submission canvassed the general insurance industry at a broad level, while the second submission focussed on the role that lenders' mortgage insurance plays in supporting competition in Australia's financial system.

#### **6.3.2. Inquiry by the Australian Competition and Consumer Commission (ACCC) into the Supply of Insurance in Northern Australia**

<https://www.accc.gov.au/about-us/inquiries/northern-australia-insurance-inquiry>

Commissioned by the Australian Treasurer on 25 May 2017, matters to be considered by the ACCC in relation to home, contents and strata insurance include but are not restricted to:

- the pricing and availability of insurance to consumers in northern Australia;
- the key cost components of insurance pricing in northern Australia and how they have changed over time, particularly catastrophe risk;
- the terms and conditions on which insurance is supplied;
- the competitiveness of markets for insurance in northern Australia;
- the existence and extent of any barriers to entry, expansion and/or exit in the supply of insurance in northern Australia;
- any impediments to consumer choice, including transaction costs, a lack of transparent information, or other factors;

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<sup>43</sup> Australian Government, [Response](#): 'Government response to the Senate Economics References Committee report: Australia's general insurance industry: sapping consumers of the will to compare', December 2017.

- identifying any regulatory issues, or market participant behaviours or practices that may not be supporting the development of competitive markets for insurance in northern Australia; and
- the profitability of insurers through time and the extent to which profits are, or are expected to be commensurate with risk.

The inquiry commenced on 1 July 2017 and the ACCC must submit interim reports to the Treasurer by 30 November 2018 and 30 November 2019. The inquiry is to be completed and a final report submitted to the Treasurer by 30 November 2020.

On 24 October 2017, the ACCC released an issues paper for public comment. In response, the Insurance Council made a major submission to the inquiry on 19 January 2018.

The ACCC hosted a series of public forums across northern Australia in late November and early December.

## 7. VULNERABLE CUSTOMERS

### 7.1. Background

The accessibility of insurance to vulnerable consumers or consumers with specific needs, such as those with a mental illness and senior Australians, has been the subject of various government and industry-initiated reviews in recent years. While there is a partial exemption for insurers under the anti-discrimination legislation<sup>44</sup>, recognising that the provision of insurance requires some differentiation between insureds, the use of broad exclusions is coming under increasing scrutiny.

The Insurance Council acknowledges that there are a mix of factors that have an impact on insurance affordability and access to insurance particularly for vulnerable consumers. For this reason the Insurance Council and members have adopted a multi-faceted approach to help address this issue. It has established programs to improve consumers' understanding of insurance; tools to help customers better understand risk; ongoing advocacy to encourage governments to invest in mitigation; development of affordable insurance products; and measures to help strengthen trust and confidence in the general insurance industry.

With regards to insurance affordability the Insurance Council is pleased that there are now affordable and simple insurance policies tailored for people on low-incomes. These products provide affordable premiums with no or little excess and also include flexible payment options. The products are distributed through selected community organisations.

The Insurance Council is also committed to helping Australians better understand, and therefore manage, their financial risks. In 2013 the Insurance Council launched Understand Insurance<sup>45</sup>, a financial literacy and capability initiative that aims to empower consumers to make well-informed decisions about their general insurance needs. The initiative is brand-free and seeks to provide information in plain English.

The following information details how the Insurance Council and members have been working to improve outcomes for vulnerable consumers.

### 7.2. Past Reviews/Inquiries

#### 7.2.1. ***Senate Economics Legislation Committee: Consideration of Unfair Contract Terms (UCT) Protections and Insurance Contracts***

When considering the bill establishing the Australian Consumer Law, this Committee examined the issue of whether the existing exclusion of insurance contracts from review for UCT should be removed. The Committee's report of September 2009 recommended that:

- Consumers are not provided with adequate protection in insurance contracts under existing law.
- The Government address insurance contract legislation to ensure that the Insurance Contracts Act provides an equivalent level of protection for consumers to that provided by the *Trade Practices Amendment (Australian Consumer law) Bill 2009*.

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<sup>44</sup> Age Discrimination Act 2004; Disability Discrimination Act 1992.

<sup>45</sup> Insurance Council of Australia, Understand Insurance [website](#).

- Consideration by the Government of the 2004 review of the Insurance Contracts Act should determine whether this will be achieved by amending the Insurance Contracts Act to achieve a harmonisation with the amendments proposed in the Australian Consumer Law bills or by amending the *Trade Practices Amendment (Australian Consumer Law) Bill 2009* to apply to insurance contracts.<sup>46</sup>

Australian Treasury conducted a number of consultations on this issue with the Insurance Council and other stakeholders which in 2012 resulted in agreement on principles which could underpin legislative change (see 7.2.4 below).

### **7.2.2. Realising the Economic Potential of Older Australians (Advisory Panel on the Economic Potential of Senior Australians)**

On 30 March 2011, the Australian Government established an advisory panel to examine how Australia could best harness the opportunities that much larger, and more active communities of older Australians bring. The advisory panel produced a series of three reports which together identified the issues, barriers and steps towards realising the economic potential of senior Australians.

In its third and final report, *Realising the economic potential of older Australians: turning grey into gold*, the advisory panel presented a number of recommendations. Recommendation 30 proposed the Australian Government:

*“... convene a roundtable with the insurance industry, peak organisations and senior Australians to identify any gaps in the availability and affordability of insurance for senior Australians, including insurance for volunteers and travel insurance.”*

These issues were pursued by Government and industry in a number of ways – see 7.2.5; 7.2.6; 7.2.7; and 7.2.9.

### **7.2.3. Senate Legal and Constitutional Affairs Committee: Comment on Mental Health and Insurance**

On 21 November 2012, the Senate referred the Exposure Draft of the *Human Rights and Anti-Discrimination Bill 2012* for inquiry and report. The Bill did not propose significant changes to existing laws or protections but sought to introduce a streamlined approach to exceptions.

The Committee report tabled in February 2013 did not comment on the exception provided to insurers. However, in view of submissions made by advocacy groups, the minority report from the Australian Greens recommended improved accountability and transparency in relation to use of the exception in relation to mental illness.<sup>47</sup> The provision of cover for medical costs related to a pre-existing mental health condition is difficult as there is limited suitable data available for underwriting; a wide variability in the types of mental illness and the unique ways in which they can affect an individual's behaviour and ability to manage risk; and significant

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<sup>46</sup> Senate Economics Legislation Committee, Report on Trade Practices Amendment (Australian Consumer Law) Bill 2009, 7 September 2009, page 76.

<sup>47</sup> Senate Legal and Constitutional Affairs Committee, Report on the Human Rights and Anti-Discrimination Bill 2012, 21 February 2013, page 117.

differences in how mental illness is diagnosed, categorised and treated. This is especially so in relation to travel insurance.

Nevertheless, the industry recognises the need to improve the accessibility of insurance to consumers with a mental illness and the Insurance Council has progressed the issues involved in subsequent discussions with advocates (see 7.3.1 and 7.3.2 below).

#### **7.2.4. Consultation Process on UCT under Assistant Treasurer Bradbury**

In 2012, Assistant Treasurer David Bradbury, having formed the view that change was needed, became actively involved in consultations on how UCT protections would be applied to insurance contracts. On 20 December 2012, he announced the elements which should underpin legislation:

- the regime would apply to consumer contracts that are standard form insurance contracts;
- it would be included as part of the duty of utmost good faith;
  - that is, if a term is found to be unfair, the insurer will be in breach of the duty of utmost good faith;
- the remedy available where a term is found to be unfair would be that the party may not rely on the term;
- in addition to the above remedy, a court could consider whether there is another more appropriate remedy;
- ASIC and consumers would both have the right to take action under UCT laws;
- ASIC would have the range of enforcement powers that are currently available to it to administer the UCT laws in the ASIC Act replicated in the Insurance Contracts Act for the purposes of enforcing the UCT laws in the Insurance Contracts Act;
- the UCT regime would not apply to a term to the extent it:
  - defines the main subject matter of the contract;
  - sets the upfront price payable under the contract; or
  - is a term required, or expressly permitted by a law of the Commonwealth or a State or Territory.
- the definition of an unfair term would be that the term:
  - would cause a significant imbalance in the parties rights and obligations under the contract;
  - would cause detriment to a party if relied on;
  - was not reasonably necessary to protect the legitimate interests of the party advantaged by the term. For the purposes of determining whether a term in an insurance contract is reasonably necessary to protect a legitimate interest, a term will be reasonably necessary if it reflects the underwriting risk accepted by the insurer.
- the insurer would have the onus of proof that a term is reasonably necessary to protect their legitimate interests; and

- the UCT regime would not apply to life insurance contracts at that stage.

Legislation was introduced in 2013 to implement the above principles but it lapsed with the 2013 federal election and change of Government. While the Insurance Council had endorsed the principles behind the bill, in the consultations on the text, the Insurance Council opposed the actual drafting which was overly complex and did not reflect the intent of the agreed basis for reform.

#### **7.2.5. Access All Ages – Older Workers and Commonwealth Laws (ALRC)**

On 30 May 2013, the ALRC released its report, *Access All Ages—Older Workers and Commonwealth Laws*.

In the report, the ALRC identifies legal barriers to older persons participating in the workforce and makes recommendations across superannuation, social security, employment, insurance and compensation law. In relation to insurance, the ALRC proposed:

- Recommendation 6–1: The Insurance Reform Advisory Group, or a similar body, should facilitate the development of a central information source to provide mature age persons with clear and simple information about relevant and available insurance products.
- Recommendation 6–2: The Australian Government should negotiate an agreement with insurers offering products in the Australian market requiring the publication of data upon which decisions about insurance offerings based on age are made.
- Recommendation 6–3: The Australian, state and territory governments should review insurance exceptions under Commonwealth, state and territory anti-discrimination legislation.
- Recommendation 6–4: The Australian Human Rights Commission should, in consultation with key insurance and superannuation bodies, develop guidance material about the application of any insurance exception as it applies to age under Commonwealth anti-discrimination legislation.
- Recommendation 6–5: The General Insurance Code of Practice and the Financial Services Council Code of Ethics and Code of Conduct should include diversity statements or objects clauses that encourage consideration of the needs and circumstances of a diverse range of consumers, including mature age persons.

These recommendations were taken up in various ways, particularly through the Insurance Reform Advisory Group (see 7.2.7).

#### **7.2.6. Volunteers, Age and Insurance (Anti-Discrimination Commissioner Tasmania)**

Investigating complaints from advocacy organisations, the Tasmanian Anti-Discrimination Commissioner examined in 2012 whether the way in which age is factored into the risk profile adopted by many in the insurance industry unfairly and unlawfully discriminates against some volunteers on the basis of age; whether it is reasonable in all the circumstances. Accordingly, the Commissioner looked into the data used by some insurance providers to justify age-based exclusions from insurance cover for volunteers. The Commissioner made a number of recommendations in the Final Report of May 2013. Key recommendations included:

- Recommendation 1: That those insurance providers that have age-based limits in volunteer insurance policies amend their policies to remove those limits unless and until they are able to produce evidence that demonstrates that such limits are justified by risk.
- Recommendation 2: That the Insurance Reform Advisory Group be requested to oversee the development of an Insurance Industry Anti-discrimination Compliance Code, containing both compliance and enforcement mechanisms aimed at providing clarification of the way in which insurance exceptions in anti-discrimination law are to apply, including in respect of volunteer insurance coverage.
- Recommendation 3: That the Insurance Industry Anti-discrimination Compliance Code include binding timeframes for the removal of remaining unjustifiable age discrimination in the provision of accident and injury insurance for volunteers.
- Recommendation 7: That insurers that are unwilling to provide coverage for volunteers in particular age groups, or that provide (or propose to provide) differential benefits on the basis of age or coverage at a different premium, be required as a matter of course to provide reasons and to refer those seeking insurance to another insurer able to provide coverage or to the Insurance Council of Australia or the National Insurance Brokers Association as provided for under Standard 2.1.5(b) of the General Insurance Code of Practice.
- Recommendation 8: That insurers be required to submit for open publication, a list of products where age is a factor used to exclude coverage or determine premiums and benefits and the data on which these decisions rely.
- Recommendations 9: Noting the work already done by the Australian Human Rights Commission on insurance guidelines in respect of disability, that the Australian Human Rights Commission develop national guidelines, in consultation with their members, on the way in which exceptions for insurance provision in anti-discrimination law more broadly are to operate.
- Recommendation 14: That further work be done by key stakeholders nationally to encourage the simplification of insurance policy documents to provide a clearer explanation of the insurance coverage purchased by organisations.<sup>48</sup>

The recommendations calling for industry action were taken up by the Insurance Council in its discussions with the volunteering organisations which participated in its National Consumer Reference Group and in its work more generally about the appropriate use of the insurance exceptions to anti-discrimination legislation.

### **7.2.7. Insurance Reform Advisory Group (IRAG)**

In September 2011, the then Assistant Treasurer established the IRAG to provide a forum in which consumers, insurers and other stakeholders could be heard by Government and could contribute to the fair, efficient and effective regulation of the industry. IRAG had several meetings until it was disbanded in November 2013. Notably, it was agreed at its meeting of 12 June 2013 that:

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<sup>48</sup> Anti-Discrimination Commissioner Tasmania, [Investigation Report: 'Volunteers, Age and Insurance'](#), May 2013, pages iii-vi.

### **In relation to volunteer insurance for senior Australians**

- The Insurance Council would participate in a working group including Volunteering Australia and other stakeholders with a view to closing information gaps regarding the need for, and availability of, insurance for volunteers.
- The Insurance Council would review its referral and information services and implement any improvements which could assist volunteering organisations in understanding and findings suitable volunteer insurance.

### **In relation to travel insurance for senior Australians**

- The Insurance Council and individual insurers would work with Treasury to produce an annual report on aggregated travel insurance data that helps people understand the insurance industry's risk assessment processes including the reasons that premiums for travel insurance tend to increase with age.
- The Insurance Council would engage with the Age Discrimination Commissioner regarding the provision of data that justifies higher costs of travel insurance for senior Australians.
- The Age Discrimination Commissioner would consider whether a voluntary code would be the most appropriate method of procuring travel insurance data from the Insurance Council.
- The Insurance Council would discuss with DFAT the possibility of undertaking a research exercise to determine the extent of travel insurance cover taken out by Australians travelling overseas.

The issues regarding insurance for volunteers were taken up and dealt with as part of the Insurance Council's work with the volunteering organisations which were members of its National Consumer Reference Group. The matters relating to senior Australians were handled with the Age Discrimination Commissioner (see 7.2.8 below).

Importantly, IRAG's inaugural meeting also saw creation of a Mental Health and Insurance Working Group (MHIWG). The MHIWG brought together relevant stakeholders in mental health and insurance matters to consider:

- improving research and data collection to better understand issues relating to mental health and discrimination and inform future work/advocacy in this area;
- development of an effective and transparent complaints process which both empowers and informs consumers and supports awareness-raising initiatives about mental illness and insurance;
- development and adoption of voluntary guidelines and, where appropriate, regulatory solutions;
- standardisation of categorisation of conditions across the States;
- improving and increasing education and awareness about mental health and insurance processes for: consumers and carers; insurance, superannuation and financial planning sector staff; mental health professionals; and the general population;

- development of a directory of ‘mental health-friendly’ insurance policies; and
- continued information provision to both inform and support mental health consumers/carers in applying for, or making claims against insurance products.

The Insurance Council sought to continue discussions on these issues with industry participants and advocacy stakeholders regardless of IRAG’s discontinuation. However, the mental health advocacy groups felt that progress was inadequate and work stopped. The Insurance Council continued to pursue better outcomes with its members and other industry stakeholders – see 7.3.1 and 7.3.2.

#### **7.2.8. Insurance Contracts Amendment Act 2013 (C’th)**

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Completed\\_inquiries/2010-13/insurancecontractsamendmentbill2013/index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/2010-13/insurancecontractsamendmentbill2013/index)

On 20 June 2013, the *Insurance Contracts Amendment Act 2013 (C’th)* was passed giving effect to a number of recommendations from the review of the Insurance Contracts Act undertaken in 2004 by Mr Alan Cameron and Ms Nancy Milne. Importantly, amendments strengthened the protections available to insureds; of particular relevance to the fair treatment of consumers:

- a failure to comply with the duty of utmost good faith became a breach of the Insurance Contracts Act (section 13(2));
- where an insurer fails to comply with the duty of utmost good faith in the handling of a claim or settlement of a claim or potential claim, ASIC may treat this failure as a breach of financial services laws under the Corporations Act (section 14A); and
- ASIC was given the power to intervene in any proceedings relating to a matter under the Insurance Contracts Act (section 11F). This provides ASIC significant enforcement powers to punish insurers for such breaches, including the withdrawal of an insurer’s Australian Financial Services Licence (AFSL).<sup>49</sup>

#### **7.2.9. Age Discrimination and Insurance (Australian Human Rights Commission - AHRC)**

After discussions throughout 2014 with the insurance industry and senior Australian advocacy groups, the Age Discrimination Commissioner released a report on 20 February 2015 on Age Discrimination and Insurance. The Commissioner wanted to examine whether insurance products matched Australians’ longer and healthier lives so everyone could participate and insure risk if they wish to do so. The project continued previous work carried out by the ALRC<sup>50</sup>, IRAG, and the Anti-Discrimination Commissioner, Tasmania.

The report concluded that:

*“Some areas of the insurance sector are taking action to better inform consumers about products and pricing. Such initiatives have the potential to assist older consumers to*

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<sup>49</sup> Parliament of Australia, House of Representatives, [Explanatory Memorandum](#) for the Insurance Contracts Amendment Bill 2013, pages 3 and 4.

<sup>50</sup> Australian Law Reform Commission, ALRC [Report](#) 120: ‘Access All Ages—Older Workers and Commonwealth Laws’, May 2013.

*find suitable products and also to empower consumers to voice their demand for insurance products tailored to their needs. Dialogues between consumer groups and the insurance industry should be facilitated as they have the potential to spur market developments that cater to the ageing population.*

*Additionally, access to insurance should not be missed as an issue in debates about longevity and demographic change. The ability to insure against risk is a key concern for older people who are working and travelling.”<sup>51</sup>*

As part of the work done with the Age Discrimination Commissioner, the Insurance Council developed education materials with its members to better inform senior Australians about how travel insurance worked and how to shop around for the cover most appropriate for their needs. These materials were integrated into the Insurance Council’s Understanding Insurance website and provided to AHRC for use with senior Australian groups.

#### **7.2.10. Australian Consumer Law (ACL) Review**

In June 2015, the Consumer Affairs Minister instituted a review of the Australian Consumer Law in view of it having operated for five years. The Final Report of the Australian Consumer Law (ACL) Review<sup>52</sup>, released in March 2017, had one recommendation directly relevant to general insurance. Proposal 10 was to apply UCT protections to contracts regulated by the Insurance Contracts Act.

The Final Report concluded that while the Insurance Contracts Act contains its own protections for consumers (such as the duty to act in the ‘utmost good faith’ and specific disclosure requirements), they were not the same as the ACL protections and had not been shown to provide equal or greater consumer protection.

Importantly, in applying unfair contract terms protections to insurance contracts, the Final Report stated that it would be important to clarify how certain exemptions would operate in the insurance context, such as those for:

- the ‘main subject matter’ of a contract; and
- terms that are reasonably necessary to protect the advantaged party’s legitimate interests.

As part of its response to the Inquiry into General Insurance by the Senate Economics References Committee, the Government announced that Treasury would undertake consultations on the implementation of this recommendation in early 2018.

The Insurance Council is currently exploring with Treasury, ASIC and consumer advocates how unfair contract terms could most appropriately be incorporated into the Insurance Contracts Act.

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<sup>51</sup> Australian Law Reform Commission, ALRC [Report](#) 120: ‘Access All Ages—Older Workers and Commonwealth Laws’, May 2013.

<sup>52</sup> Australian Consumer Law Review, [Final Report](#), March 2017.

### 7.3. Current Reviews/Inquiries

#### 7.3.1. Review of the GI Code

Consumers may experience a degree of vulnerability when interacting with an insurer, due to factors and circumstances including age, disability, mental health, living in a remote Indigenous community, coming from a non-English speaking background, or experiencing trauma, abuse or disadvantage including family violence. This vulnerability may impact on their ability to communicate with an insurer, access insurance, or make a claim or complaint.

To address this, the Insurance Council consulted on proposals to strengthen standards in the Code in relation to vulnerable consumers. Specifically, it is proposed that the Code should:

- include a new section on vulnerable consumers;
- provide guidance on best practice mental health principles;
- provide guidance on recognising and responding to instances of family violence; and
- include stronger standards on financial hardship.

The Insurance Council is working with its members to develop best practice principles relating to the design of products for, and engaging with, consumers with a mental illness. The principles encourage the industry's continuous progress in expanding access to general insurance for consumers with mental illness, the key components being:

- risk assessment of mental illnesses should be centred on reliable, evidence-based data and objective assessment;
- where possible, insurers should seek to provide cover and manage risk through pricing, exclusions, limits and caps, rather than not provide cover at all;
- as data becomes more available over time, insurers should move away from blanket exclusions and apply narrower exclusions;
- exclusions for pre-existing mental illnesses should only be applied where there is evidence that an applicant has, or is at risk of a recurrence of, a mental illness and the covered event relates to the pre-existing mental illness; and
- staff training should increase awareness and understanding of common mental illnesses, and develop communication skills for interacting with consumers who have, or show signs of having, a mental illness.

#### 7.3.2. *Victorian Equal Opportunity & Human Rights Commission (VEOHRC) Investigation into Potential Unlawful Discrimination of People with Mental Health Issues in Victorian Travel Insurance Industry*

In July 2017, the VEOHRC wrote to four insurers advising it was commencing an investigation into the issue of possible unlawful discrimination on the grounds of mental health disability in the provision of travel insurance services. The VEOHRC publicly confirmed<sup>53</sup> on 25 October 2017 that the investigation would examine the travel insurance

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<sup>53</sup> Victorian Equal Opportunity and Human Rights Commission, [Media release](#): 'Probe into potential unlawful discrimination of people with mental health issues in Victorian travel insurance industry', 25 October 2017.

policies offered by the insurers in Victoria. Following consultation, two themes were to be examined:

- the application of broad blanket mental health exclusions in travel insurance; and
- the denial of cover or the offering of insurance policies with unfavourable terms, such as higher premiums or excess for those who disclose pre-existing mental health conditions, without adequate risk assessments being undertaken for the individuals concerned.

Against the background of the VEOHRC and the earlier Ingram Case<sup>54</sup> where discrimination had been found, the Insurance Council has continued to work with members to improve access to travel insurance for those with a mental illness. Through 2017, the majority of travel insurers removed the blanket exclusions applying to claims related to mental illness; these had previously been standard practice. The removal of these exclusions increases non-medical related cover to those consumers who experience a first onset of mental illness after they have taken out their policy (such as cover for costs incurred because of cancelled or interrupted travel due to the illness).

In order to facilitate further improved access, the Insurance Council continues to work with members on the possibility of greater availability of more granular, up-to-date data in order to accurately assess the risk of providing cover for mental illness related claims. This would enable the gradual expansion of cover and lower premiums for coverage of some conditions. To assist in obtaining such data, the Insurance Council urged the Government in recent pre-Budget submissions to direct the Australian Bureau of Statistics to update the 2007 National Survey of Mental Health and Wellbeing.<sup>55</sup>

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<sup>54</sup> *Ingram v QBE Insurance (Australia) Limited (Human Rights)* [2015] VCAT 1936, 18 December 2015.

<sup>55</sup> Insurance Council of Australia, Pre-Budget submissions [2018-19](#), 15 December 2017 and [2017-18](#), 19 January 2017.