



**Submission by the
Financial Rights Legal Centre**

ACCC

Northern Australia Insurance Inquiry, 24 October
2017

December 2017

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took close to 25,000 calls for advice or assistance during the 2016/2017 financial year.

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

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

For Financial Rights Legal Centre submissions and publications go to www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

Or sign up to our E-flyer at www.financialrights.org.au

National Debt Helpline 1800 007 007
Insurance Law Service 1300 663 464
Aboriginal Advice Service 1800 808 488

Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on Northern Australia Insurance Inquiry. The Financial Rights Legal Centre has submitted written comments to many of the previous consultations in this space including:

- 2014 Treasury consultation into Addressing the high cost of home and strata title insurance in North Queensland;
- 2014 reviewed and commented on a draft form of the North Queensland Home Insurance website; and
- 2015 Inquiry conducted by the Northern Australia Insurance Premiums Taskforce.

The Financial Rights Legal Centre operates a national legal advice telephone hotline for consumers with insurance questions. We have been operating the Insurance Law Service (ILS) since 2007, and last year we took over 5,000 insurance consumer calls. In this Inquiry we will draw on our extensive consumer-advice experience and focus our comments on the following:

- The need for greater transparency in premium pricing;
- The need for better information disclosure from insurers;
- Encouraging mitigation efforts;
- Removing the exemption of insurance from unfair contract terms laws; and
- Consumer access to personal data.

Responses to Inquiry Questions

1. Your views on costs, premiums and profits (Questions 1-3)

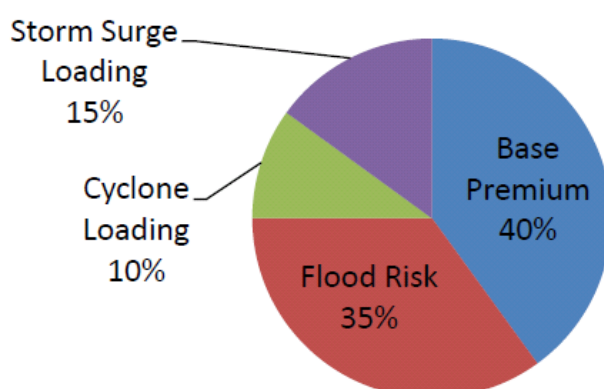
Through the ILS we have taken many calls over the years from consumers in Northern Australia. Many of those callers have had concerns about the increasing cost of home and contents insurance. Although it is clear that insurance premiums have been increasing, we have no information about changes to the key cost components over time. This is because there is little to no transparency from the insurance industry as to the component pricing of their overall premiums.

Financial Rights strongly submits that insurers should be required to provide information as to the components in their premium pricing, and we have asked for this in every Inquiry into insurance affordability. Knowing what makes up the price of a premium will better inform consumers about risk and what effect mitigation strategies may have on reducing insurance premiums or what behaviours or conditions might increase premiums. Component pricing information should apply uniformly across all insurers but will be particularly helpful in

addressing a lot of the issues faced by those in parts of Australia that face severe weather risks. It would provide an easy to read, easy to understand signal to consumers of the risk factors taken into account when premiums are set. For example:

J. Smith - Home Building Policy 2015

1234 North Street, Cairns QLD



The above would communicate to a consumer the risk, and the potential benefits of changing behaviour to mitigate that risk. To assist homeowners even further, information could be provided directly below the chart detailing practical tips on how a homeowner could mitigate cyclone risk and lower their premiums.

The Senate Economics References Committee recommended that the Government initiate a review of component pricing to allow for component pricing of premiums to policyholders upon them taking out or renewing an insurance policy. We imagine this Inquiry by the ACCC is part of that initiative.

Financial Rights notes that our component pricing proposal consistently faces objections from some in the insurance industry on the basis that pricing information is “commercially sensitive”. The Insurance Council of Australia’s view is that “such an approach would require the disclosure of commercially sensitive pricing calculations that frequently change for insurers to remain competitive and commercial. Further, component pricing may not help consumers to better understand their risks and how to mitigate them.”¹

Even if “commercial sensitivity” is accepted to be an issue, Financial Rights does not believe that it is insurmountable and asserts that there are simple and creative ways to ensure such information is sufficiently obscured without denying homeowners the right to basic information about their insurance. For example, the component pricing could use percentage figures that are heavily rounded up or even display information using graphics and images only. The number of solutions available is in our opinion limited only by the will of vested interests rather than anything unique about insurance as a product. It is Financial Rights’ view that “commercial sensitivity” must no longer be used as an excuse to continue to keep homeowners

¹ General Insurance Code of Practice 2017 Review, Interim Report, pg 55:
http://codeofpracticereview.com.au/assets/interim%20report/02112017_Interim_Report.pdf

in the dark about an essential and important product and should not be wielded as some sort of trump card to prevent any and all changes aimed at improving information asymmetry in the insurance market.

Additionally, Financial Rights also supports insurers printing on a renewal notice the policyholder's premium that they paid the previous year in order to more effectively inform consumers of price rises in their premiums. Insurers should also explain why the price has increased. Such an idea was recommended by the Victorian Government's Fire Service Levy Monitor, is currently being investigated by the UK's Financial Conduct Authority and is being introduced by international insurer AXA. We are also aware IAG had intended to trial last years premiums in some insurance products in NSW for home insurance when the Fire Service Levy was going to be removed from insurance premiums. We are not aware if this occurred and what, if any, effect it had on consumer decision making. The Consumer Action Law Centre (CALC) is also a strong advocate for this proposal.² This however would need to be mandatory for all insurers as encouraging a voluntary disclosure of this sort would encounter problems from those insurers (especially smaller insurers) wishing to avoid being the first to move.

In 2015 consumer groups (including CHOICE, CALC, and ourselves) wrote to all the major insurers to propose that letters from general insurers inviting a customer to renew their cover should prominently state the premium paid by the customer in the past year alongside the premium if the customer renews, and the reason for any increase. We argued that this will not only keep competitive pressure on prices, but also encourage consumers to re-engage with their insurance each year and consider the adequacy of their cover.

Research conducted in April 2015 by Lonergan Research suggested that customers would welcome this information. Lonergan found that 86 per cent of insurance customers would find it 'useful' or 'very useful' for renewal notices to state last year's premium and the reason for any change. UK insurers also appear to agree that this is a workable idea. The Association of British Insurers has asked the Financial Conduct Authority to require the provision this information, and AXA has committed to include last year's premium in insurance renewal quotes.

We proposed that this would be a relatively simple and inexpensive way for insurers to help consumers engage with the insurance market. Unfortunately none of the major insurers have adopted our recommendations, even with the ICA committing to "coordinate trialling of the provision of a reminder of the previous year's premium at each renewal" in the final Report of the *Effective Disclosure Taskforce*. Insurers still provide very little information to explain how premiums have been calculated or the reason for price changes. These reasons are usually considered to be commercial in confidence. These issues have not been specifically addressed in the recent review of the General Insurance Code of Practice either.

² <http://consumeraction.org.au/insurance-companies-prove-your-loyalty-to-us-be-upfront-on-price-rises/>

Recommendations

1. Insurers should be required to provide component pricing of premiums.
 2. Insurers should be required to provide the prior year's premium price on renewal notices and the reason for any increase.
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2. Your views on competitiveness of markets for insurance (Questions 4-16)

We have no comments.

3.1 Your views about choosing insurance (Questions 17-22)

We cannot comment on the level of choice or coverage that individual consumers in Northern Australia are experiencing, but through our work on the ILS we have anecdotal evidence of the importance of price and customer service to consumers in that region.

In general we find that price is very important for consumers, especially in regions where prices have been rising dramatically in recent years. When consumers experience very big premium increases they often find this very confusing and upsetting. Such increases are rarely explained to the consumer's satisfaction.

Customer service and claims handling reputation are only important to consumers at claim time, or if they have had a bad claims experience in the past. The consumers we have talked to on the ILS are generally happy about signing up with a cheaper insurer, with a product with less coverage until they have a claim rejected.

The following case studies demonstrate the lack of information and explanations that insurance companies provide to customers about changes to premiums. Many of these case studies come from our Insurance Law Service email inquiry form. Identifying information has been removed for this submission, but the content comes directly from each consumer's email.

Case study – No advice from insurer

Narelle has lived in Bundaburg for many years, her home has been continually insured with the same insurer. The insurance would routinely be between \$1200 and \$1800. She got her renewal this year at it was \$8,000. She rang the insurer as surely it was a mistake. They advised her that they had adjusted the pricing. They did not advise her any further. She felt very trapped. When she contacted the ILS we were able to provided her some advice about shopping around, using the price comparator and talking about her risk. She advised the insurer did not help with any of that.

Source: ILS Hotline Caller

Case study – Consumer awareness as to premium

We have just received our renewal notice a while ago while discussing contents insurance we had been told that we were over insuring our contents which would be costing us more to insure so we rang INSURER and arranged to bring the figure down from \$80,000 to \$45,000, while on the phone we also changed our address details from QLD to NSW. This is when problems started we were told we live in a high risk area so it will cost us more. (we spoke to neighbour they claim rubbish) then our renewal came we had reduced the amount of cover we needed yet the renewal was going to cost us \$85.00 more than it did when we had double the amount my wife was told that it was because the government in different state charge more than others it is not the insurers fault but the government I realise that Australia is not one country but several all run by different people and we need passport it travel from one state to another. so is it true is there a cost hike caused be governments?

Source: ILS Email Inquiry

Case study – Lack of transparency in premium pricing

My car insurance policy is \$700 more expensive because of my address. The "a" after my street number is causing the problem. I own a free standing house with my own title. There are 3 homes with the same issue in this street.

Source: ILS Email Inquiry

Case study – Excess changed without consent

Between one policy renewal schedule and the next, my excess increased from \$100 to \$500. My concerns are these:

1. The extent of the increase is 500%. This seems excessive and unreasonable, to say the least.
2. The only notification of the increase was a one-liner in the wording of the schedule itself, and a note at the foot of the reverse of the schedule. There was no prior notification warning of the increase - no letter warning that this might be coming. In my view, INSURER has acted in bad faith in not pre-announcing such a significant increase and therefore failing to allow its customers to consider their continued association with INSURER.

Renewal schedules come out as a matter of course; but a 500% increase in excess is something so out of the ordinary that it should have been flagged separately, and well in advance.

Had I not heard a INSURER Customer Service officer mention in passing a few days ago that the excess had increased by 500%, I would have been in the dark....

Source: ILS Email Inquiry

Case study - Unexplained decrease in premiums

Matthew has an apartment in Queensland. He was paying contents insurance of \$740 in 2012, and then \$841 in 2013 but his renewal this year was for \$231; a reduction of \$500 and over 50%. He rang them and asked what the reason for the reduction was and the insurer has told him they can't tell him. Now he wonders whether they calculated it correctly before and whether he has been overcharged. He worries he may not be covered for events and is now suspicious.

Source: ILS Email Inquiry

Case study - Unexplained discounts

John has insured his cars and homes with INSURER for over 15 years. John rang up to switch his building insurance to landlord's insurance and was told that he should ring back when the rent is known as that may affect the premium. John did so and spoke to another representative; they noted the rental and the new policy price changed. In the course of the call, the representative said "I'll just make sure all your discounts have been applied, for all the policies" after a few minutes they came back and further reduced the policy price plus reduced the price on his other policies. John was irritated, why hadn't the first person done that and he has had these policies for over 15 years. Had they been doing it before?

Source: ILS Email Inquiry

3.1 Your views on finding and using the information that you need (Questions 23-28)

Disclosure research on Key Fact Sheets

We would like to note here that we have engaged two academics to complete a research project into insurance disclosure, specifically the efficacy of including the KFS at purchase time. Research is currently being undertaken at Monash University in Victoria and the final report should be released early 2018. We are hoping the research will show some definitive findings regarding the usefulness of the KFS and how Australians use it and other pieces of disclosure information at the time of purchase.

Opting out of flood cover

Insurers have gotten much better at clearly disclosing to consumers that they can opt out of flood cover, and warning people at renewal time that they have opted out. This has improved since the 2011 National Disaster Insurance Review. However, we still come across consumers that may have understood that they opted out of “flood cover” but did not understand the definition of “flood” or did not understand the risk of flood on their property.

Help understanding insurance

If consumers need help understanding their insurance or need help choosing the right insurance product, they cannot normally turn to their insurance companies, which generally all operate on a ‘no advice’ model. The current regime does not allow for meaningful engagement with consumers by their insurance companies because of the fear that providing too much information assistance will cross over into providing financial advice. We support the recommendation made by the *Effective Disclosure Taskforce* in 2015:

The Taskforce also recommends that a reconsideration of how the financial advice regime applies to the general insurance industry should be undertaken to assist insurers to better engage with consumers. ASIC should provide regulatory guidance, and where necessary relief, to support the provision of advice to consumers purchasing general insurance products.³

Some consumers do call the Insurance Law Service for advice about the meaning of certain provisions in their insurance policies, but our resources are very limited and we can only assist a handful of these consumers.

Recommendation

3. Recommendations made by the *Effective Disclosure Taskforce* should be implemented, especially regarding the provision of advice by insurers.
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³ Too Long; Didn't Read Enhancing General Insurance Disclosure Report of the Effective Disclosure Taskforce to Insurance Council Board October 2015 (pg 46), available at: <http://www.insurancecouncil.com.au/assets/Effective%20Disclosure%20Report.pdf>

3.3 Your views on switching insurers (Question 29)

We have no comments.

3.4 Your views on what consumers and insurers can do to improve affordability (Questions 30-33)

One of the biggest problem we hear about from consumers considering whether or not to make alterations to their homes in order to reduce the risk of storm or cyclone damage is that there is no guarantee that their insurance premiums will come down.

Case study – Failure of contestability in North Queensland

Sally lives in North Cairns. Her property was built in the 1940's and is located in the White Zone outside the Storm Tide Zone as advised by her Local Council. Since buying the property and after Cyclone Yasi, Sally made some structural changes to the property and was advised by her builder that it was now "cyclone rated". She was insured for Storm, but not Storm Surge or Flood, and her premiums were \$5,000 per annum. She was happy with her policy in light of the property modifications. In early 2014 at renewal time, the insurer wrote to her and declined to renew her insurance policy on the basis her property was an "unacceptable risk".

Sally rang them and told them about the building works and that she was zoned in the White Zone. The insurer did not change its position, and continued to refuse to renew the policy. Sally rang around other insurers, each time telling them at the point of sale about the works undertaken and that she was in the White Zone. No insurer would offer a policy of insurance to her. Eventually, she contacted a broker, who arranged insurance for her at a higher price, so she would not be left completely uninsured.

ILS helped her dispute the insurer's refusal to renew, by requesting written reasons under s75 of the Insurance Contracts Act. Shortly after ILS raised the written dispute, the insurer changed its mind and offered Sally a policy at the same price as it was the year before.

Sally was disheartened as ILS had not done anything more than what she had previously done apart from quoting a section of the Act and using legal letterhead. She was still in completely in the dark about the reasons for their original decision to decline to cover her, or indeed why this was later reversed. She chose to remain with her new insurer out of dissatisfaction.

Source: Insurance Law Service

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

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

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

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

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

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

Homeowners will only be incentivised to undertake mitigation projects on their own properties if there is a corresponding reduction in premiums. There does however seem to be some impediments to insurance premiums being responsive to mitigation action. The first is that insurers might want verification of the efficacy of a mitigation strategy before reducing premiums. This could be resolved by having post-mitigation premiums be subject to some independent review. Currently there is no independent or regulatory mechanism for homeowners to contest post-mitigation premiums. Australia needs an independent inspection process to determine the vulnerability of a property to natural disaster damage, give information to consumers about what mitigation action they might take, and provide verification of all mitigation action that a property owner has undertaken. If an insurer refuses to recognise mitigation strategies undertaken by a homeowner by lowering premium, or does not lower premiums enough there must be a way for that homeowner to lodge an independent dispute.

We believe consumers will be more likely to take up adequate insurance and undertake mitigation strategies if they can identify a correlating reduction in premium. This however can only be done by promoting great transparency and contestability, as outlined above. Consumers can and do recognise some personal and property risk, but the current premium pricing system does not provide any reliable benefits to homeowners to take any personal mitigation strategies.

What are insurers doing?

We do know through various consultations that some insurers have tried to come up with innovative products⁴ to address affordability concerns, but these products have so far had a low take-up rate. As we are an independent legal centre we don't recommend products to our clients, and we don't know if other insurers would send customers whose premiums have increased to unaffordable levels to a competitor's innovative affordable product.

Recommendations

4. Australia should have an independent inspection process to determine the vulnerability of a property to natural disaster damage, give information to consumers about what mitigation action they might take, and provide verification of all mitigation action that a property owner has undertaken.
 5. Australia should have a robust dispute mechanism was in place creating greater transparency and contestability of premium pricing. This could be incorporated into the terms of reference for the new Australian Financial Complaints Authority Ombudsman.
 6. Insurers should commit to lowering insurance premiums if a policy holder has undertaken mitigation works and there is an assessable reduction of risk on their insured property.
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4. Your views on mitigation (Questions 34-37)

As is discussed above, the biggest barrier to households and property owners undertaking private mitigation is that there is no guarantee from insurers that their premiums will decrease accordingly. We also believe there is a lack of awareness by homeowners about the risks, options, costs and benefits. Homeowners moving to high risk areas for the first time will likely have a limited understanding of what risk mitigation activities should be undertaken on their property.

Another barrier to property owners undertaking private mitigation activities is that risk assessments change, sometimes more than once over a period of years. A homeowner might spend a lot of money to undertake one form of mitigation on the property and then 5 years later it might become obsolete. For example, BAL ratings can change, and with them the necessary building requirements.

Insurers can help incentivise private mitigation initiatives by committing to lowering premiums after households have undertaken mitigation works. These commitments need to be transparent, measurable and contestable.

⁴ <https://www.insurelite.com.au>

Natural hazard mapping

Financial Rights also supports greater access to information on natural hazard mapping, modelling, exposure and risk. Insurance companies are not currently required to make this information available to consumers even when it applies directly to their premium price. This information should be made available by the government through a clearinghouse website (or any alternative government supported measure) to ensure data consistency and reliability. There should also be a review mechanism built in to the process.

Financial Rights supports the continued development of the Insurance Council of Australia's Building Resilience Rating Tool⁵ however more work needs to be done to ensure that this tool is accurate and results can be contested if the rating doesn't take into account individual mitigation and resilience factors. We know this tool cannot guarantee that insurance premiums accurately match the ratings provided, but it might be an important step forward in informing consumers about their home's risk.

Independent Assessment

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

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

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

Recommendations

7. The Financial Rights Legal Centre supports greater provision of mitigation information to homeowners in regions subject to extreme weather events.
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⁵ <https://www.resilient.property/>

5. Your views on regulation (Questions 38-41)

The use and availability of consumer's personal data are increasingly becoming important issues to consumers. This is a very new and fast moving area where regulation has failed to keep pace with innovation and change. Advancements in the and analysis of data raise a range of new possibilities for consumer benefit in insurance with sophisticated risk identification, risk assessment and risk mitigation techniques, innovative new insurance products and potentially improved customer experiences but it also raises new concerns with issues of risk segmentation, price discrimination, access, sharing, trust and privacy.

For example, just in December 2017 Suncorp had to suspend a new online insurance quote feature because of concerns over data sharing. Suncorp's insurance arm, which includes AAMI, recently launched a new online feature designed to "make it easy" for consumers to obtain home and contents insurance quotes for their houses by filling out an online form. But some of the answers to questions about homes were pre-populated with information based on data Suncorp collected from customer quotes lodged over the years, including building records. This sparked customer concerns about their privacy with their homes potentially being exposed to anyone inputting their address.⁶ This is a good example of a new data innovation that could really assist consumers to get the best insurance coverage for their needs, but the security and privacy implications had not been fully considered.

Innovation and technology in insurance

Financial Rights has serious concerns regarding the greater availability and use of data particularly with respect to the insurance industry. The use of big data will have increasing impact upon the financial services sector and consumers. Many impacts are already known. In the insurance sector, for example there are a number of known impacts from an investigation by the UK Financial Conduct Authority (FCA) including on pricing, product design, distribution and sales, claims handling and fraud detection.

According to the FCA, Big Data is bringing a range of benefits to consumers, reducing form filling, streamlining sales and claims processes, and allowing firms to develop more personalised products to serve customers' needs. In addition, telematics products can provide feedback to consumers to help them manage their risk, lowering insurance costs.

However there are two areas of key concerns in the realm of insurance for the FCA:

The first of these relates to how firms assess and categorise the risk of a consumer making a claim (i.e. the likelihood of a claim and the firm's appetite to take that particular risk on). Specifically, the concern is the potential consequences of increased 'risk segmentation' as a result of Big Data. Risk segmentation has always been a key part of the insurance business. Increased risk segmentation may result in improved outcomes for some consumers, but we are concerned that it could also result in categories of consumers with higher risks that are no longer able to obtain or afford insurance for the risk they represent – in this instance the North Australian market.

⁶ <http://www.smh.com.au/technology/consumer-security/aami-suncorp-suspend-online-insurance-quote-feature-over-burglary-fears-20171204-gzyp1c.html>

The second concern is about 'pricing practices' which do not reflect a consumer's risks or the cost to serve. Big Data may improve firms' ability to identify opportunities to charge more to certain types of customer, for example looking at their ability and willingness to pay more i.e. not risk or cost based. This is referred to as 'price discrimination' or 'price optimisation'. It is a common feature in many industries, but can lead to poor consumer outcomes in some circumstances.

There are a multitude of further concerns too that have yet to be fully considered such as the impact of privacy, risk mitigation, credit and insurance reporting, pre-purchase decision-making and insurers own disclosure.

Insurers, for example are currently examining the opportunities being available for big data for their businesses. Many of the benefits for industry are to their bottom line, through increased sales or more efficient processes. They are inevitably being sold as improvements for the consumer through the development of innovative products, improved customer experiences and better customer engagement. While there may be some truth to these, the claims being made are from an industry perspective rather than a true consumer perspective.⁷

Telematics is allowing insurers to develop new pricing models where, for example, good drivers (as measured by the information gathered in a car) can be rewarded with decreased premiums. QBE for example, offers "Insurance Box for young drivers," which as of publishing is the only insurer offering the use of telematics in Australia. QBE sends an electronic device to install in the car.

AIA and MLC, for example, provide discounts and benefits on life insurance products⁸ if you use a personal fitness tracking device and share this data with the insurer. While the value proposition being put forward is that the offer promotes fitness, encourages a healthy life style and provides financial savings, the key issue is that insurers will be more empowered to identify risks and uninsured or reduce coverage of certain tracked policyholders.⁹ It is only a matter of time that telematics are applied to home and contents insurance.

This has huge implications for government as some of the highest risk consumers will be priced out of coverage. An Actuarial Institute Report identifies a number of significant issues:

Firstly greater risk transparency can facilitate better behaviour and insurers can provide incentives to undertake risk mitigation but what is the insurer's responsibility to disclose risk information to the consumer, especially health-related material. This may is not be clear and may be misused by the insurance industry to benefit their bottom line (through cost savings) rather than to ensure fair coverage of consumers.

⁷ See MLC, FSC, *Big Data in Life Insurance*, December 2016, <https://www.mlc.com.au/content/dam/mlc/documents/pdf/media-centre/big-data-report.pdf>

⁸ AIA Vitality <https://www.aiavitality.com.au/vmp-au/>; MLC Life Insurance on Track <https://www.mlc.com.au/personal/important-updates/on-track>

⁹ Actuaries Institute, *The Impact of Big Data on the Future of Insurance, Green Paper*, October 2016 <https://www.actuaries.asn.au/Library/Opinion/2016/BIGDATAGPWEB.pdf>

Self-Regulation & Government Regulation

Innovation and technology are providing new opportunities for improved engagement and information provision, but there needs to be better consumer testing before new products are launched. The insurance industry already has a relatively mature and well known self-regulatory Code of Practice which is currently under review. Financial Rights has strongly argued for greater transparency and contestability of premium pricing, as well as improvements to the current disclosure regime.¹⁰ Insurers have an excellent opportunity at the moment to include commitments in their own Code of Practice that go beyond the minimum legal requirements and set best practice for providing information to their customers.

Consumer advocates also believe government regulation can play an important role in requiring a much more effective disclosure regime since we know that the current system of giving long product disclosure statements to consumers is not working. There are also new areas of regulation that need to be considered as innovation and technology change some of the fundamental tenants of insurance.

For example, insurance prices throughout Australia have been shifting from an insurance pooling model to a model where prices can vary dramatically depending on the actuarial and statistical data held about a policyholder by the insurer. Insurance pricing is increasingly becoming more granular. More and more information is being collected about consumer habits and risk profiling. Financial Rights is concerned that the more that granular and specific data is collected the greater the exclusion will be for some sections of the insurance market. The use of granular data may lead to more targeted (and lower) pricing for some consumers, but others will be left underinsured or uninsured.

The Report from the Actuarial Institute mentioned above argues that Government may have a role to play when the insurance market, armed with volumes of granular data, do not deliver adequate cover at an affordable price. That is, will government need to step in to protect those people with uncontrollable risks identified by, for example, exposure to natural hazards and perils? Will society want individuals to pay a 'fair price' for insurance that reflects risk or do we want everyone to have affordable access to insurance regardless of the risk? In the life insurance space we have raised that genetic discrimination in insurance is far from an inconceivable development given the history of problems getting cover faced by those with mental illnesses and current moves to implement non-discrimination principles through self-regulation.¹¹ This is analogous to an extent with the increase in data availability in individual

¹⁰ General Insurance Code of Practice Review, Submissions:
<http://codeofpracticereview.com.au/submissions>

¹¹ In 2003, the then Investment and Financial Services Association (IFSA) (now the Financial Services Council) representing life insurers developed memorandum of understanding between life insurers and a coalition of mental health sector stakeholders (MHSS) in recognition of the issues faced by people with a mental health disorder. The MHSS included the Mental Health Council of Australia, Beyond Blue the Australian Psychological Society and five other representative organisations. The aim of the memorandum was to "improve the industry's understanding of mental health conditions, their risk management practices and ultimately the life insurance outcomes for Australians with mental health conditions." The memorandum has led to a number of significant developments including new guidelines for underwriting and claims treatment, a mechanism to address complaints, consumer facts sheets

homes, specifically the increase in products such as googleNest, Amazon Echo and GLAS the infiltration into people's homes of telematics and what purpose the data will be applied.

Consumers will also face a dilemma over risk reduction versus privacy. AI state:

Increased awareness of consumer behaviour, gleaned from the capture and analysis of higher volumes of detailed data, allows service and product providers to improve their offerings to individuals. Individuals will also get the opportunity to receive tailored information from their insurer about the risks they face. Insurers can develop services which give customers signals about how to reduce their risk levels and hence their insurance premiums. This will lead to a society-wide risk reduction benefit.

Nevertheless, the increase in the volume of data held on people and the way it is used (or perceived to be used) may lead to an increase in privacy and discrimination concerns. Government will need to consider the adequacy of currency privacy rules and rules for access, ownership and use of personal data.

The AI report details a list of potential policy responses to the influx of big data including:

- the government entering the market as “insurer of last resort” as it currently does in relation to commercial interruptions arising from terrorism;
- Government may want to consider whether any restrictions should be placed on what information an insurer may seek. It could require insurers to be more transparent about the use of data and whether it will be sold or passed on. It might also confirm the right of the insured to understand whether their social network footprint or internet browsing history is being used.
- Government could consider restricting the use of certain data on uncontrollable risks for pricing, to avoid the potential for adverse decision making by insurers.
- Government needs to consider the insurer's responsibility to share knowledge of risk with the consumer, particularly where there is no incentive to do so or a financial interest not to do so.

Regardless of what the Australian Government decides to do on a macro level regarding the use of big data in insurance, consumers should absolutely have access to the information held about them by their insurers. Consumers must have an opportunity to verify that any information help about them is correct and complete.

Stronger privacy regulatory regime

detailing the process, information sheets to assist the community to understanding the implications of applying for insurance products and the importance of making accurate statements about their health, annual data collection and the introduction of the Financial Services Council's Standard No. 21 Mental Health Education Program and Training. Financial Rights also notes that the FSC has announced as part of the launch of the current Life Insurance Code that

The next iteration of the code will seek to increase obligations on insurers when interacting with consumers suffering mental health issues. o The FSC will work with groups like Beyond Blue, Lifeline, Mental Health Australia and the Public Interest Advocacy Centre to determine how to better serve those consumers with mental health issues.

There are clear limitations to the effectiveness of disclosure as a consumer protection tool.¹² We therefore caution against a narrow focus on disclosure, as opposed to broader regulation that requires business to access and use consumer data fairly. We note the amendments to the *Privacy Act 1988* which came into effect in 2014 were based on an Australian Law Reform Commission review in 2008. The rapidly evolving data capture and use landscape has undergone enormous change in the period since that review. Australia needs a stronger, modern and future-proofed privacy regime to maintain consumer trust and confidence in the use of data. Improvement is not only needed in the substantive privacy protections themselves, but also the compliance regime.

If disclosure is to form a useful part of the regime, its design should start with a consideration of how consumers actually use disclosure and how they make decisions, rather than a focus on compliance and risk avoidance. It should be designed with an understanding of what kind of information will be useful to consumers, and when and how to present it for maximum effect. Consumer testing of any proposed disclosure or consent process will be critical.¹³ Effective consumer protection, and resulting consumer confidence, cannot rely on disclosure alone.

Consumer data right

Financial Rights notes that the government has announced that it will legislate in 2018 a Consumer Data Right which will give consumers a right to their banking, electricity, phone and internet transactions. This is however just to begin with and it is expected that this right and the open data regime will quickly be expected to other sectors including the insurance industry.

While we support the development of a consumer data right, we do so in a regulatory regime that ensures consumers are adequately protected and able to realise the benefits from increased data sharing. We encourage innovation, data sharing and competition not as ends unto themselves, but only to the extent that they are ultimately good for consumers.

The starting point should be an acknowledgement that data is a public good and any corporate holder of data – including insurers – should be treated like a public utility. Further, consumer access and control over their own data is imperative. An insurance data regime must be designed to benefit consumers—not only as individuals, but as a society.

In developing a regime that provides improved access to consumer data in insurance there needs to be a number of considerations:

- A cohesive and fit-for-purpose regulatory framework needs to be developed. There needs to be a comprehensive, broad, government-led regulatory framework that provides clear oversight powers to ASIC and the Office of the Australian Information Commissioner to regulate. These regulators need to be empowering well-resourced and proactive.

¹² For example see: Omri Ben-Shahar and Carl E. Schneider, *More Than You Wanted To Know: The Failure of Mandated Disclosure*, Princeton, Princeton University Press, 2014.

¹³ For more information on performance-based consumer law regulation, see Lauren Willis, *Performance-Based Consumer Law*, 82 *University of Chicago Law Review* 1309 (2015), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2485667.

- An appropriate dispute resolution framework that promotes access to justice with respect to data issues needs to be built. At a minimum the regulatory framework must include:
 - clear internal dispute resolution and external dispute resolution processes;
 - mandatory capital requirements and professional indemnity insurance for all parties using personal and financial data; and
 - a last resort compensation scheme to deal with the problem of firms without the capital to cover significant breaches and failures.
- Specific privacy, data quality and security protections should be developed. Consumers need to be provided with the ability to control their data through:
 - requesting edits;
 - receiving a copy of the data;
 - directing data to be transferred;
 - being advised if data is traded;
 - being informed of data disclosure;
 - a data erasure right, which would apply when:
 - the data is no longer necessary in relation to the purposes for which it was collected;
 - the individual withdraws consent or the relevant storage period has expired;
 - the individual objects to the processing of data; or
 - the data was unlawfully processed.
 - Rights for consumers to object at any time to the processing of their data.
 - There also needs to be a thorough review of the *Privacy Act 1988* as suggested in the previous section to keep pace with new technologies'
- Appropriate disclosure, consent and transparency regimes, including public reporting.
 - there should be a prohibition of blanket, take it or leave it consents. Consents should be appropriately unbundled and broken down for different types of data;
 - consent can be on an ongoing basis, but where there is a long-term relationship there should be mandated, periodic re-consent;
 - consent should also be able to be given for one-off, time limited, access in order to enable, for example, an affordability check to be carried out when applying for a loan;

- third party access to consumer data must be given only at the explicit or express consent of the customer and data should not be used, accessed or stored for any purpose other than the service the user explicitly requested;
- a prohibition of on-selling consumer data need to be introduced. Responsible product and suitability requirements should also be applied;
- a prohibition on secret price and other unlawful discrimination in black box technologies—acknowledging that transparency and consent will not solve problems inherent in opaque and complex digital products and services.

Insurance Reports

One element that needs to be addressed with respect to insurance data is the serious problems and issues with the current insurance reporting regime.

Financial Rights understands that in late 2016 Dunn and Bradstreet launched a ‘new’ Insurance Reference Services (**IRS**) database of Australian motor and home insurance claims, which it was appointed to build, host and manage.

The database makes available to insurers information about the claims history of every consumer that has purchased insurance through member motor and home insurers representing “some 90% of the Australian home insurance market.”¹⁴

The database contains the following information on consumers in Australia:

- Name, date of birth, driver’s license, gender and residential address;
- Enquiries made by agents of insurance companies - such as loss assessors, adjustors or insurance investigators;
- Claims made under insurance policies; and
- Details of fraud investigations.

According to Dun & Bradstreet the IRS membership database allows members to:

- improve efficiency and customer experience at onboarding and time of claim;
- accurately assess and price risk;
- optimise underwriting practices; and
- identify suspicious, unusual or potentially fraudulent claims.

However a consumer can only obtain a copy of their insurance report (called My Insurance Claims Report) from Insurance Reference Services Ltd¹⁵ for \$22 (incl. GST). There is no free access available to an insurance report for a consumer.

¹⁴ Dun & Bradstreet Launches New Australian Insurance Industry Database, 4 October 2016, <http://dnb.com.au/article-media-Australian-Insurance-Industry-Database.html>

Insurers regularly check insurance reports when a claim has been made. The consumer purchasing insurance is told about the possibility of reporting to an “insurance reference bureau” (or similar) in the PDS, often close to the end of the PDS. There does however seem to be inconsistency in obtaining consent to provide this information.

For consumers though, the selling point of an insurance report put forward by Insurance Reference Services is that:

“See what information Australian insurance companies know about your home and motor insurance claims history.

General insurance companies are required to disclose to policy holders, in their Privacy Statements and Privacy Policies, the extent to which your personal information may be shared with other insurance companies, loss assessors, claims agents and insurance reference bureaus. IRS is an insurance reference bureau and is one of the key resources that insurance companies rely upon for sharing and verifying your insurance claims history across other insurers, to assist in claims management and detection of insurance fraud.

This information may be used by insurers to validate information provided to them when quoting, assessing your claim or setting your premium. My Insurance Claims Report is based upon the aggregated home and motor claims records of the IRS home and motor claims database.”¹⁶

A consumer being able to access a central database of claims information that assists in answering disclosure questions holds some potential value but Financial Rights is unaware to what extent consumers have taken up the opportunity. Insurers tracking consumers who make fraudulent or excessive claims to reduce the instance of fraud and calculate premiums also has potential value but there are many opportunities for misreporting and abuse without adequate rules and oversight.

In Financial Rights’ discussions with insurers in 2016 and more recently in October 2017, we were told that the reports were haphazard, inconsistent and largely unreliable so that the current report provides minimal benefit to insurers or consumers.

It is also Financial Rights’ understanding that insurers may be using the database inconsistently, and are not aware of what the information contained on the report may mean. This could lead to a consumer being disadvantaged in unfair premiums, rejections for non-disclosure and inconsistent treatment. The utility and value for a consumer in having the report at the cost of \$22 is therefore undermined if the information it records is not consistent, accurate or up-to-date.

15 at www.insurancereferenceservices.com.au It was previously only available via Veda www.myinsurancepassport.com.au for \$29.95 but this service has ceased and is now only available from Insurance Reference Services Ltd.

16 <http://insurancereferenceservices.com.au/about>

Financial Rights has several additional concerns. First, very few consumers know that insurance reports exist, their purpose and when their information is recorded.

Secondly, if information on a consumer's insurance history is collected and shared amongst insurers, access to this report should at the very least be free. Consumers need to be able to access information held by insurers about them to ensure that that information is accurate.

Finally, Financial Rights is concerned that there are no specific regulations covering insurance reports stipulating the permitted contents of the report, the type and the meaning of listings and the length of time the information is retained on a report.¹⁷ The information held in an insurance report has the potential to be very prejudicial to a consumer in obtaining insurance or in making a claim. The lack of specific regulation in insurance reporting is in stark contrast with credit reports where there is extensive regulation about what information can be held, how consumers can get access and correction procedures.¹⁸ Fraud is a serious allegation and the reporting of fraud on an insurance report is potentially defamatory and needs to be tightly regulated.

Under subsection 4.8 of the General Insurance Code insurers have committed to giving reasons why they cannot provide insurance and supplying consumers with the information they have relied on, if requested. In Financial Rights' experience these reasons are often vague and rarely have information regarding an insurance report. This means consumers are not even aware of the problem on their insurance report.

In summary, insurance reports drawn from the database are haphazard, inconsistent and largely unreliable providing minimal benefit to both consumers and insurers. Very few consumers know that insurance reports exist. Access to a consumer's own information is not free. There are no specific regulations defining and limiting the permitted contents of the report, the time information stays on the report, and no systems in place to ensure that incorrect, prejudicial and potentially defamatory information can be removed.

Financial Rights has recommended to the Government in a number of recent inquiries into insurance that, similar to the regulation in place already for consumer credit reporting, the ICA work with the Federal Government, the Office of the Australian Information Commissioner and the insurance industry to overhaul the insurance reporting system through regulation. Central to any regulations should be rules to address issues of accuracy, timing, consistency of information, dispute resolution and the application of natural justice. Consumers should also have free access to the information held on them.

¹⁷ According to Veda Advantage insurance enquiries are held for five years and claims for ten years, calculated on the date the information was added to the file and are based on the time limits provided in the Privacy Act 1988.

¹⁸ Part IIIA of the Privacy Act 1988 (Cth) regulates consumer credit reporting in Australia and is supported by the Privacy Regulation 2013 (Cth) and the Privacy (Credit Reporting) Code 2014 (Cth).

Unfair contract terms

Financial Rights strongly supports removing the exemption of insurance from unfair contract terms laws. We do not believe this will have any impact on the affordability and availability of insurance products. This exemption does not benefit consumers in any way and it is not necessary to protect industry. The need to extend unfair terms protections to all consumer products and services was first recognised by the Productivity Commission in 2008, and many expert inquiries have recommended extension of protections to insurance, including a Senate Inquiry in 2010 and the National Disaster Insurance Review of 2011. Consumers have been arguing for this change consistently over the last 10 years.

Recommendations

8. Consumers should have access to any information held about them or their property by their insurers, and they should have an opportunity to verify that any information held about them is correct and complete.
9. The Federal Government, the Office of the Australian Information Commissioner and the insurance industry must overhaul the insurance reporting system through regulation. Central to any regulations should be rules to address issues of accuracy, timing, consistency of information, dispute resolution and the application of natural justice. Consumers should also have free access to the information held on them.
10. The exemption of insurance from unfair contract terms laws needs to be removed.
11. That the Government undertakes a review of the impact of data on general insurance industries, examining the social impact and developing preemptive policy approaches.

Concluding Remarks

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

Kind Regards,



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