

Australian Competition & Consumer Commission Review of Northern Australia Insurance Inquiry – Response to Interim Report

Submission by Legal Aid Queensland



Australian Competition & Consumer Commission – Northern Insurance Inquiry – Response to Interim Report

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission in response to the Australian Competition and Consumer Commission's (ACCC) *Northern Australia Insurance Inquiry Response to Interim Report*.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ's Consumer Protection Unit lawyers provide specialist advice and representation in consumer law matters. The unit provides advice to clients, lawyers and financial counselors in relation to mortgage stress, housing repossession, debt, contracts, insurance, loans, telecommunications and unsolicited consumer agreements. This includes assistance to insurance consumers in relation to claims on their insurance policies following natural disasters such as cyclones & floods.

We have responded only to those questions we can answer from our direct experience.

Recommendations

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

The governments of Western Australia, the Northern Territory and Queensland abolish stamp duties on home, contents and strata insurance products. State and territory revenue needs could be more equitably met through other means.

LAQ supports this recommendation because it reduces the cost burden of insurance policies for high risk insurance customers in Northern Australia.

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

If stamp duties on insurance are maintained, the Western Australia, the Northern Territory and Queensland governments should reduce their burden on consumers in higher risk areas by levying stamp duties for home, contents and strata insurance with reference to the sum insured value, rather than the premium level. In any case, they should also direct a portion of revenue from stamp duties on insurance products towards measures to improve affordability for low income consumers or to fund mitigation works.

It is important that governments and insurers work together to implement ways of making insurance more affordable for consumers in Northern Australia who are at greater risk of natural disasters. Typically, a majority of properties in North Queensland have a lesser value than similar properties in South East Queensland. As a result, it would be a fairer outcome if stamp duty was levied by reference to the sum insured value of the property and not its premium level.

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

The Insurance Contracts Act should be amended to require insurers to report regularly to ASIC on the brands that they underwrite, and in which postcodes new business has been written for home, contents and strata insurance products.

LAQ supports the recommendation concerning the disclosure of where insurers are writing new business because it will assist consumers looking for insurance in identifying which insurance companies write policies in their area.

However, we do not see how requiring insurers to report regularly to ASIC on the brands they underwrite will assist consumers in North Queensland by either reducing their premiums or making it easier for them to identify which brands offer insurance in Northern Australia.

Recommendation 4: Standardise definitions of prescribed events.

The Treasury's review of the standard cover regime should develop a proposal to standardise the definitions of prescribed events (including 'action of the sea', 'impacts' and 'storm') to enable greater certainty for consumers and comparability of products.

LAQ supports standardising definitions of prescribed events. Over the course of the last decade, across multiple natural disasters, we have seen the confusion and poor outcomes that the lack of standardised definitions has caused consumers following natural disasters. Typically these problems occur for consumers when they are told that the insurance coverage which they thought they had did not cover them for the damage caused by the natural disaster that has devastated their lives.

Standardising definitions of prescribed events has the advantages of providing certainty to consumers about the extent of their insurance cover, reducing complaints for insurers following natural disasters and allowing easier comparison by consumers of insurance products based on the cost and type of coverage offered.

Recommendation 5: Review and mandate standard cover.

The Treasury's review of the standard cover regime should develop a proposal to mandate that insurers offering home insurance/contents insurance products should also offer a home insurance/contents insurance product that does not deviate (through inclusions/exclusions) from the revised standard cover terms in the Insurance Contracts Regulations.

LAQ supports the recommendation to review existing standard insurance cover and mandate new standard insurance cover. In this regard, reference is made to LAQ's submission in February 2019 to the Commonwealth Treasury Consultation on Disclosure in General Insurance.

We support a mandated standard insurance cover regime that protects consumers by providing them with a base level of insurance coverage and requires insurers to clearly inform consumers about any variations from the standard cover.

We support insurers being required to provide a default cover from which there are no exceptions. This default cover should be included in the standard cover regime. If insurers wish to differentiate their products or provide consumers with additional benefits this can still be achieved by providing Gold Standard products that build on the standard cover regime rather than derogate from it.

The above approach would provide consumers with some certainty when purchasing insurance and insure they are protected against standard risks which the community expectation would require insurers to provide.

However, the ACCC's recommendation requires just one product from each insurer in the market to reflect the mandated insurance cover. This approach risks creating further confusion for consumers. Under the proposal, consumers will have to try and compare products offering mandated standard cover with products that potentially do not bear any resemblance to standard insurance cover. The evidence of recent research by the Financial Rights Legal Centre suggests that consumers find this type of comparison very difficult.

A mandated standard cover regime will only be effective if all insurance products are required to have a standard base level of cover from which no derogation is permitted.

Recommendation 6: Unfair contract term protections should apply to insurance.

The unfair contract term protections in the Australian Securities and Investments Commission Act should apply to insurance contracts regulated by the Insurance Contracts Act.

LAQ supports this proposal and has made numerous submissions to government inquiries including the recent Commonwealth Treasury inquiry into Unfair Contract Terms in Insurance supporting similar recommendations. This view is also supported by Recommendation 4.7 of the Financial Services Royal Commission Final Report.

The key part to making this recommendation effective is that any legislation bringing insurance contracts under the Unfair Contract Terms Regime must have a narrow definition of "the main subject matter of a contract," so as to ensure that the majority of insurance contract is covered by the Unfair Contract Terms Regime. This recommendation will not be effective if a wide definition of the main subject matter of a contract is used.

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

The Insurance Contracts Regulations should be amended to require insurers to clearly inform consumers about the Australian Government’s MoneySmart website (www.moneysmart.gov.au). A link to MoneySmart using uniform text should be provided on new quotes and renewal notices.

LAQ supports this recommendation. We submit it would also be effective to provide referral information to Legal Aid Commissions and Community Legal Centres (such as the Insurance Law Service) throughout Australia so that consumers have easy access to legal assistance options should they require legal advice and assistance regarding insurance issues.

Recommendation 8: Better understand information that falls within ‘general financial advice’.

The Insurance Council of Australia should engage with ASIC to gain a clearer understanding about the nature and type of information insurers can give to consumers within the meaning of providing general financial advice.

LAQ supports this recommendation. It is important that insurers feel comfortable giving general advice that allows consumers to make informed decisions about the insurance products they are considering purchasing.

Recommendation 9: Disclose costs that count towards ‘sum insured’.

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

LAQ supports this recommendation because it would:

- a) improve consumers knowledge about insurance products;
- b) allow more informed decisions by consumers about the type of insurance products that are suitable for their needs;
- c) allow consumers to reduce their insurance costs by undertaking mitigation measures to reduce their insurable risk;
- d) assist in clearing up the confusion that many consumers have between sum insured, market value and agreed value; and
- e) provide more certainty for consumers about the costs and damage that they are covered for in the event that something goes wrong.

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

The Insurance Contracts Regulations should be amended to require that renewal notices for home, contents and strata insurance clearly disclose the premium, the sum insured and any excess of the expiring policy. Insurers should also provide this information upon request.

LAQ supports this recommendation because:

- a) improve transparency in the insurance industry;

- b) provide extra information that allows consumers to make more informed decisions about the type, coverage, excess and price that they want from an insurance policy.
- c) allow insurance policies to be more effectively compared by consumers so that they can make a more informed decision about the type of policy that is suitable for them.

For this recommendation to be successful the information disclosed by an insurer must include:

- a) the price of the new policy if the consumer renews (inclusive of taxes and charges);
- b) any difference between the new price and the previous year's price;
- c) every annual price charged presented in graphic and numerical forms;
- d) the reasons for any change from the previous year;
- e) an explanation of what is meant by sum insured compared to other types of coverage such as market value and agreed value;
- f) any substantial change to coverage.

This recommendation will be more effective if an insurer provides this information automatically instead of when a request is received.

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

The Corporations Regulations should be amended to remove the exemption for general insurance retail products from the conflicted remuneration provisions as they apply to insurance brokers.

LAQ supports this recommendation. The evidence of the Financial Services Royal Commission and other inquiries has demonstrated that conflicted remuneration creates incentives for brokers and advisors to place consumers into inappropriate products. The same applies to insurance brokers. An insurance broker's duty should be to act in the best interests of the insured. Conflicted remuneration distorts this duty and should be prohibited.

Recommendation 12: Better information for consumers lodging a claim.

The General Insurance Code of Practice should be amended to require that at the time a consumer lodges a claim, an insurer or its agent must clearly inform the consumer of the insurer's claim handling policy, and expressly refer to:

- **how the insurer will assess the validity of the consumer's claim**
- **the insurer's preferred repairer policy and in what circumstances a consumer can use their preferred repairer**
- **how decisions are made on cash settlements**
- **who will be managing the claim (for example, the name and contact details of a contracted claims company if relevant)**
- **the fact that the loss adjuster is acting on behalf of the insurer and not the consumer**
- **the consumer's right to make a complaint to the insurer and the Australian Financial Complaints Authority.**

LAQ supports this recommendation and the requirement that consumers be clearly informed about the insurer's claim handling policy, by the insurer or its agent, when a consumer is lodging a claim. Having assisted thousands of Queensland consumers following natural disasters since 2010, one of the greatest sources of worry for consumers is how insurance claims are handled. Insurance claims handling is a great source of stress and confusion for consumers.

This recommendation contributes to:

- a) providing consumers with an insurance claims handling roadmap
- b) providing consumers with accurate information about the claims process at the commencement of the claims' process.
- c) setting a standard for all insurers to meet in insurance claims handling.
- d) relieving some of the stress faced by consumer following an insurance claim.

We are that following the Townsville Floods in January 2019, the Insurance Council of Australia and Suncorp have held public community forums that LAQ and Townsville Community Legal Centre were invited to, to explain the insurance claims process. We support these initiatives as a means of helping consumers to more easily understand the insurance claims process.

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

The Insurance Council of Australia (ICA) work with ASIC to obtain its approval for the General Insurance Code of Practice.

LAQ supports this recommendation. Ensuring ASIC approval for the General Insurance Code of Practice will improve the strength and enforceability of the Code. It is also likely to improve the outcomes that consumers can achieve under the Code.

Recommendation 14: Public mitigation works and expected premium reductions.

The insurance industry should work with governments to identify specific public mitigation works (e.g. flood levees) that could be undertaken and insurers should provide estimates of the premium reductions they anticipate should the works proceed.

LAQ supports this recommendation. Particularly in Northern Australia, mitigation measures that reduce the insurance risks are a vital part of any response to improving access to affordable insurance in Northern Australia. This approach will:

- a) achieve better results for consumers by encouraging Governments and the Insurance Industry to work together to develop and implement mitigation measures.
- b) improve transparency for consumers about the costs of their insurance policies.
- c) encourage consumers to take an active interest in measures that can reduce their insurance risk.

We also highlight the importance of State and Local Government working together regarding development approvals to ensure that future development in flood prone areas are not approved.

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

The Australian Building Codes Board expressly consider measures that better protect the interiors and contents of residential buildings from damage caused by natural hazard risk (such as, wind-driven water ingress around doors and windows during and following storms).

LAQ supports this recommendation. While we acknowledge that it might initially increase the cost of building new dwellings in Northern Australia. This recommendation is likely to greatly reduce the effect and costs of future natural disasters in North Queensland and Northern Australia.

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

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

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

LAQ supports this recommendation. In our experience of providing advice and assistance to consumers following natural disasters, consumers tend to be inaccurate when estimating an appropriate sum for which to insure their property. This problem is most apparent when it comes to estimating the costs of rebuilding a home that is severely damaged. Consumers rarely have access to appropriate data that allows them to estimate this amount successfully. However, insurers have easier access to data about the costs of rebuilding a property. As a result, insurers are better placed to be able to make an informed estimate of the sum insured required under an insurance policy.

For this recommendation to be successfully implemented the risk of insurers inflating the sum to be insured needs to be addressed. Some insurers apply Consumer Price Index derived increases to policies annually as a cost effective method of taking into account increases in property value and repairs costs over time.

Ensuring the adequacy and accuracy of the sum insured is the key to making this recommendation effective. Calculators play an important part in ensuring the adequacy and accuracy of the sum insured on an insurance policy. However, it is important that these calculators are:

- a) regularly reviewed by experts in the area;
- b) easily accessible for consumers;
- c) where possible use the same calculations for calculating the cost of extras such as clean up costs following a cyclone.

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

The Insurance Contracts Regulations should be amended to require insurers to publish key facts sheets and product disclosure statements online in a prominent manner and alongside the relevant products.

They should be accessible prior to the commencement of a quoting process. This will facilitate more timely and convenient access for consumers to important information about products they are interested in buying.

LAQ supports this recommendation. We agree that the placing of PDS's and KFS in a prominent place on insurers' websites would be a useful means of better informing consumers for little cost about Insurance products and their coverage. In particular KFS are an important part of improving the understanding of all consumers about the coverage provided by their insurance policies.

For this recommendation to be successful, the placement and presentation of this information should be regulated to ensure consistency between insurers and to aid consumers in comparing different insurance policies.

We note that the North Queensland Home Insurance website (nqhomeinsurance.gov.au) operated by the Australian Government provides information useful to consumers in the quoting process. LAQ has observed, at least anecdotally, that consumers have little awareness of this service. LAQ believes better promotion of this service would assist consumers make more informed decisions about insurance products available to them.

We also refer to our submission made in February 2019 to the Commonwealth Treasury Consultation on Disclosure in General Insurance and in particular LAQ's submissions in relation to KFS.

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

The Insurance Contracts Regulations should be amended to require that insurers disclose the premium costs or saving for each optional inclusion or exclusion they offer to a consumer. Insurers should also indicate the premium cost or saving associated with incremental changes in excess levels and sums insured. This information should be provided to a consumer with a quote for a policy and upon its renewal.

Providing consumers with information about the cost impact of optional inclusions/exclusions (e.g. flood cover, accidental breakage cover) as well as variable costs (such as changing an excess or sums insured) will allow consumers to make more informed decisions about their choice of cover.

LAQ supports this recommendation. This information cannot reasonably be viewed by Insurers as commercially sensitive information that should only be available to the insurer.

This recommendation is important because it improves transparency in the insurance industry and allows consumers to make more informed choices about the type of products that are suitable for them and access insurance that is suitable for them based on the type of coverage offered and its costs.

However, a risk with this recommendation is that it may lead cost strapped consumers to making decisions about the type and quality of insurance cover they need on price considerations alone. This risk is likely to be considerably higher in Northern Australia where not all insurance companies offer insurance cover in North Queensland and premiums are very expensive and often unaffordable for consumers.

Draft recommendation 4: National home insurance comparison website

The government should consider developing a national home insurance comparison website. It should require the participation of all insurers active in relevant markets, allow consumers to compare policies by features, and make it quick and easy for consumers to act on the results.

An independent insurance comparison website may facilitate more informed consumer choice by assisting consumers to quickly and easily find insurers in their area and offering policies that meet their needs. Comparison websites can provide an opportunity for new entrants to increase consumer awareness of their brand at relatively low cost, reducing a barrier to entry. Enhanced comparability of products, such as through standardised definitions (recommendation 4) and mandated standard cover (recommendation 5), will assist in the effectiveness of such a website.

LAQ supports recommendations which have the potential to enhance the ability of consumers to compare insurance products in Northern Australia.

However, we are not convinced that a National home insurance comparison website will benefit consumers for the following reasons:

- a) it remains difficult to compare features within an insurance product because of a lack of standardised definitions;
- b) it remains difficult to compare features within an insurance product because of a lack of a mandated standard insurance cover regime;
- c) it is impossible for consumers to compare insurance products on a like for like basis because the coverage and price of different insurance products varies greatly within the market;
- d) to be effective it would require the cooperation of all insurers providing data and information about all of their products; and
- e) comparison websites encourage a focus on price and not other features of the product.

For a national home insurance comparison website to be effective it must be resourced appropriately to ensure it is maintained and all policies are updated. This would require cooperation between the Government and insurers.

Draft recommendation 5: Renewal notices should give 28 days notice

The Insurance Contracts Act should be amended to require insurers to provide renewal notices for home, contents and strata insurance no less than 28 days before the expiration of their insurance coverage.

The Insurance Contracts Act currently requires no less than 14 days. The current minimum timeframe does not provide consumers with sufficient time to consider their renewal quote and explore their insurance options. It also may not be sufficient time for some consumers to have ready-access to funds.

LAQ supports this recommendation. The proposed increase from 14 days to 28 days would:

- a) provide consumers with sufficient time to consider their renewal notice and consider their options;

- b) enable consumers to budget for premium payments; and
- c) benefit rural and remote customers whose message delivery services are not as timely as those in more populated areas.

The increase from a minimum of 14 to a minimum of 28 days notice is sufficient. We doubt whether a greater notice period would be of any further benefit to consumers and acknowledges a notice period of more than 28 days could result in consumers forgetting to renew a policy.

It is also doubtful such a change would increase administrative costs to insurers and thereby affect prices charged to consumers. If it does, the benefits to consumers outweigh any additional costs to insurers.

Draft recommendation 6: Disclosure where premium increases are capped

The Insurance Contracts Act should be amended to require insurers that have capped premium increases for particular risks (to slow the rate of adjustment to a higher technical price or other pricing objective), to disclose this to an affected policy holder and provide an estimate of the timing and extent of premium increases that the insurer intends to apply in future.

This will allow consumers to recognise price as a signal of risk and prepare for potential future premium rises.

LAQ supports insurers being required to provide more information about the reasons and methods of calculation of the insurance premiums charged to consumers. It is important that consumers be provided with information that assists them to engage with insurers and the community about mitigating risks in their community. However, we question the value of providing such technical information unless it can be provided in an easy to understand format for consumers.

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

States and territories should implement measures to prompt consumers to investigate insurance costs when they are considering purchasing real estate. As a first step, states and territories should include a statement in a statutory information disclosure for a real estate transaction advising any potential purchaser to obtain an insurance estimate as part of their due diligence. If recommendation 5 (to review and mandate standard cover) is accepted, states and territories should mandate that a current home (building) insurance premium based on the standard cover product be listed in a statutory information disclosure for a real estate transaction.

This will provide prospective purchasers with a clearer expectation of the possible insurance costs associated with the property.

LAQ acknowledges this recommendation would be likely to better inform property purchasers when conducting due diligence upon a property they considering purchasing. However, we note that the proposal does not oblige purchasers to obtain the insurance estimate. To be effective, it should be done before entering into contract.

Also, the recommendation provides only a point in time snapshot of the property's insurance risk i.e. at the time of purchase. It cannot foresee all of the future risks to the property.

The conveyancing process already includes a large number of due diligence actions, many of which are largely ignored by consumers.

Draft recommendation 8: Requesting personal information held by insurers

The Insurance Contracts Regulations should be amended to require insurers to provide clear notice to consumers that they can obtain a copy of the information that the insurer holds about them, and contact details for doing so. This notice should be provided on a certificate of insurance and any renewal notices.

This will empower consumers to check and confirm their risk assessment, pricing and claims assessment is based upon reliable and verifiable information.

LAQ supports this recommendation because it would benefit consumers. In our experience, for consumers who are affected by natural disasters or who are seeking insurance and facing the prospect of large insurance premiums, one of the biggest challenges in engaging with insurers is in understanding how premiums are calculated and what, if anything, they can do to reduce premiums.

This notice would:

- a) allow consumers to access their personal information that is being relied on by consumers;
- b) allow consumers to correct any errors; and
- c) enable the reduction or mitigation of risks that are increasing their current insurance premiums.

This recommendation would be improved and provide further benefits to consumers if it was provided automatically to consumers instead of relying on consumers to request it.

We refer to our submission made in February 2019 to the Commonwealth Treasury Consultation on Disclosure in General Insurance and in particular LAQ's submissions in relation to component pricing.

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

State and territory legislation governing strata managers should be amended to prohibit strata managers from accepting payments in relation to arranging strata insurance other than those agreed to, and made by, their body corporate.

Strata managers should be required to negotiate any fees or payments for arranging insurance directly with the body corporate they are servicing. This would encourage remuneration arrangements that better align the interests of the strata manager and their clients.

LAQ supports this recommendation. Strata managers serve the body corporate and therefore are required to act in the best interests of the body corporate and its members. Receiving payments for organising insurance other than as agreed by the body corporate is at best a perceived conflict of interest and should not be permitted.

This recommendation will require some body corporate managers to change their processes. However, if it results in body corporates obtaining more appropriate insurance, it will be positive change.

We submit that there should be no grandfathering of any existing conflicted arrangements.

Draft recommendation 10: Clear disclosure of products considered and remuneration

The Corporations Regulations should be amended to require comparison websites and insurance brokers to disclose a complete list of what home, contents, or strata insurance products they will consider when making a comparison or providing a recommendation to a consumer. If recommendation 3 (insurers to report their brands and where they are writing new business) is adopted, this disclosure should also refer consumers to this information. Finally, comparison websites should also be required to disclose the amount of commission and other remuneration that they receive for each product.

Comparison websites and insurance brokers only consider a sub-set of the market when providing a quotation or recommendations. Consumers should clearly understand the breadth of search undertaken by the comparison website or insurance broker they are looking to use.

LAQ supports this recommendation. Many consumers, use and trust comparison websites because they are time poor. Currently, none of those comparison websites inform consumers that:

- a) they do not cover all of the products available in the market;
- b) a cheaper price is usually available if they buy the product directly from the insurer; or
- c) they receive commission or remuneration that differs based on the type of policy sold through the website.

This recommendation is important because:

- a) it encourages transparency by comparison websites;
- b) highlights the importance of shopping around for insurance, even on comparison websites; and
- c) allows for informed better comparison of insurance products by consumers, in particular if they understand that the comparison website is being rewarded more for recommending a particular product to them.

How should this recommendation be implemented?

We submit that this information should be conveyed to consumers by a general message on the comparison website. Also, when a search is undertaken potential remuneration for the website should be identified in the search results. The information should also be made available when a product is purchased.

For reasons of consistency and transparency the required information should be prescribed by regulation and include:

- a) the form of remuneration;
- b) the size of commission;
- c) any non-commission/non-financial benefits the website receives;
- d) any ownership or related company information; and
- e) any lower than standard cover elements in the product being offered.

Draft recommendation 11: Giving consumers more control over how claims are settled

The Insurance Contracts Act should be amended to provide consumers with the right to choose whether their home insurance claim is settled through a cash settlement or by proceeding with a repair/rebuild managed by the insurer.

The consumer must be given clear notice of the implications of accepting a cash settlement, for example the insurer will be discharged of any obligations to manage or guarantee the quality, cost or timeliness of any repair the consumer chooses to undertake. Any ancillary expenses subject to the claim that are not within the scope of works for the quote (such as temporary accommodation costs) would be settled separately.

Over the past decade LAQ has seen a number of problems arise out of the use of cash settlements by insurers following natural disasters. These problems include:

- a) the cash settlements offered to consumers are too low. Cash settlements are being offered by insurers for the amount that the insurer could engage a builder to repair the property not the amount that a consumer is able to engage a builder undertake repairs to a property. There is no recognition of the commercial bargaining power advantage of the insurer for cash settlement amounts being paid by insurers.
- b) some insurers are already attempting to address this issue by adding a mark up to account for this problem when they are making a cash settlement for a claim.

Additionally, consumers underestimate the impact increased demand, for builder and other trade services subsequent to a natural disaster, has on the prices quoted and charged.

Consumers are asking for cash settlements without understanding critical issues such as:

- a) the repairs will not have the same insurer guarantees concerning the quality of the repairs, and
- b) that it can be very hard to engage qualified repairers quickly after a natural disaster.

Consumers can lose the benefit of lifetime repair guarantees offered by insurers when they agree to a cash settlement.¹

There is a perception in the community that insurers are using cash settlements as a means of getting rid of more difficult complaints when there is a dispute over the scope of works.

Cash settlements are a problem where the consumer has a mortgage on the property. Where there is a mortgage on the property, the mortgagee is entitled to receive the insurance payout and then approve any repairs done on the property. We are aware of instances following Cyclone Debbie where invoices for paint were not paid because the consumer had undertaken the painting in an attempt to save money and the mortgagee did not view them as a qualified repairer.

In these circumstances cash settlements do not work for the consumer because they are essentially exchanging one overseer of the claim (the insurer) for another (the mortgagee).

Without representation, consumers find insurer's IDR process difficult to deal with and will consider cash settlements purely so that they do not have to continue what they view as the battle with their insurer.

¹ Northern Australia Insurance Inquiry Interim Report December 2018 – page 205 - <https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20-%20First%20interim%20report%202018.PDF>

Consumers find it difficult to project manage complex repair projects following a cash settlement.²

Data from the ACCC's Northern Australia Insurance Inquiry Interim Report indicates that a majority of claims looked at by the ACCC were being cash settled despite an industry perception that the industry's preference was for repairing property.³

Consumers do not always obtain their own quotes before accepting cash settlements. The problem with this is that they have no conception of whether the amount being offered by the insurer is appropriate.

LAQ is concerned that the draft recommendation would result in consumers making decisions about accepting a cash settlement because they are struggling with the insurance process or having difficulty with one of the issues outlined above.

Any implementation of this recommendation will not be effective unless the above issues are addressed. It may be more effective to develop a set of guidelines to regulate the circumstances in which insurers inform consumers about cash settlements and determine when a claim will be settled using a cash settlement.

² Northern Australia Insurance Inquiry Interim Report December 2018 – page 205 - <https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20-%20First%20interim%20report%202018.PDF>

³ Northern Australia Insurance Inquiry Interim Report December 2018 – page 205 - <https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20-%20First%20interim%20report%202018.PDF>

Draft recommendation 12: Clearly stated mitigation discounts

The Insurance Contracts Regulations should be amended to require insurer quotes and renewal notices for a property to expressly show what discounts have been applied (if any) to reflect mitigation measures undertaken on that property.

This is important to help ensure premium adjustments are comparable between insurers and transparent for consumers. It also provides clarity to consumers and assists with evaluating investments in mitigation works.

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

The Insurance Contracts Regulations should be amended to require insurer quotes and renewal notices for home insurance to provide a schedule of mitigation measures which customers of the insurer have undertaken for properties with similar characteristics in order to improve their risk rating. This should include a guide to the premium reductions (in percentage terms) that consumers have received for undertaking these measures.

This would provide (new or renewing) consumers with current information on a practical range of actions that could be undertaken to mitigate risk and show them what the benefit could be in terms of premium reductions. This will assist consumers to decide if the risk mitigation option is worth the upfront cost.

LAQ supports draft Recommendations 12 and 13. Informing consumers about what mitigation measures may be available to them and how that will reduce their premium is very important. Understanding, that a large portion of your premium is made up of cyclone, flood or storm risk, allows consumers to make informed decisions about whether it is financially worth mitigating the risk in an attempt to reduce their premiums.

These two recommendations:

- a) encourage improved transparency regarding how insurance premiums are calculated;
- b) encourage consumers to take an interest in cost effective measures that reduce the insurance risk on their property;
- c) encourage a risk mitigation partnership between insurers and consumers and remove significant information asymmetries between insurer and insured;
- d) alert consumers to changes in the insurer's perception of their risk; and
- e) provide consumers with opportunities to correct errors or misperceptions of their risks that exist with their insurer.

For these recommendations to be successful it is important that the insurance industry have standard mitigation measures that could apply to a property.

We are aware that with respect to bushfires the Country Fire Authority of Victoria identifies 4 relevant categories:

- a) defensible space: an area of land around a building where vegetation (fuel) is modified and managed to reduce the effects of flame contact and radiant heat associated with a bushfire.
- b) access - Access from the primary road network to the building needs to be provided and designed to enable occupants of the building safe access and exiting in the event of an emergency. Clear access to the water supply may also crucial in the event of a fire.

- c) water supply - The provision of a dedicated water supply, with appropriate volume, access and markings will ensure that, in the event of a bushfire, a property is well equipped to defend against a bushfire if required
- d) construction standard - Building construction and design can be used to minimise the impact of ember attack and radiant heat on a building. Construction requirements for buildings are expressed as a Bushfire Attack Level (BAL) as prescribed in AS3959 or NASH Standard.

Insurers and authorities would be well placed to provide similar information with respect to cyclone and flood classifications that would provide a standard approach to mitigation of these risks in Northern Australia.