

# **Australian Competition & Consumer Commission Northern Australia Insurance Inquiry – Second Update Report**

Submission by Legal Aid Queensland

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## 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 Second Update Report released on 30 July 2019.

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 seeks to offer policy input that is constructive and 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 advice in relation to mortgage stress, house repossession, debt, contracts, loans, insurance claims, telecommunications and unsolicited consumer agreements and other related matters. This includes clients seeking assistance with insurance issues arising from natural disasters.

## Response to questions on focus area 1—measures to improve affordability and availability

The second update report asked “what measure(s) do [respondents] think have the greatest potential to improve insurance affordability and accessibility in northern Australia?”

The report examines the options of:

- A reinsurance pool;
- An insurance mutual;
- A direct subsidy;
- Private mitigation measures, and
- Public mitigation measures.

In LAQ's view, the measures that are most likely to improve insurance affordability and accessibility in Northern Australia are private and public mitigation measures.

The reasons for this are:

- Mitigation measures directly address and reduce the risk that a property and its contents will be damaged as a result of fire, flood, cyclone or other natural disaster;
- Past mitigation measures such as flood levees have seen reductions in insurance premiums;
- Consumers will undertake cost effective private mitigation measures if they can see a tangible reduction in their insurance premiums as a result of the mitigation measures;
- Private and public mitigation measures improve the overall safety of the community;
- Insurers have shown in the past that they are responsive to and will reduce premiums in response to mitigation measures that reduce the risk; and
- Mitigation measures provide sustainable long term improvements to a community and longer term improvements to the insurance risk faced in Northern Australia.

The other options available are not as effective because:

- They provide shorter term solutions to the problem; and
- They do not directly address the issue of risk which is one of the primary causes of the higher insurance premiums in Northern Australia. Instead these solutions address the symptom of the high risk in Northern Australia which is high insurance premiums.

LAQ's response to the specific questions provided in the report is set out below.

## Reinsurance Pool

### 1. What are the key advantages and disadvantages of the measure(s)?

The key advantage of a reinsurance pool is that it provides reinsurance to private insurers against the insurance costs of a natural disaster.

If this measure was to be adopted, LAQ would support the introduction of a government entity similar to New Zealand's Earthquake Commission to provide catastrophe insurance. Catastrophe insurance has the potential to provide a direct benefit to consumers by providing them with some protection against the risk of their property being damaged by natural disasters.

The key disadvantages are:

- Its coverage is often capped to particular loss levels;
- This solution focuses on the symptom (the high cost) rather than the cause which is the high risk of natural disaster that is faced by properties in North Queensland and Northern Australia; and
- There is a risk that even with a reinsurance pool; insurance will still not be affordable for a significant portion of consumers living in North Queensland and Northern Australia.

### 2. How should the measure(s) be structured, including:

- a. Which risk/perils should the measure(s) apply to?
- b. What geographic area should the measure(s) apply to (e.g. only northern Australia, or all of Australia)?

**c. How should eligibility for assistance under the measure(s) (if it is targeted directly at consumers) be determined?**

**d. What other considerations are important for the design of the measure(s)?**

In LAQ's submission, the measure should:

- Apply to all natural disasters including fire, flood and cyclone;
- Apply to all of Australia;
- Determine eligibility for assistance by looking at the risk profile of the insured property and the income of its owner;
- Provide insurance for contents as well as property damage; and
- Ensure that the benefits of the measure are passed onto consumers in the form of reduced costs of insurance.

There is likely to be a significant cost to implementing a reinsurance pool or a government entity catastrophe insurance scheme. Securing an on-going source of funding for the measure is a very important part of ensuring its success.

**3. What would be the costs of the measure(s)?**

LAQ has no experience with which to answer this question.

**4. How should the measure(s) be funded?**

A reinsurance pool or government entity providing catastrophe insurance should be funded by the government, through levies and by private insurers.

**5. What impact would the measure(s) have on:**

- a. Premiums**
- b. insurance availability**
- c. the incentives of consumers and of insurers**
- d. competition in, or the operation of, insurance markets**
- e. the regulatory burden on insurers?**

In LAQ's view, this measure has the potential to:

- Reduce insurance premiums;
- Increase access to insurance for consumers;
- May encourage more insurers to provide insurance in North Queensland; and
- Increase the regulatory burden on insurers.

**6. Would the benefits of the measure(s) be passed through to consumers? Would any additional safeguards be required to ensure that this occurred?**

There is always a risk that the benefits of this measure could be absorbed by insurers. This is one of the reasons that LAQ favours the use of private and public mitigation measures because these measures can directly affect the insurance risk profile of a particular property or community in Northern Australia which will in turn reduce the cost of insuring it.

## 7. Are there any similar international measures that the ACCC should consider?

The ACCC has identified the relevant international Reinsurance Pool schemes on Page 31 of the Report.

## 8. How long should any measure(s) be in place for, and where relevant how should they be phased out?

For this measure to be effective it needs to be permanent. The risk of damage by natural disasters faced by consumers in Northern Australia is only going to increase not reduce in the future.

### Insurance Mutual

#### 1. What are the key advantages and disadvantages of the measure(s)?

The key advantage is consumers can see a tangible benefit of the mutual as profits are used to benefit consumers including by reducing insurance premiums.

The key disadvantage is that this solution focuses on the symptom (the high cost) rather than the cause which is the high risk of natural disaster that is faced by properties in North Queensland and Northern Australia.

#### 2. How should the measure(s) be structured, including:

##### a. Which risk/perils should the measure(s) apply to?

##### a. What geographic area should the measure(s) apply to (e.g. only northern Australia, or all of Australia)?

##### b. How should eligibility for assistance under the measure(s) (if it is targeted directly at consumers) be determined?

##### c. What other considerations are important for the design of the measure(s)?

In LAQ's submission, the measure should:

- Apply to all natural disasters including fire, flood and cyclone;
- Apply to all of Australia;
- Determine eligibility for assistance by looking at the risk profile of the insured property and the income of its owner;
- Provide insurance for contents as well as property; and
- Ensure that the benefits of the measure are passed onto consumers in the form of reduced costs of insurance.

#### 3. What would be the costs of the measure(s)?

LAQ has no experience with which to answer this question.

#### 4. How should the measure(s) be funded?

The measure should be funded by a combination of government funding, levies and private insurers.

#### 5. What impact would the measure(s) have on:

- a. Premiums
- b. insurance availability
- c. the incentives of consumers and of insurers
- d. competition in, or the operation of, insurance markets
- e. the regulatory burden on insurers?

This measure has the potential to:

- Reduce insurance premiums and provide a direct benefit to consumers;
- Increase access to insurance for consumers who cannot otherwise afford insurance for their property;
- May encourage more insurers to provide insurance in North Queensland; and
- May increase the regulatory burden on insurers.

**6. Would the benefits of the measure(s) be passed through to consumers? Would any additional safeguards be required to ensure that this occurred?**

The benefits of this measure are more likely to be passed onto consumers as the mutual operates to directly benefit consumers.

**7. Are there any similar international measures that the ACCC should consider?**

The ACCC has identified the relevant international Reinsurance Pool schemes on Page 31 of the Report.

**8. How long should any measure(s) be in place for, and where relevant how should they be phased out?**

For this measure to be effective it needs to be permanent. The risks of damage by natural disasters faced by consumers are only going to increase not reduce in the future.

### Direct Subsidy

**1. What are the key advantages and disadvantages of the measure(s)?**

A key advantage of a direct subsidy is that assistance can be targeted to those specific individuals in Northern Australia who find it the most difficult to afford to insure their properties.

The key disadvantages include:

- Insurers could adjust their pricing so that they collect part or the entire subsidy;
- Price signals could be distorted. Those who do not qualify for the subsidy will resent their exclusion and may respond through the political process, forcing an expansion of those eligible to receive the subsidy and thereby increasing its cost to taxpayers;
- This solution focuses on the symptom (the high cost) rather than the cause which is the high risk of natural disaster that is faced by properties in North Queensland and Northern Australia;
- Targeting and identifying the appropriate people or groups of people who would benefit from the subsidy would be difficult;
- It does not address the issue of risk to properties in North Queensland which contributes significantly to higher insurance premiums; and

- There is a risk that even with a subsidy the cost of insurance in Northern Australia will still be unaffordable for many consumers. Following natural disasters in Northern Australia, LAQ regularly sees a significant portion of consumers who are uninsured because they could not afford it.

**2. How should the measure(s) be structured, including:**

**a. Which risk/perils should the measure(s) apply to?**

In LAQ's view the direct subsidy should apply to all natural disaster risks.

**b. What geographic area should the measure(s) apply to (e.g. only northern Australia, or all of Australia)?**

Any subsidy should be available to all of Australia.

**c. How should eligibility for assistance under the measure(s) (if it is targeted directly at consumers) be determined?**

Eligibility for the subsidy should be determined by:

- A property's risk profile; and
- The consumer's income level.

**d. What other considerations are important for the design of the measure(s)?**

To be effective the measure must be on-going and cannot be for a defined period of time.

**3. What would be the costs of the measure(s)?**

The cost of direct subsidies are significant and on-going.

**4. How should the measure(s) be funded?**

The measure should be funded by a combination of government funding, levies and private insurers.

**5. What impact would the measure(s) have on:**

- Premiums**
- insurance availability**
- the incentives of consumers and of insurers**
- competition in, or the operation of, insurance markets**
- the regulatory burden on insurers?**

The measure should reduce premiums as long as premiums do not rise in anticipation of the subsidy being applied. There is a risk that, even with a direct subsidy, insurance will still not be affordable for many consumers in Northern Australia. It may encourage more consumers into buying insurance. It is unlikely to affect competition in insurance markets and is likely to increase the regulatory burden on insurers.

**6. Would the benefits of the measure(s) be passed through to consumers? Would any additional safeguards be required to ensure that this occurred?**

This measure has the benefit of being applied directly to a consumer's insurance premium. The risk is that some insurers could intentionally raise the premiums in anticipation of consumers receiving the levy.

### 7. Are there any similar international measures that the ACCC should consider?

There are no direct international comparisons that LAQ is aware of.

### 8. How long should any measure(s) be in place for, and where relevant how should they be phased out?

If a direct subsidy was introduced, for it to be effective, it would have to be a permanent subsidy. A subsidy to insurance premiums would provide no long term benefit if it was phased out over time.

## Private Mitigation Measures

### 1. What are the key advantages and disadvantages of the measure(s)?

The key advantages of private mitigation measures are that they:

- address one of the causes and not the symptom of high insurance prices in North Queensland and Northern Australia by reducing or mitigating a property's insurable risk; and
- Provide an opportunity for property owners to take direct steps to reduce the risk of damage to their property due to a natural disaster.

The key disadvantage is that unless consumers can see a tangible and worthwhile benefit in terms of a reduced insurance premium they are unlikely to spend the money to undertake private mitigation measures.

### 2. How should the measure(s) be structured, including:

- a. Which risk/perils should the measure(s) apply to?
- b. What geographic area should the measure(s) apply to (e.g. only northern Australia, or all of Australia)?
- c. How should eligibility for assistance under the measure(s) (if it is targeted directly at consumers) be determined?
- d. What other considerations are important for the design of the measure(s)?

Private Mitigation measures should:

- Apply to all natural disasters including fire, flood and cyclone;
- Apply to all of Australia; any property owner from anywhere in Australia should be able to benefit from a reduced insurance premium if they undertake measures that reduce the risk to their property; and
- Lead to a worthwhile reduction in insurance premiums. Consumers will not undertake private mitigation measures that do not reduce their premiums and are not cost effective for them.

### 3. What would be the costs of the measure(s)?

Costs will vary depending upon the type of private mitigation measure being undertaken.

### 4. How should the measure(s) be funded?

The measures should be funded by private individuals who will expect to see a reduction in their insurance premiums when the mitigation measures they are undertaking reduce the insurance risk to their property.



**5. What impact would the measure(s) have on:**

- a. Premiums
- b. insurance availability
- c. the incentives of consumers and of insurers
- d. competition in, or the operation of, insurance markets
- e. the regulatory burden on insurers?

In LAQ's submission, the impact private mitigation measures are likely to have is:

- Premiums will be reduced as the risk to a property is reduced;
- Consumers will be incentivised to take an interest in what can reduce the risk of damage to their property; and
- Consumers will be incentivised to take an active role in mitigating the risk of damage to their property.

**6. Would the benefits of the measure(s) be passed through to consumers? Would any additional safeguards be required to ensure that this occurred?**

There is a likelihood that the benefits will be passed through to consumers.

**7. Are there any similar international measures that the ACCC should consider?**

LAQ is not aware of any international measures that the ACCC should consider.

**8. How long should any measure(s) be in place for, and where relevant how should they be phased out?**

Private mitigation measures that reduce a property's insurance risk provide long term benefits to individual property owners and the community.

### Public Mitigation Measures

LAQ supports the Federal and State Government packages outlined on page 33 of the report as a way of reducing the risk of damage being caused by natural disasters to communities in North Queensland and Northern Australia.

**1. What are the key advantages and disadvantages of the measure(s)?**

A benefit of public mitigation works is that a broad range of people where the works are undertaken can benefit. Properly implemented public mitigation works reduce the risk, breadth and severity of damage occurring and thereby:

- make property in the areas benefitting from the works more attractive to insure from an insurer's perspective; and
- providing lower premiums to consumers as their risk profile is improved.

Public mitigation measures also directly address one of the causes of high insurance premiums in Northern Australia which is the risk of damage being suffered by a property as a result of a natural disaster. In the past insurers have also shown a willingness to respond and reduce insurance premiums in response to properly undertaken public mitigation works that reduce or mitigate a property's insurable risk.

Disadvantages of public mitigation measures include:

- They may not be delivered in a timely manner and risk public criticism for delays. For example, large scale drainage works are likely to be undertaken in coastal locations requiring environmental approvals. Delays in obtaining approvals could frustrate those communities the works are intended to benefit; and
- Such works, particularly where levees are constructed, may increase the risk of damage for those not benefiting from the protections created. Works that improve drainage capacity rather than simply redirect floodwaters away from certain locations would gain wider community acceptance.

## **2. How should the measure(s) be structured, including:**

### **a. Which risk/perils should the measure(s) apply to?**

As wind and water damage (i.e. from flooding or storm water and cyclones) are the most common causes of claims in northern Australia, LAQ would expect public mitigation works respond to these risks.

### **b. What geographic area should the measure(s) apply to (e.g. only northern Australia, or all of Australia)?**

Public mitigation measures should respond to the risks that need to be mitigated in particular geographical areas. These risks will vary between areas in Northern Australia and the reach of these measures will depend upon the project undertaken. If the public mitigation works applied to building standards for instance, such an investment in further developing building standards may be of benefit to the entire country. Works focused on physical projects would be limited to the location of the works.

### **c. How should eligibility for assistance under the measure(s) (if it is targeted directly at consumers) be determined?**

Eligibility would best be determined on a project by project basis.

### **d. What other considerations are important for the design of the measure(s)?**

LAQ has observed delivery times have been cited by attendees at community forums as an important factor. Attendees have complained governments can be too slow in delivering the mitigation measures.

## **3. What would be the costs of the measure(s)?**

Costs would depend upon the project undertaken. LAQ is not in a position to comment on the costs attributable to specific projects.

## **4. How should the measure(s) be funded?**

Such measures could be funded by local, state and/or federal governments, since they are public works. There may be occasions where government owned entities, particularly those that operate important infrastructure, may contribute also. An example of this may be dam owners or operators who have the ability to recover some or all of their costs for mitigation works from their customers.

We note from attendances at public forums on this subject that landholders around coastal rivers have requested that access to dry silt deposits should be facilitated. Those attendees who raised this issue said they, and they anticipate others, would like to retrieve soil from these deposits for transport to their properties

and would collect and transport it at their own cost. The impediment to this occurring they stated is access to the silt deposits, royalties incurred and environmental approvals. Managed properly, they said river flows could be improved for negligible public costs. LAQ recommends proposals such as these that represent little cost to the public be examined further.

**5. What impact would the measure(s) have on:**

- a. Premiums
- b. insurance availability.
- c. the incentives of consumers and of insurers
- d. competition in, or the operation of, insurance markets
- e. the regulatory burden on insurers?

Public mitigation measures would reduce premiums in the areas benefitting from such works. If the mitigation measures improve the risk profile of property located in areas to benefit from public mitigation measures, LAQ also expects the availability of insurance to improve in those areas as insurer's become more confident in accepting customers in those locations.

**6. Would the benefits of the measure(s) be passed through to consumers? Would any additional safeguards be required to ensure that this occurred?**

LAQ regards this question is best answered on a case-by-case basis.

**7. Are there any similar international measures that the ACCC should consider?**

LAQ is not aware of any international measures.

**8. How long should any measure(s) be in place for, and where relevant how should they be phased out?**

Identifying and implementing public mitigation measures as cited in the Report should be a long term and ongoing activity.