



**Submission by the
Financial Rights Legal Centre**

Senate Economics References Committee

Inquiry into Australia's General Insurance
Industry, November 2016

February 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 over 25,000 calls for advice or assistance during the 2015/2016 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/

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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 the Senate's inquiry into Australia's general insurance industry. The Financial Rights Legal Centre will address the following broad problems facing consumers of insurance:

- Reasons behind and solutions to increasing insurance costs;
- The lack of transparency and contestability in insurance pricing;
- Problems surrounding price comparison websites;
- Unfair Terms in insurance contracts;
- Standard cover and product suitability; and
- Big data and the future of insurance.

Term of Reference (a)

the increase in the cost of home, strata and car insurance cover over the past decade in comparison to wage growth over the same period.

Financial Rights regularly hears from consumers complaining about the increase in their insurance premiums. Increasing premiums are the result of a series of complex and inter-related factors, many of which are already well known to industry and government. Some have direct, significant impact on price increases; others have smaller, more indirect impacts. All of them are worth considering. They include:

- an increase in the number of, and cost of claims;
- an increase in the size and frequency of natural disasters –This increase in natural disasters is the result of the impact of climate change upon the natural environment, a fact that has been long recognised and factored in by insurers;
- the introduction of automatic flood cover, leading to increased costs for those in flood prone areas;
- the increasing cost of construction, rebuilding and repairs through materials and labour costs, all of which are interdependent on increases in demand for these services and goods;
- the use of some modern construction methods and materials that are potentially riskier and less safe with respect to fire protection and spread;

- the growth of the housing market, particularly into areas that are more prone to natural disasters;
- the tightening building regulations, codes, standards;
- the simultaneous lack of significant public mitigation works and appropriate town planning;
- the increased cost of reinsurance, which in turn leads back to increased premiums,
- improved information available about where and when floods will occur and how much it costs to fix damage;
- a lack of information available to insurers about local flood mitigation measures such as raised floor heights or even the existence of a levee, meaning these factors may not be taken into account in premium pricing;
- a lack of competition in some areas, for example in northern Australia, where insurers have either left the market or chosen not to enter the market because of uneconomic risks;
- the increase in motor vehicle technology and complexity, leading to increases in the cost of repair;
- the increase in legal costs in private suits;
- standard inflationary pressures and general economic conditions including the impact of the GFC;
- lack of premium transparency as to the basis of an insurer's pricing decision. It is commonly accepted that insurers' premium pricing information is "commercially sensitive" and if pricing is known it would somehow detrimentally affect their ability to compete. This guarded approach has led to consumer suspicion, misunderstanding and sensitivity to change;
- increased use of granular and individuated data profiles.

It is worth noting that some of these factors – such as claims costs and reinsurance – have affected everyone who buys insurance because insurers spread the cost across all their customers. Other factors only affect very specific areas or customers (who may face higher local perils). Many of these will continue to bear a strong impact upon future pricing of insurance premiums and will need to be considered when examining ways to ensure that insurance remains accessible to all Australian consumers.

Financial Rights wishes to focus this submission on identifying potential solutions to address problem of rising insurance premiums. We argue that government, working closely with the insurance industry needs to:

- factor in climate change;
- encourage and support mitigation measures;
- provide better information to consumers;
- provide strategically applied direct subsidies; and
- introduce an independent assessment process for household risk and mitigation.

Factor in Climate Change

Although there is broad agreement among experts as well as insurers that the climate is changing and severe weather will become more frequent, this issue has yet to be seriously discussed at a government and policy level in the context of increased costs to insurance in Australia. From the East Coast low in 2016, Tropical Cyclone Marcia in 2015, the South Australian bushfires in January 2015, the Brisbane hailstorm in November 2014, there is little doubt there has been an increase in the number of catastrophes in Australia. According to the Insurance Council of Australia insurance claims alone in the six months between November 2014 and April 2015 totaled more than \$1.5 billion.

Financial Rights directs the Committee to recent reports from the Climate Council that make it clear that there are “dramatic changes to the climate system happening across the globe” and that “Climate change is increasing the frequency and severity of many extreme weather events” posing “substantial and escalating risks for health, property, infrastructure, agriculture and natural ecosystems.”¹

It is therefore prudent to factor in climate change and the risks this poses for the environment, communities, industry and individual homeowners, when recommending any changes to home and strata insurance. Indeed, Financial Rights notes that the insurance industry themselves have long factored in the impact of climate change and extreme weather events into their business models and have been arguing for some time for governments to support resilience policies to protect vulnerable communities.

Recommendation

The Committee must factor in climate change and the risks this poses for the environment, communities, industry and individual homeowners, when recommending any changes to home and strata insurance.

¹ Climate Council's latest report: “Climate Change 2015: Growing Risks, Critical Choices” By Lesley Hughes And Will Steffen (28/8/15), available at: <https://www.climatecouncil.org.au/climate-change-2015-growing-risks-critical-choices>

Encourage and Support Mitigation Measures

Financial Rights notes the work of the Northern Australia Insurance Premium Taskforce in producing its report in 2015. While there are a number of very specific circumstances faced by consumers seeking to insure their property in northern Australia, we believe that a number of key findings and lessons from this report can and should be applied to the insurance sector more broadly.

The key recommendation of the Report to reduce premiums in a sustainable, long term way is mitigation action – that is taking action now to protect for potential vulnerabilities in the future. The Report argues for policies that:

- encourage consumers to take responsibility for their own mitigation strategies,
- ensures government steps in with direct subsidies for lower income, more vulnerable consumers to undertake the necessary work and
- ensures that the insurance industry steps up to develop appropriate pricing systems that provide greater recognition of mitigation action, and engage more effectively with property owners via greater disclosure of risks and greater responsiveness to policyholder concerns.

With respect to this latter point Financial Rights can attest to the frustrations felt by consumers.

Provide Better Information for Consumers

Providing consumers with more information about risk and mitigation strategies is an important first step to reducing insurance costs by reducing risk. Through our extensive experience talking to insured consumers on the Insurance Law Service we believe are many areas where consumers might be able to self-mitigate if they had better information. Below are two examples:

1. Building codes are designed to reduce injury to people, but not necessarily mitigate against any structural damage in a cyclone.² This information should be clearly and simply communicated to consumers. Homeowners who have gone to great lengths to make sure their homes are up to the latest building codes may be under the impression that their insurance will be reduced accordingly, when in fact they have not reduced their risk of cyclone damage at all.
2. Minor steps can be taken by consumers to reduce the vulnerability of cyclone damage before a storm hits.³ Things like removing loose items around a property or undertaking small-scale home improvements. This information should be distributed to homeowners, and tenants on a regular basis. Many residents in cyclone areas might be new to the area and not aware of the small steps they can take to greatly reduce their cyclone damage risk.

² p. 12, *Northern Australia Insurance Premiums Taskforce, Interim report, 2015*

³ p. 14, *Northern Australia Insurance Premiums Taskforce, Interim report, 2015*

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.

Financial Rights supports an independent inspection process to determine the vulnerability of a property to natural disasters or threats, 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 greater transparency and contestability. 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.

Financial Rights notes that the Northern Australia Insurance Premium Taskforce states that

“Potentially, there is also a role for legislating enhanced requirements around the disclosure of risks if industry efforts do not yield meaningful results for consumer.”

Financial Rights strongly believes that Government has a role to play in ensuring that consumers are better informed of their risks. This means ensuring that insurers provide better and more accessible information around natural risks and building resilience measures to help motivate homeowners to take action to protect themselves and their property.

We also believe that government needs to step in to ensure that insurers make insurance premiums more responsive to mitigation. This would require rules to ensure greater premium transparency by making the link crystal clear between mitigation and lower insurance premiums (or conversely no mitigation and higher insurance premiums). Insurers should also be more proactive in working with their customers (or future customers) to raise mitigation awareness and help educate them of its benefits.

Provide Direct Subsidies for Mitigation

The Northern Australia Insurance Premium Taskforce Final Report recognised that there will be many property owners who may not be able to realise premium reductions from mitigation because they do not have the financial capacity to undertake the necessary work. One option put forward was to have the government to directly subsidise the cost of mitigation for low income households. Financial Rights supports a direct subsidy to consumers if eligibility for that subsidy is explicitly tied to those mitigation activities.

Insurance costs are a clear signal to consumers about the level of risk their home is subject to. If the Government interrupts this risk signal, there will be no incentive for consumers to mitigate, or move elsewhere and the same affordability concerns will still exist when subsidies are phased out.

Government should concentrate intervention on supporting mitigation costs, addressing information asymmetries or significant information gaps and supporting better regulation of the insurance market to promote significantly increased transparency and contestability. Governments also need to subsidise public works through grants to local councils for, say flood protection infrastructure. Ideally this would take place in the context of a broader strategy to promote better mitigation infrastructure generally, including improved planning regulation, and insurance affordability as recommended by the National Disaster Insurance Review (see below).

Introduce an Independent Assessment Process

Financial Rights supports the development of an independent mitigation assessment process. 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.

Recommendation

The Committee should recommend that government, working closely with the insurance industry needs to:

- encourage and support mitigation measures;
- provide better information to consumers;
- provide direct subsidies; and
- introduce an independent assessment process for household risk and mitigation.

Full Implementation of the National Disaster Insurance Review recommendations

Related to climate change and insurance cost we direct the Committee's attention to the National Disaster Insurance Review (NDIR) in September 2011. In the aftermath of the catastrophic Queensland storm and flood events of late 2010 and early 2011, and the Victorian floods of early 2011, several inquiries were commissioned. These events brought home that many Australian homes were simply not covered for flood events, a fact that was a shock to many, and had expensive consequences for not only the individuals affected, but their families, communities, charities and governments who were called upon to fill this void.

The NDIR, commissioned by the then Assistant Treasurer, the Honourable Bill Shorten, was tasked with making recommendations to address the issues that had arisen. Key objectives of the review were facilitating rebuilding and recovery by people and communities as quickly as possible; allowing people to choose the location of their homes in the knowledge of the attendant risk; improving access to adequate insurance cover where possible; and promoting risk mitigation works by individuals and governments. Guiding principles were that government should only interfere in the private insurance market to the extent that there was clear failure by those markets to offer appropriate cover at affordable premiums.

The above review made four "pivotal recommendations":

1. That an agency be established with the two key functions of managing the national coordination of flood risk management and operating a system of premium discounts and a flood risk reinsurance facility;
2. That all home insurance, home contents and home unit insurance policies include flood cover;
3. That a system of premium discounts be introduced to ensure affordable cover to high risk properties without the need for cross-subsidisation by other policy holders in low risk areas; and
4. That any funding shortfall occurring in the reinsurance facility through claims exceeding the funds held in the facility would be met by governments.

Flood cover is now included in many home and contents insurance policies, with a common definition, but consumers have the choice to "opt out". In our experience many consumers are doing so, or simply finding it impossible to find cover at an affordable price:

Financial Rights gets regular calls from consumers who are unhappy with the premium being asked in relation to their flood cover. Complaints include:

- Consumers disagree with insurer's assessment of the risk in the general area
- Consumers have undertaken flood (or storm, or indeed fire) mitigation work that has not been taken into account

- Consumers believe they have been wrongly allocated to an area of general high risk – for example, they are one of the only houses on top of a hill in an otherwise flood prone area
- Consumers simply cannot afford the premium being asked.

Some callers are being refused insurance completely:

An employee of a shire council rang to report that in the last two weeks nine residents of his council area had rung to complain they have been refused insurance due to increased flood risk. In 2009 the council had conducted a flood risk study done and only three dwellings were in 1% flood risk lines. None of the nine residents who complained were in this risk bracket which meant they had only a 1 in 10 000 risk of flooding.

We have been approached by a least one insurer concerned about the number of customers who are opting out of flood insurance and wanting to know to what extent we can assist people better understand their risk. We have noted from our calls that consumers are extremely price sensitive – they will call up complaining about relatively small premium increases or ask why typing one of their neighbour's addresses into the insurance price calculator creates a \$30 difference – and have a tendency to discount the likelihood of loss events occurring.

We are concerned that events similar to 2011 are likely to occur again, with significant numbers of properties uninsured for flood as a result of customers being unable to afford appropriate cover in the private market, being refused cover, or opting out of cover without appreciating the full extent of their risk. The market solution is not currently working. All indicators currently point to a likely increase in natural disaster events. These events are inevitably going to cost the government significant amounts of money. The NDIR recommendations offered a solution which invested that money in strategic way, ensuring flood mitigation and improved planning was a key part of the equation. Either the recommendations of the NDIR should be fully implemented or the government and insurance industry need to come up with an alternative model which provides real solutions.

Recommendation

The recommendations of the NDIR should be fully implemented.

Financial Rights further addresses the critical issues of premium transparency and our concerns with comparison websites as a solution below.

Term of Reference (b) competition in Australia's \$28 billion home, strata and car insurance industries;

Financial Rights has no comment.

Term of Reference (c) transparency in Australia's home, strata and car insurance industries;

Insurance prices throughout Australia can vary depending on the actuarial and statistical data held 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.

Additionally, the more data used to calculate risk and price premiums, the greater the risk for error. Current competition is in our view adversely affected by the lack of transparency in premium pricing. There is currently no adequate mechanism to review whether premiums are being calculated fairly.

Through the Insurance Law Service, the Financial Rights Legal Centre regularly receives complaints from consumers about the level of their premium. Consumers sometimes believe their premium has been incorrectly calculated given their claims history, or has been calculated based on incorrect information. From our experience, consumers who dispute their premium or excess pricing with the insurer are generally left feeling unsatisfied. We are told:

- a) the sales team cannot explain why the premium is priced as it is;
- b) they are provided generic answers; or
- c) they do not feel the insurer has taken any steps to look at their particular situation.

For example, in flood coverage for home insurance products, an insurer may historically have priced premiums on a suburb level rather than an individual property level, creating a benefit to shopping around in some regions. Some consumers will benefit from using insurers which take into account specific hydrological data about their property (and price lower accordingly). Alternatively, where a specific property is assessed as high risk for its individual topography, a suburb-based premium could be more competitive. In some regions this does not occur because there are fewer insurers, or no insurers pricing on postcode or a higher peril.

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.

Financial Rights 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 Financial Rights 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 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.

Through our extensive advice experience we have found that consumers have difficulty contesting premium pricing by insurers (despite section 75 of the ICA). Even when consumers do all the right things, they face impediments due to lack of competition and a lack of premium pricing transparency. It is commonly accepted that insurers' premium pricing information is "commercially sensitive" and if pricing is known it would somehow detrimentally affect their ability to compete. This guarded approach leads to consumer suspicion, misunderstanding and sensitivity to change. It undermines the insurance industry's credibility in being consumer focused and drives the perception of gouging.

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. In those examples identifying information has been removed for this submission, but the content comes directly from each consumer's email.

Case study: Consumer awareness as to premium (Financial Rights email inquiry)

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?

Case study (Financial Rights email inquiry)

My insurance premium for my investment property and my house insurance have gone up 600% in the last 4 years, this company said there is nothing they can do for us and you will find the same quotes elsewhere so I wouldn't even try. My investment property is the problem, as we have fixed the first one. The problem is the [address in SUNSHINE COAST QLD]. the last years premiums were \$347 a month. I could no longer afford this and tried a few insurance companies to see if they could help. I recently had to cancel my policy with INSURER1 and joined INSURER2, their charge was \$90.00 a month. i feel like I've been ripped off and would like to make a claim, if i look back at the other house premiums and they were as bad so there might be a case there as well. can you please help ??

Case study: Lack of transparency in premium pricing (Financial Rights email inquiry)

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.

Case study: (Financial Rights email inquiry)

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.

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.

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?

This in our view the lack of transparency surrounding how premiums are priced is detrimental to the insurance industry, and it does not foster accountability. The insurance industry should not be able to shield relevant information on the grounds that there are using "commercially sensitive" rating factors and weightings. Consumers should have access to such information if they have a legitimate dispute about the reasons behind a premium or excess price or changes to their insurance policy conditions. There is currently no dispute resolution mechanism for a consumer notwithstanding the consumer's insurance policy may:

- Be offered with a premium the consumer believes to be unreasonable due to inappropriate assessment of risk; or
- Have complex terms and conditions the consumer cannot understand and, as a consequence, the consumer finds they have an inappropriate policy.

Recommendation

Require insurers to disclose the basis of the premium pricing

Premium contestability

In its 2014 publication entitled "*Enhancing the consumer experience of home insurance: Shining a light into the black box*"⁴ the Fire Services Levy Monitor (FSLM) reasoned that by improving the efficiency of insurance markets, through removing information asymmetry and making competition more effective, policyholders will be better informed and premiums will fall, thereby making insurance more accessible. In order to achieve this goal and to improve consumer awareness the FSLM specifically recommended that FOS:

Provide easier access to information and dispute resolution – by removing hurdles to information provision by insurers and dispute resolution by the Financial Ombudsman Service, consumers are less likely to be disadvantaged by opaque risk rating practices of insurers.

⁴ Fire Services Levy Monitor, "Enhancing the consumer experience of home insurance - Shining a light into the black box" (July 2014) Available at: <http://www.firelevymonitor.vic.gov.au/home/news+and+information/publications/publication+shining+a+light>

The FSLM report argues there is a need for greater contestability of premium pricing and cost pricing.

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

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

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

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

As a possible alternative, a consumer may make an application to the Financial Ombudsman Service (FOS). However FOS has a very limited decision making power when it comes to reviewing premiums. The FOS Terms of Reference provides:

Clause 5.1 - The service may not consider a dispute:

- b) about the level of a fee, **premium**, charge or interest rate – unless:
 - (i) the Dispute concerns non-disclosure, misrepresentation or incorrect application of the fee, premium, charge or interest rate by the Financial Services Provider having regard to any scale or practices generally applied by that Financial Services Provider or agreed with that Applicant; ...**
- e) in the case of a Dispute about a General Insurance Policy – about rating factors and weightings the insurer applies to determine the insured's or proposed insured's base premium which is commercially sensitive information;*
- f) about a decision to refuse to provide insurance cover except where:
 - (i) the Dispute is that the decision was made indiscriminately, maliciously or on the basis of incorrect information; or*
 - (ii) the Dispute pertains to medical indemnity insurance cover; ...**

In the 2015/16 financial year 32 consumers lodged disputes about insurance cover refusals (under clause 5.1(f)) and were excluded from FOS, and 215 consumers lodged disputes about

Level of fee/premium/charge and had the dispute refused.⁵ The Annual Report does not indicate whether FOS accepted any disputes made by consumers under the above sections.

A review of all of the decisions made by FOS to date shows that 15 determinations have been issued in their jurisdiction about “incorrect premiums”, the majority of decisions relate to consumers being misled.

Significantly, determination number 218234 recognises that an insurer has the commercial decision to increase premiums, but must disclose the basis of the increase beyond providing a general explanation. In Financial Rights’ view, this was a good decision of FOS as it enabled a consumer some degree of contestability of an unexplained premium increase when the consumer’s personal circumstances (and risk assessment) had not changed and the insurer could not justify the increase in the cost. However, this represents only one decision of FOS and has not resulted in any insurers giving reasons on renewals as to increases in insurance costs.

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 fairness and consistency 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” signalling 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.

⁵ see the 2015/16 FOS Annual Review on page 58:
<https://www.fos.org.au/custom/files/docs/20152016-fos-annual-review.pdf>

Recommendations

The Financial Rights Legal Centre recommends the following approaches to promote pricing contestability, disclosure and transparency:

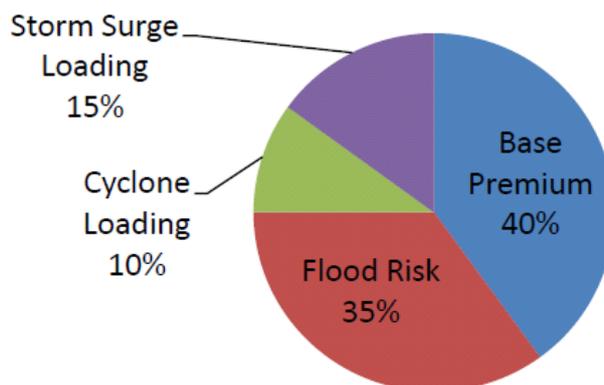
- a) Amend s 75 of the *Insurance Contracts Act 1984* requiring insurers to provide written reasons for why premiums were increased on request in writing from a policy holder. These reasons should include any increased risk factor that the insurer has become aware of.
- b) Alternatively, if legislative change is not feasible, the General Insurance Code of Practice should be amended to include a requirement for the insurer's IDR team to provide reasons for significant premium increases after a request in writing by the policy holder.
- c) Change FOS Terms of Reference to allow disputes about the level of a premium if there has been an unfavourable change to an insurance policy (or if the insured has recently undertaken mitigation strategies on their home which have not resulted in a reasonable reduction of premiums) and the insurer's IDR response has failed to include adequate reasons for the change.

Disclosure of Component Pricing

Financial Rights strongly submits that insurers should be required to provide information as to the components in their premium pricing. 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.

Financial Rights recognises that such a proposal may face objections from some in the insurance industry on the basis that pricing information is “commercially sensitive”. 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 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.

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 Tool⁶ 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.

In addition to these ideas, 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. The Consumer Action Law Centre is also a strong advocate for this proposal.⁷ 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.

⁶ <https://www.resilient.property/>

⁷ <http://consumeraction.org.au/insurance-companies-prove-your-loyalty-to-us-be-upfront-on-price-rises/>

Recommendations

Insurers should be required to provide component pricing of premiums.

Insurers should be required to provide the prior year's premium price on renewal notices and the reason for any increase.

Term of Reference (d) the effect in other jurisdictions of independent home, strata and car insurance comparison services on insurance cover costs;

Price Comparison Websites in the United Kingdom

There has been lots of consumer research done on the relatively recent influx of price comparison websites (PCWs) in the United Kingdom.⁸ Various reports have discussed the risks and benefits of PCWs for consumers but there is not much evidence that insurance cover costs have gone down.

There is some evidence that PCWs in the UK did lower insurance costs at first by causing fierce competition,⁹ but, new research by David Ronayne of Warwick University argues "that consumers often lose out from comparison sites. They earn a commission for each shopper who uses them to buy insurance. That referral cost is incorporated into the price the consumer ends up paying. If the increased costs outweigh the saving the comparison enables, consumers end up worse off."¹⁰

In 2014 Britain's competition regulator found that some comparison websites were engaging in anti-competitive behaviour. Specifically, they were using their contracts with retailers to ban them from offering cheaper prices elsewhere. In a related article entitled *Costly comparison: Price-comparison websites should help lower prices, but left unchecked, they may raise them*, the Economist argued the only way to ensure the market for price

⁸ See Price comparison website: Consumer market research - June 2014 - Research Prepared for the Financial Conduct Authority (<https://www.fca.org.uk/publication/research/price-comparison-website-consumer-research.pdf>); and see also Warwick Economics Research Paper Series - Price Comparison Websites, by David Ronayne, October 2015; UKRN Research into Price comparison websites (September 2016)

<http://www.ukrn.org.uk/wp-content/uploads/2016/09/201609027-UKRN-PCWs-Report.pdf>

http://www2.warwick.ac.uk/fac/soc/economics/research/workingpapers/2015/twerp_1056b_ronayne.pdf

⁹ <https://www.towerswatson.com/en-GB/Insights/IC-Types/Survey-Research-Results/2011/02/Why-arent-we-making-mone>

¹⁰

http://www2.warwick.ac.uk/fac/soc/economics/research/workingpapers/2015/twerp_1056b_ronayne.pdf

comparison is competitive is to ask consumers to check multiple comparison websites, which defeats the point of using them in the first place!

Another solution the Economist mentions is to only have one site which is regulated like a public utility, or to have the government run it (like the Obamacare insurance marketplace in the United States). However, creating a good search and comparison site is hard and governments are unlikely to do a very good job.¹¹

Consumer Market Research in the UK

In 2014 the Financial Conduct Authority (FCA) in the UK commissioned a market research study into the use of price comparison websites in insurance. What the report found was that PCWs are highly valued by consumers for enabling them to quickly and painlessly identify the best insurance policies for their needs, but consumers often suffered from a number of misconceptions about PCWs which could lead them to selecting policies that did not meet their needs or expectations.¹²

Several of the research's key findings were that PCWs served to over-simplify insurance products in consumers' minds:

It was evident that few had ever stopped to consider what PCWs are or how they work, and there were a number of misconceptions about the search results which could lead to consumers selecting policies that do not meet needs or expectations.

Many interpret the simple layout and presentation of information about the insurance products on PCWs as all they need to make a good decision, and a cognitive nudge not to look further.

The search results on PCWs are largely taken at face value and many assume the different policies and add-ons will work the same way or offer similar cover.

It is currently hard to find detailed and accessible information on PCWs summarising how the policies work and the expectation was for more detail to summarise the levels of cover or key product features. Some examples offered little more than the PCW search results, reinforcing perceptions that there is little more to know, or that the GI policies are all broadly the same.¹³

Insurance policies are complex financial products that do not always lend themselves to easy comparison. Different policies might not only include different levels and types of cover, they might have completely different definitions for the same terms. Unfortunately, instead of giving consumers the opportunity to learn more about

¹¹ *Costly comparison: Price-comparison websites should help lower prices, but left unchecked, they may raise them.* The Economist, July 11, 2015. <http://www.economist.com/news/finance-and-economics/21657458-price-comparison-websites-should-help-lower-prices-left-unchecked-they-may>

¹² *Price comparison website: Consumer market research - June 2014 - by Atticus Market Research Consultancy, research prepared for the Financial Conduct Authority* (<https://www.fca.org.uk/publication/research/price-comparison-website-consumer-research.pdf>)

¹³ *Price comparison website: Consumer market research - June 2014 - by Atticus Market Research Consultancy, research prepared for the Financial Conduct Authority (pg 14)*

different policies, the consumer research found that presentation of insurance information in a clear and simple way 'framed' the process as a simple and straightforward task of comparing products that were largely the same. Several consumers noted that the "simplicity of the icons commonly used by PCWs - green ticks and red crosses - plant the idea in the users mind that this is simple." PCWs did the hard work for consumers so there was no need to look any deeper and nothing more to know about how policies work or what they cover.¹⁴ Many consumers in the study admitted that they assume "all policies and add-ons are broadly the same in terms of the way they work or the level of cover they offer."¹⁵

Term of Reference (e)

the costs and benefits associated with the establishment of an independent home, strata and car insurance comparison service in Australia;

The costs and benefits associated with insurance comparison websites have been thoroughly debated over recent years. The benefits are generally thought to be lower insurance costs for consumers (prices driven down by fierce online competition), better transparency in the insurance market (it's easy to see what everyone has on offer) and a more streamlined consumer process for finding insurance products. However there are also a great number of costs associated with these types of aggregator websites. In general, comparison websites provide only a very simplistic and often inaccurate overview of different insurance policies and tend to reduce the complex insurance purchasing decision to one based on price alone - disregarding differences in policy cover, product options and claims service capabilities. The scope of cover, product options and claims service capability vary greatly across the industry and using a comparison website can fail to take these factors into account and carry some hidden catches.

Consumer advocates are also concerned that the type of competition encouraged by such websites, which oversimplify the consumer's options and magnify an existing bias towards choosing on price alone, will facilitate a race to the bottom on coverage, as insurers with superior cover and claims handling services are outcompeted by cheaper and inferior offerings.

Insurance pricing is also very individual in practice, taking into account claims history and other individual risk factors associated with the person (e.g. driving history) or the property address (e.g. flood or theft risk). As a result a price comparison site may produce misleading results, depending on its level of sophistication. Even the comparison of the

¹⁴ *Price comparison website: Consumer market research* - June 2014 - by Atticus Market Research Consultancy, research prepared for the Financial Conduct Authority (pg 11)

¹⁵ *Price comparison website: Consumer market research* - June 2014 - by Atticus Market Research Consultancy, research prepared for the Financial Conduct Authority (pg 8-9)

base premium before these factors are taken into account may be misleading where insurers incorporate the additional risk factors differently.

Consumer advocates also tend to disagree that comparison websites increase transparency in insurance markets. 'Free' comparison sites can earn commissions from insurers which can make up a big portion of a consumer's total insurance premium. Additionally, some comparison sites are misleading about how much of the market they compare and some sites are actually owned by the insurance companies they're supposedly comparing.¹⁶

Independent Comparison Website

Some of the anti-competitive problems that happened in the UK with PCWs might be avoided in Australia if a truly independent insurance comparison service was created. Such a website would need to be regulated like a utility and it would also need to ensure that all of the major insurers provided data. This could prove extremely difficult both legally and practically.

In May 2014 the Federal Government committed to building an insurance comparison website for home insurance in Northern Queensland in an effort to bring down prices. ASIC was charged with creating the site (NQHI – North Queensland Home Insurance), which it launched (with very little fanfare) in late March 2015.

The NQHI website has not been met with much enthusiasm from insurers or consumers, nor has it seemingly created more competition in the market for home insurance in Northern Queensland.¹⁷ The website has been running for almost two years but there is no public data on whether it has had any effect on the cost of home insurance in North Queensland, whether levels of un-insurance and underinsurance have dropped, or whether consumers in that area find the comparison website useful. We may not have answers to any of these questions until there is another major weather event in North Queensland, at which point it will be too late for the website to help any consumers that are underinsured.

The NQHI site does however evidence the standard that ASIC might expect from aggregators. One can assume that the website represents “best practice”, and so provides proper disclosure, identification of key features and unbiased comparison.

Any new independent comparison website should follow the example set by ASIC by emphasising the importance of policy features appropriate to a consumer's circumstances when choosing home insurance, not just the premium.¹⁸ The site also

¹⁶ *Insurance Comparison Sites*, CHOICE. By Jodi Bird, 19th August 2014.

<https://www.choice.com.au/money/insurance/insurance-advice/articles/insurance-comparison-sites>

¹⁷ *All quiet on the northern front... for now*, InsuranceNews.com.au. 13 April 2015

<http://www.insurancenews.com.au/analysis/all-quiet-on-the-northern-front-for-now>

¹⁸ 15-072MR Launch of North Queensland Home Insurance website, 31 March 2015.

<http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-072mr-launch-of-north-queensland-home-insurance-website/>

forces consumers to contact insurers for more information regarding each policy before they can purchase anything:

*The indicative premiums displayed in the comparison results returned by the website are not quotes and consumers will need to contact insurers for actual quotes specific to their circumstances and to purchase a policy.*¹⁹

The site also leads with an “important information” warning which gives users an idea of the sites aims and limitations while ensuring that consumers know that a focus on premiums is the wrong approach.

Don't focus only on premiums: you should consider coverage and policy features when deciding which policy best suits your needs²⁰

Effectively warning consumers not to make insurance decisions based solely or primarily on price can be difficult. In the UK, consumer market research found that

*There was little evidence of consumers being influenced by the messages, pop-ups or advertisements on the PCWs, including those that appear as a holding page while results are being collated. It was evident that many have such a single focus on the task and the search results, they almost zone out extraneous content.*²¹

The FCA's market research did however make some useful recommendations about how price comparison websites could be improved in this regard.

*The data-entry stage is the optimal time to engage consumers about how the products work. Allowing them to filter on levels of cover or features at this initial stage would not only raise awareness about differences in the policies, but also provide more tailored and relevant results that would allow a true comparison of both price and policy.*²²

From our experience advising consumers we believe an aggregator website should provide a useful tool for a consumer not to just compare price, but prompt them to consider their needs, risks and preferences for the insurance product. A consumer will hopefully then get a suitable product, where they are making conscious decisions to reduce cover in return for a cheaper product or paying more for a product with better benefits.

Many of the current sites have “related articles” or some in built mechanism to prompt consumers to consider their risks and consider the various scenarios that they may face; but it requires the consumer to read it. For an aggregator to have value in ensuring the consumer is resourcing themselves as to the operation of the product, it should employ a mixture of information and prompting of the consumers needs.

¹⁹ 15-072MR Launch of North Queensland Home Insurance website, 31 March 2015.
<http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-072mr-launch-of-north-queensland-home-insurance-website/>

²⁰ <http://nqhomeinsurance.gov.au/>

²¹ *Price comparison website: Consumer market research - June 2014 - by Atticus Market Research Consultancy, research prepared for the Financial Conduct Authority (pg 8-9)*

²² *Price comparison website: Consumer market research - June 2014 - by Atticus Market Research Consultancy, research prepared for the Financial Conduct Authority (pg 14)*

Whilst “big event” information is important (whether or not you are covered for flood or storm surge), other day to day information is equally important.

For example, whether materials will be matched, choice of repairer, and how a claim is settled (cash or store credit). Many consumers are just as concerned for minor claims as they are for large.

A comparison website should not be a mechanism to arrange or purchase insurance, but the information does need to be current and up to date to reflect changes in policy wordings.

Generated quotes should be able to be “saved” and any personal information that has been entered by a consumer should be secure and confidential.

Finally, any comparison website should have accessible links to the most recent full PDS wording.

Additional risks associated with live quote aggregator websites

If the government moves forward with the creation of an independent insurance comparison service it should be cognisant of the following risks:

- a) Would the site store the quote or arrange the policy?
- b) If the prices vary from the site to the insurer, what are the requirements on the insurer to explain the difference?
- c) Where the consumer misunderstands a feature – who bears the responsibility?
- d) What will you do about consumers that create “fake” scenarios to test the system and revealing oddities or quirks which they cannot rationalise (see case study X below)
- e) What will you do about consumers that try to “beat the system” and reduce premiums by changing answers to disclosure questions or undertake other questionable tactics?
- f) If the site becomes outdated with the wording, and the insured enters a contract with misinformation what, if any liability, will the website have?

Recommendation

The Financial Rights Legal Centre does not support the creation of an independent comparison service for insurance due to all the risks described above.

However, should the Committee recommend the creation of an independent insurance comparison service, it should include the following:

- As much as possible, a comparison website should prompt consumers to consider their individual risk and encourage them to compare policy features, not just premium price.
- A comparison website should not be a mechanism to arrange or purchase insurance, but the information does need to be current and up to date to reflect changes in policy wordings.
- Generated quotes should be able to be “saved” and any personal information that has

been entered by a consumer should be secure and confidential.

- Any comparison website should have accessible links to the most recent full PDS wording.

Problems with existing insurance comparison websites in Australia

Financial Rights has extensive experience talking with consumers to the Insurance Law Service about insurance comparison websites in Australia. In our experience the existing sites do not adequately enable consumers to compare the features of products offered by multiple insurers.

The first problem is that current comparison websites for home and contents insurance compare some features, but not others. Below we have laid out a few examples:

1. CANSTAR – home and contents comparison

Company	Product	Star Rating	Online Discount	Pay Monthly at No Extra Cost	Nil Excess Available	Flood Inclusions			Home Inclusions		
						Riverrine Flood Cover	Flash Flooding	Storm Surge	Accidental Damage	Fusion Cover	Under Insurance Protection

As can be seen from the above screenshot, the comparison is on price (online discount, monthly premiums, and excess), flood, and 3 features (accidental damage, fusion cover and underinsurance protection). The comparison is ultimately cursory and limited to the listed features. It ultimately requires the consumers to know which features are important to them already and to read the full policy documents themselves if they want to know about other features.

2. Compare the Market, for car insurance compares some for price and features and others for features only.

An example screen shot of some features is as follows.

Caravan - Loss or Damage Whilst Attached	✗	✗	✗	Limited
Emergency Accommodation	Limited	Limited	✗	✗
Emergency Travel	Limited	Limited	✗	Limited
Genuine Parts Guarantee	✗	✓	✗	✗
Insured's Choice of Repairer	Limited	✗	Limited	✓
Lifetime No Claim Bonus	✓	✗	✓	✗
No Claim Bonus Protection	Optional	✗	✓	Optional
Personal Property Stolen or Damaged	Limited	Limited	✗	Limited
Rental Vehicle After Accident (Excluding Running and Incidental Costs)	Optional	Optional	✗	Optional

The feature comparison on this website is more extensive, and provides certain clarifications as to the differences in the features between products.

3. ISelect at least warns the consumer about its limitations and prompts the user to nominate features that are important:

- I am aware that only products from iSelect General's participating car insurers (only products for which I may be eligible) will be displayed on the results page. It is important that I read and understand the insurer's Product Disclosure Statement before purchasing a policy as the products compared do not compare all features that may be relevant to me.

Please tell us what features are important to you.

	Important	Not so important
<input type="checkbox"/> New Car Replacement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Emergency Transport & Accommodation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Variable Excess to Reduce Premium	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Freedom to nominate your preferred repairer	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Pay by the month option	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Lifetime guarantee on repairs for as long as you own the car	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Trailer	<input type="checkbox"/>	<input checked="" type="checkbox"/>

In our experience, consumers are:

- i) price sensitive;
- ii) rarely read the PDS (even when warned and prompted); and
- iii) are unaware of policy limitations and variations in wording until it is time to claim.

The vast majority of ILS's callers are seeking clarification as to their rights and entitlements under their policy wording. Many consumers have had no regard to the policy wording until they have suffered a loss and have claimed. The complaints we hear are often consumers not being aware of the contractual terms of the policy. Policy wordings can be difficult to compare, as levels of coverage, options and rights can be very nuanced.

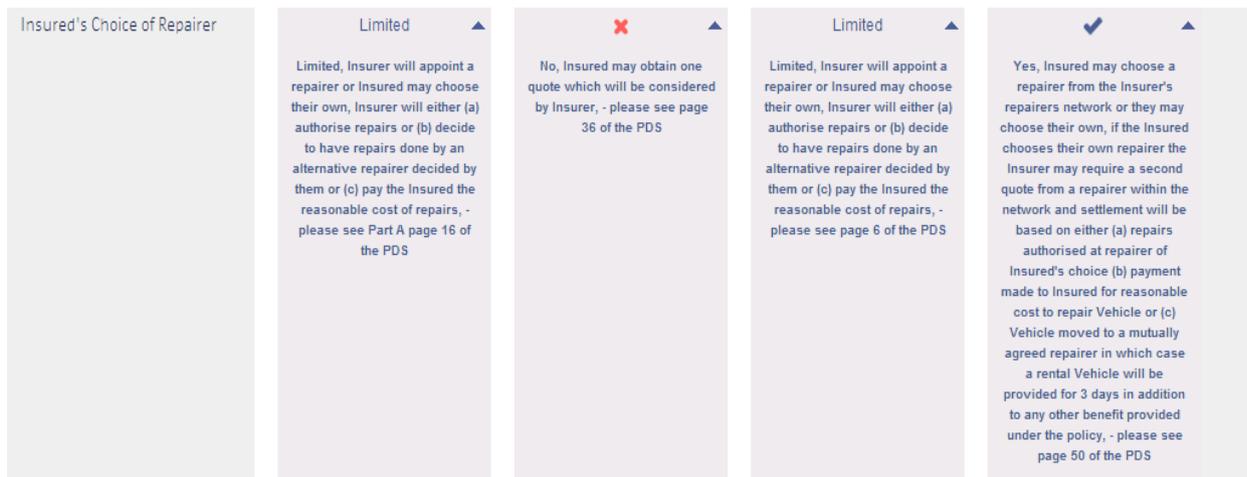
For example, "Choice of Repairer" in motor vehicle policies can mean something significantly different in different policies. Insurers may advertise heavily you have a "Choice of Repairer" as a special benefit but "choice" needs to be assessed in context, as it is rarely an unfettered choice of a consumer and is often limited or restricted, or may carry certain disincentives within the wording itself.

For example:

- **GIO** Choice of Repairer – only if GIO agree after they have assessed it at their assessment centre and the quote is reasonable and cost effective.
- **Coles Insurance** – choice of repairer if the total repair cost do not exceed the quoted repair by the authorised repairer

- **Shannons** – choice of repairer allows for adjustments made by the assessor including the method of repair.
- **Youi** – choice of repairer – will pay the fair and reasonable costs of repairs as determined by their assessor

An approach like “**Compare the Market**” communicates the multitude of differences in policies, for example, a random selection of policies compared on Insurer’s choice of repairer resulted in the following:



The extensive list is comparable to the extensive policy benefits and possibility of nuances, while other comparison websites leave the onus largely on the consumer to read the PDS.

Notably, **Compare the Market** does not compare prices, or provide sample quotes.

Transparency in Premium Pricing

Consumers are sensitive to comparisons. A simple comparison of sample quotes may not make sense to a consumer that thinks insurance products are basically all the same. This can be seen in the consumer research from the UK:

The difference between quote amounts caused some confusion and uncertainty. Many struggled to understand why the same search might result in quotes that can differ by over £1000. The default belief was that the high quotes are just over-priced, and the lowest quotes competitive and good value for the consumer. There was little sense among consumers that policies might differ in quality or level of cover. Consumers naturally wanted to believe that the lowest or lower cost quotes are the best choice, and there was also a sense that these would not appear on the PCW at all unless they were viable or trustworthy.²³

Comparison websites might not even provide accurate quotes if consumers have not accurately entered all of their personal information. Different insurers weigh different things when pricing their policies. For example (as noted above): individual risk factors including claims history and underwriting issues such as criminal history or past cancellation of a policy can change the cost of a policy dramatically.

²³ *Price comparison website: Consumer market research - June 2014 – by Atticus Market Research Consultancy, research prepared for the Financial Conduct Authority (pg 10)*

Consequently, a comparison will be unhelpful to a consumer that is not aware of the different pricing methodologies. Competition in insurance is important and consumers shopping around can achieve this to some extent. But, the danger is that as policies are driven to be cheaper and cheaper by market forces the benefits are reduced without the consumer being aware of the consequence as to coverage for other events.

As discussed above, there should be better explanation as to how premiums are loaded or calculated. Currently, insurers issues "guides" that set out in a general way the factors that have been taken into account when pricing risk, however, consumers rarely link those factors to personal situations and similarly consumers have no way of knowing if insurers follow their own "guides" correctly.

Case study

Mr X went to COMPARISON WEBSITE and obtained insurance - he said he read the PDS before obtaining the product through the site.

Mr X then received a copy of the PDS and a certificate of insurance - but he did not read these fully as he read PDS earlier before signing up. He said the certificate of insurance, which was attached to an email they sent him, set out the applicable excesses.

Mr X made a claim after an at fault accident- the INSURER have applied all of the various excesses that amount to \$4,000 including \$1800 for basic excess and \$600 because making claim in first 6 months of policy and \$1100 for being under the age of 30, \$300 because single car incident.

He wants to dispute that - he was not aware of the extent of the excesses that would be applied or that they would be cumulative.

Case study - danger of aggregator in health insurance

Mr B made an inquiry about health insurance through a health insurance agency. Mr B gave his info to COMPARISON WEBSITE but definitely said no to signing anything.

The COMPARISON WEBSITE used his info and made an application for a health policy to the INSURER. The INSURER sent him a letter asking him to complete his application but he never did. Mr B never received any cover note or policy certificate of any kind.

Then six months later Mr B discovered that money had been deducted from his account for the premium totalling \$1300.

When Mr B called the ILS he wanted his money back and his information deleted from the insurer's systems.

Case study

Ms M was referred to the Insurance Law Service by a STATE COURT.

Ms M used COMPARISON WEBSITE to pick her health insurance. Through searching on the website she has discovered that she's paid \$1500 in extra premiums over the last 5 years that

she shouldn't have had to pay for. She wants to sue to get these extra premium payments back from the insurer.

Ms M is a pensioner and really needs the money. She is prepared to go to court.

Case study – the following is an EMAIL to the Insurance Law Service

When getting an insurance quote for my car, and my daughter's car, I noticed that different rates are charged according to what day your birthday is!! That is my birthday is on the 30th of the month, I am charged 8% more than if my birthday was on the 29th or the 31st of the month! For my daughter she was quoted 30% more for her birthday on the 8th of the month than if her birthday was either the 7th or the 9th of the month. After a little investigation I saw that every 3rd birthday is charged more than others. That is 1st and 2nd are cheaper than the 3rd, 4th and 5th cheaper than the 6th of the month etc.

I contacted COMPARISON WEBSITE directly and have been dealing with Head of Corporate affairs [REMOVED]. Although helpful his final answer was that it is an algorithm run by the insurance underwriters themselves so he is unable to help me and suggested that I deal with them directly.

Term of Reference (f)

legislative and other changes necessary to facilitate an independent home, strata and car insurance comparison service in Australia; and

Financial Rights has no comment.

Term of Reference (g)

any related matters.

Unfair Contract Terms

Insurance is the only financial services area that is not subject to unfair terms legislation. Arguably insurance is the area where consumers most need protection from unfair terms because consumers insure their main assets.

It is our understanding that legislation has been drafted to implement unfair terms regulation into the Insurance Contracts Act. The introduction of unfair terms in insurance has been the subject of several consultations. There is no reason why the legislation should not be enacted. We contend that unfair terms legislation is urgently needed to ensure a level playing field and adequate consumer protection in insurance.

Recommendation

Urgently introduce unfair terms legislation for insurance.

Standard cover and product suitability

The *Insurance Contracts Act 1986* sets out standard cover for some general insurance products but allow for insurer's to deviate from standard cover provided this is clearly disclosed in writing. These provisions are close to useless because consumers rarely read the Product Disclosure Statement setting out these deviations. Introducing standard minimum cover and more standardised definitions has the potential to greatly improve consumer outcomes. It would also go some way to mitigating some, but far from all, the risks of comparison websites.

There is no requirement that insurance products should be suitable for the consumer's circumstances and needs. This was recognised by the Financial System Inquiry and Treasury are currently consulting on legislation to introduce a Product Design and Distribution obligation on financial service providers to address the inappropriate selling of unsuitable financial products that has been identified at unacceptable levels in the market to date. This requirement will stop short of requiring insurer's to match any particular product to the needs of any particular consumer – more could be done in this regard also. For the time being it is totally incumbent on ordinary, time poor, inexpert consumers to negotiate a complex and confusing array of risks and cover. It is little wonder they take short cuts and often get it wrong, to their significant detriment.

Recommendation

The Government should consult about introducing standard minimum cover, greater uniformity of definitions in general insurance policies and shifting some of the responsibility for determining product suitability from consumers back onto insurers.

Big data and the future of general insurance

Financial Rights notes that the Productivity Commission has recently released a report on Data Availability – a report that is mainly directed at examining options for improving availability and use of both public sector and private sector data. Financial Rights has serious concerns regarding the greater availability and use of data particularly with respect to the insurance industry.

The insurance industry is increasingly integrating data collection into their service provision. AIA and MLC, for example, provide discounts and benefits on life insurance products²⁴ 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 uninsure or reduce coverage of certain tracked policyholders.²⁵

²⁴ AIA Vitality <https://www.aiavitality.com.au/vmp-au/>; MLC Life Insurance on Track <https://www.mlc.com.au/personal/important-updates/on-track>

²⁵ 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>

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 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.

AI 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, genetic testing. 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? 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.²⁶

Insurers in Australia are currently not permitted to require a genetic test of a consumer applying for insurance, but are entitled, under the principle of disclosure to the results of previously undertaken genetic tests. This is not the case in US, Sweden, Germany and France, which all prohibit genetic discrimination.

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.

²⁶ 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 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.

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:

- placing limits on life insurance premiums as currently occurs under CTP and health insurance as a social good;
- the government entering the market as “insurer of last resort” as it currently does in relation to commercial interruptions arising from terrorism;
- the 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.
- the Government could consider restricting the use of certain data on uncontrollable risks for pricing, to avoid the potential for adverse decision making by insurers.
- the 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.

Recommendations

That the Government undertakes a review of the impact of data on general insurance industries, examining the social impact and developing preemptive policy approaches.

That the Government and the Productivity Commission in its current Data Availability review adequately take into account genuine community concerns about privacy protections and adequately fund the Office of the Australian Information Commission.

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 the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,

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