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The Parliament of the Commonwealth of Australia

# Advisory Report on the Insurance Contracts Amendment Bill 2011

House of Representatives  
Standing Committee on Economics

February 2012  
Canberra

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## Chair's foreword

The floods of 2010-11 were a devastating blow to many communities with lives lost and homes and property destroyed. In the aftermath, the tragedy and devastation was made worse when many people found that they were under insured or their insurance policies did not provide cover. In many cases, people thought they were insured only to be advised that their policies did not provide for the types of floods that occurred. The discovery that homes were not adequately insured against the floods was devastating for families.

The Insurance Contracts Amendment Bill 2011 is part of suite of measures to address issues associated with flooding. The Bill is a technical piece of legislation which introduces, through schedule 1, a standard definition of flood and, through schedule 2, a Key Facts Sheet (KFS).

Both the standard definition of flood and the KFS are widely supported by both Industry and consumer groups. It is clear that consumer groups have wanted these measures and industry groups support them. The National Insurance Brokers Association (NIBA), RACQ Insurance, the Insurance Council of Australia, and the Consumer Action Law Centre all indicated that they support both measures.

The Bill provides the framework for the introduction of the standard definition and the KFS. Once the Bill is passed the regulations prescribing the standards definition and the KFS will be introduced.

The Treasury has issued draft regulations on the standard definition and will soon issue a discussion paper on the KFS. The committee's roundtable public hearing provided a constructive forum to gauge the adequacy of Treasury's performance in consulting on the standard definition and the KFS. The committee is reassured by the constructive dialogue between the Treasury, industry groups and consumer

groups and believes that the technical points raised during the hearing can be successfully dealt with as the regulations are further developed.

The committee concludes that the Insurance Contracts Amendment Bill 2011 is an important piece of legislation that should be passed.

I would like to thank the organisations that assisted the committee during the inquiry through submissions or participating in the hearing in Canberra. I also thank my colleagues on the committee for their contribution to the report.

Julie Owens MP  
Chair



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## Membership of the Committee

Chair	Ms Julie Owens MP
Deputy Chair	Mr Steven Ciobo MP (from 13 February 2012) Ms Kelly O'Dwyer MP (until 13 February 2012)
Members	Mr Scott Buchholz MP Mr Stephen Jones MP Dr Andrew Leigh MP Ms Kelly O'Dwyer MP Mr Tony Smith MP (until 7 February 2012) Mr Craig Thomson MP

## Committee Secretariat

Secretary	Mr Stephen Boyd
Research Staff	Mr David Monk Ms Samantha Mannette Dr Phillip Hilton
Administrative Officer	Ms Natasha Petrović



## Terms of reference

On 24 November 2011 the Selection Committee requested the Committee to inquire into and report on the Insurance Contracts Bill 2011.

Under Standing Order 222(e), the House is taken to have adopted the Selection Committee's reports when they are presented.





## List of abbreviations

CALC	Consumer Action Law Centre
HBHC	Home Building and Home Contents (combined and individual)
IC Act	<i>Insurance Contracts Act 1984</i>
ICA	Insurance Council of Australia
ICR	Insurance Contracts Regulations 1985
KFS	Key Facts Sheet
NIBA	National Insurance Brokers Association
PDS	Product Disclosure Statement
RIS	Regulation Impact Statement
this Bill	Insurance Contracts Amendment Bill 2011



# Recommendation

## 2 Analysis of the Bill

### Recommendation 1

The committee recommends that the House of Representatives pass the Insurance Contracts Amendment Bill 2011.

## Introduction

### Referral of the Bill

- 1.1 On 24 November 2011 the Selection Committee referred the Insurance Contracts Amendment Bill 2011 to the committee for inquiry and report.

### Origins and purpose of the Bill

- 1.2 During 2010-11 there were a significant number of natural disasters. In particular, severe floods affected large areas of Queensland, New South Wales and Victoria. These floods resulted in loss of life, social upheaval and significant financial costs. The aftermath of the flooding revealed that a considerable number of people had inadequate or no insurance cover. Many consumers were confused about what is covered in insurance policies and, in particular, the extent to which policies insure against flood. The Natural Disaster Insurance Review (NDIR) stated:

The fact that all home insurance policies cover storm damage including related water damage but many do not cover flood damage, which distinction is seen as arcane and artificial by many, led to a community backlash against insurers during 2011 and considerable distress, financial loss and disillusionment for many insured homeowners.<sup>1</sup>

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1 Natural Disaster Insurance Review, *Inquiry into flood insurance and related matters, Executive Summary and Recommendations*, September 2011, p. 1.

- 1.3 On 5 April 2011 the Government released a consultation paper *Reforming flood insurance: Clearing the waters*. The purpose of the paper was to engage the community in suggesting improvements to the regulatory framework and other aspects of Australia's insurance market.<sup>2</sup> The Explanatory Memorandum (EM) states:

The paper contained two key proposals designed to improve clarity for consumers in relation to insurance policies and in particular, the cover provided for various types of flood, namely, a **standard definition of flood** and the **Key Facts Sheet (KFS)** to outline the key information in relation to home building and home contents policies. The *Insurance Contracts Amendment Bill 2011* (this Bill) implements these proposals.<sup>3</sup>

- 1.4 The then Minister for Financial Services and Superannuation, the Hon Bill Shorten, MP, stated that 'these catastrophic events highlight the importance of insurance and making sure that individuals, families, communities and governments have effective insurance cover in place to guard against and recover from disasters.'<sup>4</sup> Mr Shorten, in his second reading speech to the Insurance Contracts Amendment Bill, stated:

This bill delivers on the government's commitment to provide consumers – everyday individuals, modest hardworking families and striving Australian enterprises – with a better understanding of what is included in their insurance policies and in particular, the extent to which policies provide cover for flood and what cover for flood actually means.<sup>5</sup>

- 1.5 The Minister stated that the Bill will implement these two measures 'with the aim of helping consumers make effective decisions in relation to their insurance needs, through increased clarity and accessibility of key information.'<sup>6</sup>

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2 Explanatory Memorandum, Insurance Contracts Amendment Bill 2011, p. 3.

3 Explanatory Memorandum, Insurance Contracts Amendment Bill 2011, p. 3.

4 The Hon Bill Shorten, MP, Assistant Treasurer and Minister for Financial Services and Superannuation, House of Representatives Hansard, 23 November 2011, p. 23.

5 The Hon Bill Shorten, MP, Assistant Treasurer and Minister for Financial Services and Superannuation, House of Representatives Hansard, 23 November 2011, p. 23.

6 The Hon Bill Shorten, MP, Assistant Treasurer and Minister for Financial Services and Superannuation, House of Representatives Hansard, 23 November 2011, p. 23.

## Standard definition of flood

1.6 **Schedule 1** of the Bill amends the *Insurance Contracts Act 1984* to introduce a legislative framework for a standard definition of the term 'flood' for home building, home contents, small business and strata title insurance policies. The Minister, in his second reading speech, stated:

The definition is designed to provide a clear and easily understandable meaning for what is commonly known as riverine flooding, namely the covering of normally dry land with water that has escaped or been released from the normal confines of any lake, river, creek or other natural watercourse or alternatively, any reservoir, canal or dam.

A standard definition of flood will reduce consumer confusion regarding what is and is not included in insurance contracts. It will also avoid situations where neighbouring properties in the same street, affected by the same flood event, receive different claims assessments because the policies covering them use different definitions of flood.<sup>7</sup>

1.7 The current problem with flood definitions is that there are various sources of inundation that can cause damage to property. The Insurance Council of Australia (ICA) has suggested the risks can be divided into three broad categories which are summarised below:

- **A. Stormwater/rainfall runoff:** These terms refer to high intensity, short duration storms producing localised flooding. Most insurance policies (but not all) cover this risk. Some insurers also use the term 'flash flooding' with similar intent.
- **B. Riverine/inland flooding/flooding:** Inundation caused by watercourses or catchments overflowing their banks due to long duration rainfall over large areas. Some insurers provide cover for this risk, but many exclude it. Whether included or excluded, the definitions of this risk can vary greatly.
- **C. Actions of the sea/sea level rise/storm surge:** Inundation caused by movement of seawater. Few insurance policies cover this risk.<sup>8</sup>

1.8 The Natural Disaster Insurance Review stated:

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<sup>7</sup> The Hon Bill Shorten, MP, Assistant Treasurer and Minister for Financial Services and Superannuation, *House of Representatives Hansard*, 23 November 2011, p. 23.

<sup>8</sup> Treasury, *Reforming flood insurance – Clearing the Waters*, April 2011, p. 3.

In the wake of the recent floods in Queensland and Victoria, a number of policyholders have reported that they were surprised that their policies did not cover the type of inundation that occurred. The majority of these cases relate to policies that do cover category A but exclude cover for category B (riverine flooding).<sup>9</sup>

- 1.9 A comparison of the proposed law versus the current law is shown in the following table.

### Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Insurance providers will be required to use a standard definition of the term flood (and all related terms) in all HBHC, small business and strata title insurance policies and their supporting documents. The term flood will be defined in regulations.	Currently the term flood is not defined in the ICA resulting in insurers defining the term in different ways.

Source *Explanatory Memorandum, Insurance Contracts Amendment Bill 2011, p. 8.*

- 1.10 The Treasury noted that the Bill does not itself mandate the use of a standard definition of flood. However, it does 'require the use of a particular definition of flood, if the word flood is used in an insurance contract.'<sup>10</sup>

## Key Facts Sheet

- 1.11 Schedule 2 of the Bill amends the *Insurance Contracts Act 1984* to provide a legislative framework to allow regulations to be made to introduce a requirement for insurers to provide a key facts sheet outlining key information in relation to home building and home contents insurance. The Minister, in his second reading speech, stated:

The key facts sheet will enable consumers to access key information in relation to home building and home contents insurance policies in a concise and easy to understand format. This will assist consumers in making more appropriate decisions when entering into these types of insurance contracts.

<sup>9</sup> Treasury, *Reforming flood insurance – Clearing the Waters*, April 2011, p. 3

<sup>10</sup> Ms Sue Vroombout, Department of Treasury, *Committee Hansard*, Canberra, 8 February 2012, pp. 2-3.

In order to ensure consumers are able to effectively utilise the key facts sheet, insurers will be required to provide this document to consumers as soon as they have requested information on the particular policy.<sup>11</sup>

1.12 The Minister concluded that the 'introduction of the key facts sheet will make the purchase of home building and home contents policies simpler for consumers, assisting them to compare policies with a consistent document, and facilitate more effective and informed decision making.'<sup>12</sup>

1.13 Currently, insurers are required to give consumers a Product Disclosure Statement (PDS) if they offer or issue an insurance policy. The EM noted that 'PDSs can be lengthy, making it difficult for consumers to access key information about the features of the policy, including the inclusions and exclusions.'<sup>13</sup> The EM stated:

The KFS is a one page document that will summarise the key information about a given HBHC insurance policy, which may include:

- what is covered;
- what is not covered;
- the cooling off period;
- what type of cover is offered under the policy; and
- an explanation of how the KFS is to be used.<sup>14</sup>

1.14 A comparison of the proposed law versus the current law is shown in the following table.

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11 The Hon Bill Shorten, MP, Assistant Treasurer and Minister for Financial Services and Superannuation, *House of Representatives Hansard*, 23 November 2011, p. 24.

12 The Hon Bill Shorten, MP, Assistant Treasurer and Minister for Financial Services and Superannuation, *House of Representatives Hansard*, 23 November 2011, p. 24.

13 Explanatory Memorandum, Insurance Contracts Amendment Bill 2011, p. 13.

14 Explanatory Memorandum, Insurance Contracts Amendment Bill 2011, p. 14.

### Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
In addition to existing disclosure requirements for home building and home contents insurance policies contained in the Corporations Act 2001 (Corporations Act), insurers are required under the ICA to provide a KFS, which outlines the key information on what is and what is not covered in respect of the particular home building, home contents or home and contents insurance policy at the request of a consumer.	<p>The existing disclosure obligations in the Corporations Act require an insurer to disclose information in relation to the terms and risks associated with the insurance policy in a product disclosure statement.</p> <p>There is no disclosure requirement in the ICA for a document containing a summary of the key information to be made available to consumers for home building and home contents insurance policies.</p>

Source *Explanatory Memorandum, Insurance Contracts Amendment Bill 2011, p. 14.*

- 1.15 A draft key fact sheet used in the *Reforming flood insurance – Clearing the waters* consultation paper is shown on the next page.



## Draft Key Fact Sheet: Reforming flood insurance – Clearing the waters

CONSULTATION DRAFT		
<b>KEY FACTS ABOUT YOUR HOME INSURANCE POLICY</b>		
[Insurance provider logo]		
<b>Description of your home insurance policy</b>		
Policy name	XYZ Home Building Classic	
Policy type	<input checked="" type="checkbox"/> Sum insured	<input type="checkbox"/> Sum insured plus margin <input type="checkbox"/> Total replacement cost
<b>How to use this statement</b>		
<p>You can use this statement to help you to find out quickly whether this insurance policy may suit you, and you can use it for comparing the features of this policy with other policies. It is a only short summary of key benefits and exclusions and before making a decision it is important that you read the full terms and conditions in the XYZ Home Building Classic Product Disclosure Statement which can be obtained from <a href="http://www.insurance.xyz">www.insurance.xyz</a> or by telephoning us on XXXX.</p>		
<b>What is covered</b>		<b>What is NOT covered</b>
<b>Fire:</b> eg damage from bushfire or fire caused by electrical fault		Damage from ash or soot if there is no fire in your home
<b>Explosion</b>		
<b>Theft or attempted theft</b>		
<b>Stormwater/rainfall runoff</b>		
<b>Flood</b>		Tsunami/actions of the sea
<b>Impact</b>		
<b>Riot</b>		
<b>Occupier's liability</b>		
		<b>Other:</b>
		<ul style="list-style-type: none"> <li>• landscaping, plants</li> <li>• cars, boats</li> </ul>
<p><b>Covered amount:</b> This policy is a 'sum insured' policy. The policy will only cover you up to fixed limits, agreed by you. You should ensure that the limits are adequate to compensate you for the losses you may have. For further information see [reference to tools to estimate the value to insure].</p>		
<p><b>Need to consider risks:</b> There may be risks such as flood, bushfire, land slippage in the area where the insured property is located. You should consider carefully whether this policy provides you with the cover you require for those risks.</p>		
<p><b>Cooling Off:</b> If you are not happy with your insurance cover, and have not made a claim, we will cancel and refund your premium in full within [XX] days of purchase.</p>		
<p><b>Excess:</b> An excess may be payable if a claim is made. The standard excess is \$XX [but this may be varied]. Please see the XYZ Home Building Classic Product Disclosure Statement [at page/paragraph XX].</p>		
<p><b>Optional Cover:</b> For an additional premium amount, we may insure items that are not standard. To find out about a range of our Optional benefits, please refer to the XYZ Home Building Classic Product Disclosure Statement which can be obtained from our website <a href="http://www.insurance.xyz">www.insurance.xyz</a> or by telephoning us on XXXX.</p>		
CONSULTATION DRAFT		

## Date of effect

- 1.16 The amendments in this Bill will take effect from the date of Royal Assent. The regulations will commence two years after they are made in respect of each of the measures (the standard definition of flood and the KFS).

## Release of draft regulations

- 1.17 On 9 December 2011 the Minister released draft regulations implementing the standard definition of flood in insurance contracts. The draft regulations for the key fact statement are expected to be released early in 2012.<sup>15</sup>
- 1.18 Proposed section 29D of the draft regulations provides the following meaning of flood in prescribed contracts.

### *Proposed section 29D Meaning of flood in prescribed contracts etc.*

- (1) *For paragraph 37B (2) (a) of the Act, the word 'flood' means the covering of normally dry land by water that has escaped or been released from the normal confines any of the following:*
- (a) a lake (whether or not it has been altered or modified);*
  - (b) a river (whether or not it has been altered or modified);*
  - (c) a creek (whether or not it has been altered or modified);*
  - (d) another natural watercourse (whether or not it has been altered or modified);*
  - (e) a reservoir;*
  - (f) a canal;*
  - (g) a dam.*

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15 The Hon Bill Shorten, MP, Assistant Treasurer, Minister for Financial Services and Superannuation, *Media Release*, 9 December 2011, Consultations on Draft Regulations Implementing the Standard Definition of Flood in Insurance Contracts.

- 1.19 The Minister noted that the draft regulations ‘follow the announcement by CGU Insurance to extend flood coverage based on these regulations, to all home, contents and landlord policies nationally.’<sup>16</sup>
- 1.20 The Minister commented that the ‘proposed definition is consistent with the recommendation of the Natural Disaster Insurance Review, that the Government introduce a standard definition of ‘flood’ in the form proposed in the Assistant Treasurer’s *Reforming Flood Insurance: Clearing the Waters* consultation paper.’<sup>17</sup>

## Treasury Consultation

### First round

- 1.21 On 5 April 2011 the Government released a consultation paper *Reforming flood insurance: Clearing the waters*, with submissions closing 13 May 2011.<sup>18</sup> The paper aimed to engage the community in suggesting improvements to the regulatory framework and other aspects of Australia’s insurance market.
- 1.22 The paper acknowledged that:
- Following the recent experience, insurance industry and consumer representatives have made some suggestions for improving the regulatory framework and other aspects of Australia’s insurance market. The Government is giving a high priority to progressing reforms aimed at improving the insurance policy framework...<sup>19</sup>
- 1.23 The paper proposed that insurance contracts covering flood damage would follow a standard definition of flood. It also proposed a Key Facts Sheet (KFS) to outline the key information in relation to home building and home contents policies.

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16 The Hon Bill Shorten, MP, Assistant Treasurer, Minister for Financial Services and Superannuation, *Media Release*, 9 December 2011, Consultations on Draft Regulations Implementing the Standard Definition of Flood in Insurance Contracts.

17 The Hon Bill Shorten, MP, Assistant Treasurer, Minister for Financial Services and Superannuation, *Media Release*, 9 December 2011, Consultations on Draft Regulations Implementing the Standard Definition of Flood in Insurance Contracts.

18 This is available at:

[http://www.treasury.gov.au/documents/1995/RTF/clearing\\_the\\_waters\\_april2011.rtf](http://www.treasury.gov.au/documents/1995/RTF/clearing_the_waters_april2011.rtf)

19 Treasury, *Reforming Flood Insurance: Clearing the Water*, April 2011, p. 1.

- 1.24 Treasury received 13 submissions in response to the paper. There were 12 public submissions and 1 confidential. Submissions are available at: <http://www.treasury.gov.au/contentitem.asp?ContentID=2039&NavID=037>.
- 1.25 There was widespread support for reform, including the development of a standard definition of flood and the Key Facts Sheet, but there was also disagreement about the precise definition of flood and the complexity and length required for the fact sheet.

## Second round

- 1.26 On 9 December 2011 the then Assistant Treasurer, the Hon Bill Shorten, MP, released draft regulations to introduce a standard definition of "flood" for insurance contracts of home building and home contents (combined and individual policies). The closing date for submissions on the draft regulations was 3 February 2012.<sup>20</sup>

## Natural Disaster Insurance Review

- 1.27 On 4 March 2011, the Assistant Treasurer established the Natural Disaster Insurance Review (NDIR). The NDIR's final report was released on 14 November 2011. The NDIR noted that it 'was the absence of flood insurance for many policyholders, particularly in Brisbane and Ipswich, that was the primary stimulus for the Review.'<sup>21</sup>
- 1.28 While the NDIR commented on the need for a standard definition for flood and a key fact sheet, its terms of reference were more wide ranging. In particular, the NDIR examined the availability and affordability of insurance offered by the private insurance market, with particular reference to flood but also including other natural disasters.
- 1.29 The NDIR made 47 recommendations which focused on providing an integrated solution to the availability and affordability of flood insurance.

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20 For more details on this process, see <http://www.treasury.gov.au/contentitem.asp?NavId=&ContentID=2259> and <http://www.dpm.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/165.htm&pageID=003&min=brs&Year=&DocType=0>.

21 Natural Disaster Insurance Review, *Inquiry into flood insurance and related matters, Executive Summary and Recommendations*, September 2011, p. 1.

The NDIR identified the following five essential requirements that would need to be met by such a solution:

1. All home insurance, home contents insurance and body corporate insurance products need to include flood cover.
2. Discounted insurance premiums are needed for homes, home contents and home units in areas of medium and high flood risk, so as to render flood insurance affordable.
3. National coordination of flood risk measurement and mitigation is needed, in order to improve flood risk management for the benefit of the community generally and to ensure the continuing development of a competitive market for flood insurance.
4. A mechanism is needed to fund the discounts that are to be offered for affordability purposes.
5. Insurers will need access to a government-sponsored reinsurance facility if they are to deliver flood insurance discounts without compromising their own commercial positions.<sup>22</sup>

1.30 On 14 November 2011 the government released its response to the recommendations of the NDIR. The government has sought submissions on the NDIR paper by 30 March 2012.

## **Objectives and scope of the inquiry**

- 1.31 The objective of the inquiry is to investigate the adequacy of the Bill in achieving its policy objectives and, where possible, identify any unintended consequences.
- 1.32 The committee's role is to examine schedules 1 and 2 of the Bill, namely the definition of flood and key facts sheet. It is noted that these measures will be advanced through the development of regulations when the Bill is passed. The Treasury is undertaking a detailed consultation process on both the definition of flood and the key facts sheet.
- 1.33 The committee is not scrutinising the broader work undertaken by the NDIR which focuses on flood insurance availability and affordability.

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22 Natural Disaster Insurance Review, *Inquiry into flood insurance and related matters, Executive Summary and Recommendations*, September 2011, p. 3.

- 1.34 The committee notes that the measures in the Bill are part of a broader suite of measures to address issues associated with flooding.

## Analysis of the Bill

### Overview

- 2.1 There is wide support for the introduction of a standard definition of flood and a key fact sheet for home building and home contents insurance contracts. The submissions to the government's consultation paper, *Reforming Flood Insurance – Clearing the waters* demonstrated that there was wide support from industry and consumer groups for these two measures.
- 2.2 The Natural Disaster Insurance Review (NDIR) recommended that 'the Commonwealth Government introduce a standard definition of flood in the form proposed in the *Reforming flood insurance – Clearing the waters* consultation paper.'<sup>1</sup> In addition, the NDIR recommended that:
- ...in endorsing the Government proposal for a Key Facts Statement, the Key Facts Statement list replacement cover and all natural disaster events, identified as 'standard cover' in the Insurance Contracts Regulations 1985.
- That insurers issue a Key Facts Statement to policy holders with all new policies written and all policy renewals on an annual basis.<sup>2</sup>
- 2.3 The submissions to the committee's inquiry were also highly supportive of both a standard definition of flood and a key fact sheet (KFS). The
- 

1 Natural Disaster Insurance Review, *Inquiry into flood insurance and related matters, Executive Summary and Recommendations*, September 2011.

2 Natural Disaster Insurance Review, *Inquiry into flood insurance and related matters, Executive Summary and Recommendations*, September 2011, Recommendation 34 (KFS) and Recommendation 36 (Standard definition of flood).

National Insurance Brokers Association (NIBA) commented that ‘as a general statement we support both of the initiatives: the standard definition provisions in relation to flood and the key facts sheet.’<sup>3</sup> Similarly, RACQ insurance supported both measures.<sup>4</sup> The Insurance Council of Australia (ICA) commented that ‘we emphasise that we do strongly endorse both of the initiatives – the standard definition of flood and the key facts sheet’.<sup>5</sup> In addition to the industry groups, the Consumer Action Law Centre (CALC) was also highly supportive of the initiatives. The CALC stated:

We understand that there is now broad agreement on the proposed definition of flood. This is something we strongly support. We believe that a standard definition will assist in reducing disputes about when someone who experienced a flood is or is not covered. Key facts sheets, which are designed to provide simple and accessible information about a policy so that a consumer does not have to wade through hundreds of pages of product disclosure, is also a good reform which, if implemented properly, will empower consumers in the marketplace to make more effective choices.<sup>6</sup>

- 2.4 While there is general support, some groups raised technical issues about the two key measures in the Bill which are examined in this chapter.

## **Proposed section 37C – Insurer must clearly inform insured whether prescribed contract provides insurance cover in respect of flood**

- 2.5 Proposed section 37C of the Insurance Contracts Amendment Bill 2011 states:

### ***37C Insurer must clearly inform insured whether prescribed contract provides insurance cover in respect of flood***

*Before entering into a prescribed contract, the insurer must clearly inform the insured in writing whether the contract provides insurance cover in respect of loss or damage caused by, or resulting from, flood as defined by the regulations.*

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3 Mr Mark Radford, NIBA, *Committee Hansard*, Canberra, 8 February 2012, p. 1.

4 Mr Christopher Walsh, RACQ, *Committee Hansard*, Canberra, 8 February 2012, p. 2.

5 Mr John Anning, ICA, *Committee Hansard*, Canberra, 8 February 2012, p. 2.

6 Mr Gerard Brody, CALC, *Committee Hansard*, Canberra, 8 February 2012, p. 2.



## Application to new policies, renewals, extensions, variations and reinstatements

- 2.6 Insurance groups raised concerns that proposed section 37C will require them to advise insureds of their flood insurance cover every time a variation is made to their insurance policy.
- 2.7 The RACQ notes that under proposed section 37C there is a requirement that insurers clearly inform the insured in writing as to whether the contract of insurance provides cover in respect to flood. The RACQ notes that ‘insurers would be required to send the customer a Product Disclosure Statement (PDS) at renewal and also in the event of a policy variation.’<sup>7</sup> The RACQ is critical of this noting that ‘this approach would be impractical and excessive in the context of the requirements that presently exist in section 11(9) of the *Insurance Contracts Act 1984*.’<sup>8</sup> (IC Act)
- 2.8 The RACQ notes that the requirement to comply with proposed section 37C could be required by any variation to the policy even if it was unrelated to the flood provisions of the policy. The RACQ states:
- By way of example, following the renewal of an existing policy, a customer contacts their insurer to specify an item of jewellery. Whilst there has been a change in the risk, this variation would bear little consequence to the provision of flood cover.
- Despite this, under the current proposal a PDS would be required to be sent to the customer, essentially for the sole purpose of providing disclosure regarding flood coverage.<sup>9</sup>
- 2.9 The Insurance Council of Australia (ICA) raised similar concerns. The ICA advised that ‘by virtue of section 11(9) of the IC Act, the requirement imposed by proposed section 37C would apply not only to new policies but also to renewals, extensions, variations and reinstatements of the contract of insurance.’<sup>10</sup> Section 11(9) of the *Insurance Contracts Act 1984* states:

### *Section 11(9) – Insurance Contracts Act 1984*

- (9) *Subject to subsection (10), a reference in this Act to the entering into of a contract of insurance includes a reference to:*
- 

7 RACQ Insurance, *Submission 3*, p. 2.

8 RACQ Insurance, *Submission 3*, p. 2.

9 RACQ Insurance, *Submission 3*, p. 2.

10 Insurance Council of Australia, *Submission 4*, p. 1.

- (a) *in the case of a contract of life insurance—the making of an agreement by the parties to the contract to extend or vary the contract;*
- (b) *in the case of any other contract of insurance—the making of an agreement by the parties to the contract to renew, extend or vary the contract; or*
- (c) *the reinstatement of any previous contract of insurance.*

2.10 In relation to section 11(9), the ICA stated:

It is unnecessarily onerous to require a general insurer to inform the insured in writing in all these circumstances. For example, an individual may take out a home contents insurance policy and would be informed, in writing, whether the contract provides insurance cover in respect of loss or damage caused by/resulting from flood. If the insured then contacts their insurer the next day to vary the contract by adding an additional item to the policy, under the proposed section 37C the insurer would be required to again inform the insured, in writing, whether the contract provides insurance cover in respect of loss or damage caused by/resulting from flood.<sup>11</sup>

2.11 In proposing a solution, the ICA stated:

This issue can be overcome with an amendment so that the words "before entering into a prescribed contract" in section 37C are dealt with in a similar way to the current sections 35 and 37 under subsection 11(10) of the IC Act. That is, the insurer should only be required to clearly inform the insured whether the prescribed contract provides insurance cover in respect to flood (as defined by the Regulations):

- at or before initially entering into a contract;
- at or before the first renewal, variation, extension or reinstatement of the contract after the amending legislation commences; and
- at or before any renewal or variation but only where the renewal or variation changes the extent of flood cover.<sup>12</sup>

2.12 During the roundtable public hearing, the Treasury acknowledged that its interpretation of the current provisions is consistent with the concerns being raised by industry. The Treasury advised that 'we are looking at whether some changes might need to be made to those provisions.'<sup>13</sup>

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11 Insurance Council of Australia, *Submission 4*, p. 1.

12 Insurance Council of Australia, *Submission 4*, p. 2.

13 Ms Sue Vroombout, Department of the Treasury, *Committee Hansard*, Canberra, 8 February 2012, p. 3.

- 2.13 The ICA noted its concern about the possible requirement to clearly inform with every variation to a contract. The ICA stated:

To the extent of flood cover, we have certainly agreed that the obligation is appropriate when the contract is first being entered into; certainly also when the contract is renewed, varied, reinstated after the standard definition comes into force, or if there is a renewal or variation which affects flood cover. But given that in Australia the risk of flood is really only present for five to 10 per cent of the population—I think that is the figure used by the National Disaster Insurance Review—to have a very onerous obligation to clearly inform in writing of flood cover at all those touch points is unnecessary.<sup>14</sup>

- 2.14 In response to the issues raised at the hearing, the Treasury stated:

This will ultimately be a matter for government decision. I guess our thinking is around something along the lines of what is already in section 11(10) as the circumstances where ‘clearly informed’ would be necessary in relation to flood cover. So it is not required for renewals, extensions and reinstatements provided they do not involve a significant variation of the contract. What we are saying is that if there is a significant variation to the contract then the clearly inform obligation should apply.<sup>15</sup>

## Conclusion

- 2.15 Insurance groups were concerned that proposed section 37C would require them to advise insureds of their flood insurance cover every time a variation is made to their insurance policy. For example, if a consumer varied their policy by including a new item of jewellery then the insurance company would need to provide advice of the consumers flood insurance cover. During the hearing, the Treasury acknowledged that this interpretation was correct and, therefore, could lead to unintended consequences. Treasury was therefore examining ways to respond to this concern.. Treasury noted that section 11(10) of the *Insurance Contract Act 1984* may provide a possible solution.
- 2.16 This matter was dealt with effectively at the roundtable public hearing. Treasury are aware of the need to provide an effective solution which

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14 Mr John Anning, ICA, *Committee Hansard*, Canberra, 8 February 2012, p. 4.

15 Ms Sue Vroombout, Department of the Treasury, *Committee Hansard*, Canberra, 8 February 2012, p. 4.

balances the needs of consumers and insurers. The committee is confident that the level of consultation as demonstrated in the hearing will provide a strong foundation to achieve an effective outcome.

## **Proposed section 37D – Circumstances in which prescribed contract is taken to provide insurance cover etc in respect of flood**

2.17 Proposed section 37D of the Insurance Contracts Amendment Bill 2011 states:

### ***37D Circumstances in which prescribed contract is taken to provide insurance cover etc. in respect of flood***

- (1) *This section applies in relation to a prescribed contract that includes provisions (**flood provisions**) that provide insurance cover in respect of loss or damage caused by, or resulting from, one or more flood events (whether or not the contract expressly provides insurance cover for flood as defined by the regulations).*
- (2) *The prescribed contract is taken to provide insurance cover in respect of loss or damage caused by, or resulting from, flood as defined by the regulations.*
- (3) *The insurer under the prescribed contract may not refuse to pay a claim in respect of loss or damage caused by, or resulting from, the happening of a flood event by reason only that, but for subsection (2), insurance cover in respect of loss or damage caused by, or resulting from, that event was not provided by the contract.*
- (4) *If the prescribed contract includes provisions (also **flood provisions**) that provide different maximum amounts of insurance cover in respect of different flood events, the prescribed contract is taken to provide a maximum amount of insurance cover in respect of loss or damage caused by, or resulting from, flood, as defined by the regulations, equal to the highest maximum amount (the **maximum flood cover amount**) of insurance cover provided by the contract in respect of any flood event.*
- (5) *The insurer under the prescribed contract may not refuse to pay an amount equal to the maximum flood cover amount in relation to a claim in respect of loss or damage caused by, or resulting from, the happening of a flood event by reason only that, but for subsection (4), the maximum amount of insurance cover provided by the contract in respect of loss or damage caused by, or resulting from, that event was less than the maximum flood cover amount.*
- (6) *This section has effect in relation to a prescribed contract whether or not the insurer clearly informed the insured of the purported effect of the flood provisions in the contract.*
- (7) *In this section:*

***flood event** means an event that is, or would be, a flood as defined by the regulations.*

2.18 The ICA sought clarification on proposed section 37D. The ICA advised that:

- Insurance policies providing flood cover commonly include:
  - ⇒ an exclusion for flood damage which occurs within the first 72 hours of a policy first being issued;
  - ⇒ exclusions for specific items of high risk property such as sea walls, jetties and pontoons; and
  - ⇒ general exclusions that apply to all types of loss under the property such as where the home does not comply with building laws and regulations or a flood that was the result of malicious or deliberate damage to a dam.<sup>16</sup>

2.19 The ICA advised that its members 'are concerned that section 37D as currently worded would operate to prohibit any limitation on the operation of the standard definition of flood.'<sup>17</sup> The ICA concluded that 'such a result would be clearly unreasonable and we would appreciate consideration being given to how the wording of this section could be clarified.'<sup>18</sup>

2.20 The Treasury was scrutinised on this issue and advised that it was not the intention of the legislation to disallow exclusions. The Treasury stated:

That is not the intention of the bill and it is not our view of the legal effect of the bill. Our view of the legal effect of the bill is that it would allow those sorts of exclusions – the 72 hours and the sorts of provisions around attached structures such as jetties and the like. We believe that the legal effect of the bill is that it would allow those sorts of exclusions.<sup>19</sup>

2.21 The Treasury indicated that it would make this clarification in the Explanatory Memorandum. The ICA commented that 'it is a serious issue for our members, so if Treasury is taking it on to clarify it, that it is very welcome.'<sup>20</sup>

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16 Insurance Council of Australia, *Submission 4*, pp. 2-3.

17 Insurance Council of Australia, *Submission 4*, p. 3.

18 Insurance Council of Australia, *Submission 4*, p. 3.

19 Ms Sue Vroombout, Department of the Treasury, *Committee Hansard*, Canberra, 8 February 2012, p. 4.

20 Mr John Anning, ICA, *Committee Hansard*, Canberra, 8 February 2012, p. 4.

## Interaction of proposed section 37D and the standard definition of flood

2.22 During the hearing, the ICA sought clarification on the interaction of proposed section 37D and the proposed standard definition of flood. The ICA noted that 'if you have an insurer who is offering coverage under storm, there may be certain things under storm that are covered that are deemed to be under flood and therefore you may be forced to cover complete flood when your intent was only to cover, say, escape of water from stormwater drains.'<sup>21</sup> The ICA stated:

Perhaps a practical example is the best way to explain it: an insurer would not want to risk offering escape of water from stormwater channels in their storm cover as a stormwater channel may be considered a canal under the definition of flood. The insurer would therefore, under section 37D, be deemed to have offered complete flood cover even when their intent was not to do so. So the effect of the provision may be to make insurers think very carefully about what they include under stormwater coverage when in fact they are looking at excluding flood for fear that if they include some stuff under stormwater coverage, that falls within the definition of flood and then they will automatically be seen to cover all of it.<sup>22</sup>

2.23 The NIBA commented that 'from the perspective of the brokers advising the clients, the concern would be, if that became an issue, that insurers would then potentially take away the storm cover in that circumstance so that they are not exposed to the full flood cover.'<sup>23</sup>

2.24 The Treasury acknowledged that as part of its consultation on the standard definition of flood the issue of 'man-made watercourses and what is or is not covered in the definition of flood is one that has been raised with us in submissions on the draft regulations.'<sup>24</sup> The Treasury stated:

Those sorts of issues I think we will be discussing in further detail as we go through the consultation process on the regulations, but it is an issue that has been squarely raised with us in the context of the regulations. The standard definition that we are consulting on

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21 Mr Andrew Yeend, ICA, *Committee Hansard*, Canberra, 8 February 2012, p. 5.

22 Mr Andrew Yeend, ICA, *Committee Hansard*, Canberra, 8 February 2012, p. 5.

23 Mr Mark Radford, NIBA, *Committee Hansard*, Canberra, 8 February 2012, p. 6.

24 Ms Sue Vroombout, Department of the Treasury, *Committee Hansard*, Canberra, 8 February 2012, p. 5.

says it covers canals; the explanatory statement to the regulations says it does not cover man-made watercourses. The issue or question that has been put to us is that there might be some kinds of watercourses that could meet both the definition of canal and the definition of man-made watercourse and I think that issue we need to, as I say, work through in the consultation process on the draft regulations.<sup>25</sup>

## Conclusion

- 2.25 The committee's examination of the interaction of proposed section 37D and the standard definition of flood has helped to raise a potential issue regarding the level of coverage provided by insurers. The ICA noted that if you have an insurer who is offering coverage under storm, there may be certain things under storm that are covered that are deemed to be under flood and therefore the insurer may be forced to cover complete flood when its intentions were only to cover, for example, escape of water from stormwater drains.
- 2.26 The Treasury noted this concern and indicated that as part of current consultation on the standard definition of flood it would need to take this into account. Again, there was confidence by the industry groups at the roundtable hearing that the Treasury would take a constructive approach to dealing with this as part of their consultations.

## Proposed section 33C – Insurers obligation to provide Key Fact Sheet

- 2.27 Proposed section 33C of the Insurance Contracts Amendment Bill 2011 states:

### ***33C Insurer's obligation to provide Key Facts Sheet***

- (1) An insurer must provide a Key Facts Sheet for a prescribed contract, or a potential prescribed contract, in the circumstances, and in the manner, prescribed by the regulations.*
- (2) Regulations made for the purposes of subsection (1) may prescribe circumstances in which a Key Facts Sheet may or must be provided by electronic means. The regulations have effect despite subsection 77(1).*

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25 Ms Sue Vroombout, Department of the Treasury, *Committee Hansard*, Canberra, 8 February 2012, p. 5.

(3) *The regulations may prescribe exceptions to the requirement in subsection (1).*

*Note:* A defendant bears an evidential burden in relation to a matter prescribed for the purposes of subsection (3) (see subsection 13.3(3) of the Criminal Code).

(4) *The following provisions do not apply in relation to the requirement in subsection (1):*

(a) *subsection 11(11);*

(b) *section 69.*

*Offence*

(5) *An insurer commits an offence if:*

(a) *the insurer is subject to a requirement under subsection (1); and*

(b) *the insurer engages in conduct; and*

(c) *the conduct contravenes the requirement.*

*Penalty:* 150 penalty units.

## The provision of insurance quotations and the need to provide a KFS

2.28 The RACQ has interpreted proposed section 33C(1) to mean 'that a KFS will be required to be provided in writing to a customer at the time of a quotation.'<sup>26</sup> The RACQ is concerned about this because a large number of informal quotations are made over the phone so that customers can determine their possible premium. The RACQ believe that this process will become inefficient if a KFS is required to be provided with every quotation. The RACQ state:

The introduction of a regime which requires insurers to send a KFS (and other associated paperwork) to the customer would add significant cost to the new business quotation process by virtue of the increased processing time and documentation required.

Ultimately, insurers would be forced into a position where these additional acquisition costs would be passed onto the consumer.<sup>27</sup>

2.29 The RACQ supports the need to provide a KFS when the consumer is approaching the point of purchasing a new insurance contract. The NIBA commented that 'if everyone is trying to wait until the KFS has been delivered then, in certain urgent cases, people might not have the insurance they would otherwise get as part of the process.'<sup>28</sup> The ICA stated:

26 RACQ Insurance, *Submission 3*, p. 1.

27 RACQ Insurance, *Submission 3*, pp. 1-2.

28 Mr Mark Radford, NIBA, *Committee Hansard*, Canberra, 8 February 2012, p. 7.



Going back to a practical example which could arise is, if I am buying a house and I want to get insurance on a house straightaway in order to protect my purchase, then in that situation I would want to make sure that I can get insurance straightaway. I would not want to the insurer saying to me, 'Oh, we can't provide it to you until we give you this key facts sheet.'<sup>29</sup>

- 2.30 The Treasury acknowledged that this interpretation of the legislation is accurate.<sup>30</sup> However, the Treasury advised that 'we are working through those sorts of issues in the development of the discussion paper on the key facts sheet and the explanatory memorandum indicates that there will be some flexibility around the provision of the key facts sheet, but always bearing in mind that the purpose of the key facts sheet is to help inform the consumer in making decisions about the insurance policy they are entering into.'<sup>31</sup>
- 2.31 The Treasury indicated that it would be issuing a discussion paper on the key fact sheets as part of its consultation strategy to ensure the key fact sheet achieves an effective outcome. Treasury advised that this issue would be included in the discussion paper.
- 2.32 The ICA concluded that 'the key part for us is that flexibility is delivered somehow in the use of the KFS.'<sup>32</sup> The Treasury acknowledged this point stating:

Yes and I think the key issue for consultation is: is it the same sort of flexibility that is provided in 69D or is it some variant on that sort of flexibility, given the different nature of the key facts sheet and the different purpose of the key facts sheet? So you might not necessarily apply the same sort of flexibility as in 69D. It might be slightly different given the different purpose and nature of the key facts sheet.<sup>33</sup>

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29 Mr Andrew Yeend, ICA, *Committee Hansard*, Canberra, 8 February 2012, p. 8.

30 Ms Sue Vroombout, Department of the Treasury, *Committee Hansard*, Canberra, 8 February 2012, p. 6.

31 Ms Sue Vroombout, Department of the Treasury, *Committee Hansard*, Canberra, 8 February 2012, pp. 6-7.

32 Mr John Anning, ICA, *Committee Hansard*, Canberra, 8 February 2012, p. 7.

33 Ms Sue Vroombout, Department of the Treasury, *Committee Hansard*, Canberra, 8 February 2012, p. 7.

## Conclusion

- 2.33 Insurance groups advised that the proposed legislation could require them to issue a key fact sheet (KFS) when an insurance quotation is required. The insurance groups noted that this could have disadvantages when consumers needed urgent advice. The Treasury was constructive in its advice advising that a proposed discussion paper on the KFS would include discussion of this matter with the aim of developing a response that meets the needs of insurers and consumers.

## Size of Key Facts Sheet

- 2.34 The National Insurance Brokers Association (NIBA) supports the introduction of a standard definition of flood and a KFS. NIBA commented that 'overall both initiatives will be of value to consumers.'<sup>34</sup>
- 2.35 In relation to the proposal for a KFS, NIBA noted some reservations. NIBA stated:
- NIBA is concerned that a one page KFS will not be likely to assist clients in *properly* understanding the nature of the cover being offered by the insurer, or in comparing products being offered by different insurers. To do so would require a level of information that is not possible to include in such a short form document.<sup>35</sup>
- 2.36 NIBA was concerned that 'consumers may end up being misled or seek to rely on this document [KFS] as an explanation of the cover, rather than the PDS or the policy itself, and this can have significant consequences.'<sup>36</sup>
- 2.37 In addressing this concern, NIBA concluded that the preferred 'approach would be to have the KFS identify for clients the key concepts and differences relevant to such policies they need to be aware of and consider when reading PDSs.'<sup>37</sup>

## Conclusion

- 2.38 The committee notes that the Treasury will issue a discussion paper on the KFS and views about the format and substance can be raised as part of this process. As part of this consultation, the KFS will be subject to consumer testing.
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34 National Insurance Brokers Association, *Submission 2*, p. 2.

35 National Insurance Brokers Association, *Submission 2*, p. 10.

36 National Insurance Brokers Association, *Submission 2*, p. 10.

37 National Insurance Brokers Association, *Submission 2*, p. 10.

## Compliance cost impact

2.39 The Explanatory Memorandum noted that the compliance cost impact would be medium. The EM stated:

The measures contained in this Bill are expected to increase compliance costs for industry. However, the compliance costs will be minimised by having a two year transition period from the date the regulations are made.<sup>38</sup>

2.40 During the hearing, industry groups were examined on the potential costs of the measures. In relation to the standard definition, the ICA noted that there would be costs and benefits but overall the impact would be 'cost neutral.'<sup>39</sup>

2.41 In relation to the costs associated with a KFS, the ICA stated:

There will be costs in relation to the facts sheet. We have raised those with members and provided there is electronic communication and realistic requirements around provision of the key fact sheet, we see those costs as being manageable.<sup>40</sup>

## Transition period

2.42 The Explanatory Memorandum states that 'the regulations in relation to the measures in this Bill (the standard definition of flood and the KFS) will commence two years after the day the regulations are made in respect of each of the measures.'<sup>41</sup>

2.43 CALC is concerned about the length of the transition period and recommends that the government ensure that 'it is as short as possible.' CALC stated:

While we recognise that insurers will need time to put processes in place to comply with the key facts sheet requirements, we query whether two years is necessary. We note that much shorter transition periods apply to the introduction of key facts sheets for

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38 Explanatory Memorandum, Insurance Contracts Amendment Bill 2011, p. 4.

39 Mr John Anning, ICA, *Committee Hansard*, Canberra, 8 February 2012, p. 17.

40 Mr John Anning, ICA, *Committee Hansard*, Canberra, 8 February 2012, p. 17.

41 Explanatory Memorandum, Insurance Contracts Amendment Bill 2011, p. 3.

home loans (around six months) and credit cards (around 12 months).<sup>42</sup>

- 2.44 In contrast to the concerns raised by CALC, the ICA was concerned that the transition period may not be long enough. The ICA stated:

Any new policy that is entered into or renewed at least 12 months after the date the Regulations are made will still be in force at the date that the standard definition of flood is deemed to apply.

Unless the content of the PDS contains the standard definition of flood at the time of the new business or renewal, at the end of the transition period the standard definition of flood will apply rather than the definition in the PDS.<sup>43</sup>

- 2.45 In view of these issues, the ICA commented that 'in effect, this means insurers have less than 12 months to make the necessary changes to PDSs.' The ICA concluded that 'we strongly encourage the Government to consult further with the general insurance policy to determine a reasonable timeline for implementation.'<sup>44</sup>

## Conclusion

- 2.46 The regulations for the standard definition and the KFS will commence two years after they are made in relation to each measure. Industry groups would prefer a longer transition while the Consumer Action Law Centre would prefer a short transition. The existing timeframe provide a balance between these competing positions.

## Overall conclusion

- 2.47 The floods of 2010-11 were a devastating blow to many communities with lives lost and homes and property destroyed. In the aftermath, the tragedy and devastation was made worse when many people found that they were under insured or their insurance policies did not provide cover. In many cases, people thought they were insured only to be advised that their policies did not provide for the types of floods that occurred. The discovery that homes were not adequately insured against the floods was devastating for families.

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42 Consumer Action Law Centre, *Submission 1*, p. 4.

43 Insurance Council of Australia, *Submission 4*, p. 4.

44 Insurance Council of Australia, *Submission 4*, p. 4.

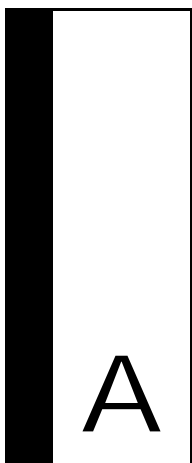
- 2.48 The Insurance Contracts Amendment Bill 2011 is part of suite of measures to address issues associated with flooding. The Bill is a technical piece of legislation which introduces, through schedule 1, a standard definition of flood and, through schedule 2, a Key Facts Sheet (KFS).
- 2.49 Both the standard definition of flood and the KFS are widely supported by both Industry and consumer groups. It is clear that consumer groups have wanted these measures and industry groups support them. The National Insurance Brokers Association (NIBA), RACQ Insurance, the Insurance Council of Australia, and the Consumer Action Law Centre all indicated that they support both measures. The Bill provides the framework for the introduction of the standard definition and the KFS. Once the Bill is passed the regulations prescribing the standards definition and the KFS will be introduced.
- 2.50 The Treasury has issued draft regulations on the standard definition and will soon issue a discussion paper on the KFS. The committee's roundtable public hearing provided a constructive forum to gauge the adequacy of Treasury's performance in consulting on the standard definition and the KFS. The committee is reassured by the constructive dialogue between the Treasury, industry groups and consumer groups and believes that the technical points raised during the hearing can be successfully dealt with as the regulations are further developed.
- 2.51 It is noted that there were no points raised in submissions or at the hearing that the Treasury was not already across or was taking steps to consider solutions.
- 2.52 The committee concludes that the Insurance Contracts Amendment Bill 2011 is an important piece of legislation that should be passed.

### **Recommendation 1**

- 2.53 **The committee recommends that the House of Representatives pass the Insurance Contracts Amendment Bill 2011.**

**Julie Owens, MP**  
**Chair**  
**15 February 2012**





## Appendix A – Submissions

1. Consumer Action Law Centre
2. National Insurance Brokers Association of Australia
3. RACQ Insurance Limited
4. Insurance Council of Australia







## Appendix B – Hearings and witnesses

### **Wednesday, 8 February 2012-Canberra**

#### **The Department of Treasury**

Ms Michelle Calder, Manager, Financial Services Unit

Mr Wayne Fogarty, Policy Analyst, Financial Services Unit, Retail Investor Division

Ms Sue Vroombout, General Manager, Retail Investor Division

Mr Tim Andri, Analyst, Financial Systems Division

Mr Jerome Davidson, Senior Adviser, Financial System Division

#### **Insurance Council of Australia**

Mr John Anning, General Manager

Ms Fiona Thompson, Associate General Counsel, General Insurance, **Suncorp**

Mr Andrew Yeend, Senior Corporate Lawyer, **Insurance Australia Group**

#### **Consumer Action Law Centre (via teleconference)**

Mr Gerard Brody, Director, Policy and Campaigns

#### **RACQ Insurance Limited (via teleconference)**

Mr Luke Saxby, Executive Manager - Product & Pricing

Mr Christopher Walsh, General Manager, Sales and Product

#### **National Insurance Brokers Association of Australia**

Mr Mark Radford





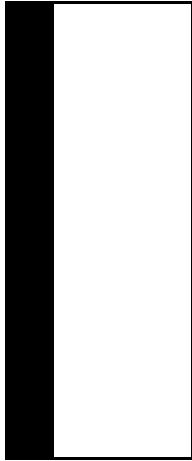
## Appendix C – List of advisory reports

Below is a list of advisory reports tabled by the House of Representatives Standing Committee on Economics in the 43<sup>rd</sup> Parliament.

No.

1. Inquiry into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011; and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011
2. Inquiry into Indigenous economic development in Queensland and advisory report on the Wild Rivers (Environmental Management) Bill 2010
3. Advisory report on the Taxation of Alternative Fuels Bills 2011
4. Advisory report on the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011
5. Advisory report on the Competition and Consumer (Price Signalling) Amendment Bill 2010 and the Competition and Consumer Amendment Bill (No. 1) 2011
6. Advisory report on the Food Standards Amendment (Truth in Labelling - Palm Oil) Bill 2011
7. Advisory report on the Corporations (Fees) Amendment Bill 2011
8. Advisory report on the Tax Laws Amendment (2011 Measures No. 8) Bill 2011 and the Pay As You Go Withholding Non-compliance Tax Bill 2011

9. Advisory report on the Minerals Resource Rent Tax Bill 2011 and related bills
10. Advisory report on the Tax Laws Amendment (2011 No. 9 Measures) Bill 2011
11. Advisory report on the Insurance Contracts Amendment Bill 2011



Supplementary Remarks –  
Mr Steven Ciobo MP, Deputy Chair,  
Ms Kelly O’Dwyer MP, Mr Scott Buchholz MP,  
Liberal Party of Australia

Liberal Members of the Committee agree with the overall observations of the Committee report regarding the need and support for a common definition of “flood”; and the benefit of a key facts sheet for policies.

Liberal Members cannot, however, agree with paragraphs 2.50 and 2.51 of the report that outlined assurances the Department of Treasury was engaged in constructive dialogue with industry and consumer groups; as well as the observation that there were “no points raised in submissions or at the hearing that the Treasury was not already across or was taking steps to consider solutions”.

The clear evidence from industry representatives at the hearing was industry’s frustration that many of the issues – as identified in this report – that have been raised with the Government over the operation of the Insurance Contracts Amendment Bill 2011 (ICA) remained unresolved, with industry awaiting comprehensive consultation on regulations before obtaining any clarity on the identified issues.

We note that disappointingly the ICA Bill is bereft of much of the detail craved by industry to bring certainty; and industry and consumer confidence in the Gillard Labor Government’s policy response is contingent upon the regulations made under the ICA Bill being available.

In the absence of this detail, it is our observation that support is on a principles only basis, with the regulations holding potential to make matters worse rather than better.

**Ms O'Dwyer:** ... My question is directed to the Insurance Council of Australia ... concerning the legislation that is before us – and I am conscious that the regulations have a lot of the details here – in your view is it going to make it simpler or more complex for people to take out flood insurance?

**Mr Anning:** That detail needs to be looked at but the reasons we strongly endorse these two proposals is we think a common definition of flood does not make it simpler for people to understand their insurance cover and similarly a key facts sheet does have limitations. As NIBA explained, it is very difficult to summarise an insurance policy on one page, but as a means of highlighting particular aspects of the policy that the consumer needs to think about and to be able to compare with policies from other insurers, we think there are advantages in going down that route.

**Ms O'Dwyer:** But you would need to be satisfied as to the detail in the regulation before you could answer that question with any certainty – is that right?

**Mr Anning:** That is right. Also we need to be very clear about what the purpose of a key fact sheet is. We would not want people to be encouraged to take purchasing decisions solely on the basis of the key fact sheet because it will actually be a high-level summary of the information.

**Ms O'Dwyer:** Given it is a high-level summary, do you think that then could have the potential to be more confusing for potential consumers.

**Mr Anning:** It does have that potential, unless it is clearly explained to consumers what the key facts sheet is to be used for.

Similarly, the absence of a definition of flood in the Bill and the need for the definition to be clarified in regulation means industry and consumers continue to have no clarity on how they will be affected.

**Mr Ciobo:** So the standard definition would cover an event where sea water went into people's homes, would it?

**Mr Anning:** It would depend on what the definition of flood is decided to be.

**Mr Ciobo:** Wasn't that the entire point of this bill?

**Mr Anning:** Not the actual definition of flood. That is subject to the discussions under the regulations.

**Mr Ciobo:** So, we actually have no clarification yet of what the impact of this would be on potentially thousands of people...

**Mr Anning:** ...I guess the point is we are not at the point of having the clarity to even form a view.

Liberal Members of the Committee are of the view that given the length of time that has expired since the Gillard Labor Government undertook to clarify insurance issues, it is disappointing that the ICA Bill only addresses two issues, and these two issues remain unclear as the regulations actually contain the detail industry and consumers need to obtain clarity.

**Mr Steven Ciobo, MP**  
**Deputy Chair**

**Ms Kelly O'Dwyer, MP**

**Mr Scott Buchholz, MP**