

# Summary and recommendations

## CHAPTER 1—THE PROBLEMS OF INSURANCE BUYERS

1. Concern about increasing public liability and professional indemnity insurance premiums has featured heavily in the news since early 2001. There have been severe effects on many community groups, small businesses (particularly in the outdoor recreation sector) and professionals (particularly health professionals).

2. A major part of the problem is the extreme variability of increases. Many submissions reported sudden, exorbitant increases in premiums, exclusions and excesses. Some reported that they cannot obtain insurance at any price. This is not the sign of an efficient competitive market. It suggests that some insurers are taking maximum advantage of the sellers' market created by the contraction of supply following the collapse of HIH in March 2001.

3. Many submissions argued that insurers are exploiting classes of buyers who have little market power, regardless of their risk, to cross-subsidise higher risk classes. This concern seems to be supported by figures from Insurance Statistics Australia which show that within the public liability line of business, sport and recreation and welfare/community groups have been among the least unprofitable. Yet these are the very groups that seem to have been hardest hit by the present crisis.

## CHAPTER 2—CAUSES: INSURANCE MARKET ISSUES

4. The causes of the insurance crisis are generally summarised as:

- the 'hardening' of the insurance market as, after a period of underpricing and poor profitability in the mid 1990s, insurers now focus on improving profitability rather than merely increasing market share;
- the increasing cost of claims (dealt with in chapters 3 and 4); and
- international influences including the withdrawal of capacity and the increasing cost of reinsurance following the destruction of New York's World Trade Centre in terrorist attacks on September 11, 2001.

5. Public liability and professional indemnity insurance made very large losses in the mid to late 1990s. The present hardening of the market has been exacerbated by the removal of HIH. Liability insurance suffers particularly from a volatile insurance cycle because its 'long tail' characteristic, and the small risk pools, make it harder to price premiums.

6. The March 2002 Trowbridge report to ministers estimated that reinsurance costs, and flat investment returns in recent years, are relatively minor causes of the present problems.

## **CHAPTER 3 - THE NUMBER OF CLAIMS**

7. There is some uncertainty in information on the trend in the number of claims. According to APRA statistics the ratio of claims made per 100 public liability policies has increased only slightly from 1996 to 2001. Other evidence suggested a sharp increase in claims against local councils since 1997, and a steady increase in public liability bodily injury claims in court statistics over the last five to ten years.

8. Suggested causes of increasing claims include arguments that Australia has become a more litigious society; that ‘no win no fee’ arrangements encourage claims; that there are not enough disincentives to pursuing unmeritorious claims; that courts over time have defined ‘negligence’ more generously to plaintiffs. However there seems to be little hard evidence on the validity of these arguments or the relative importance of the various items.

9. The Trade Practices Amendment (Liability for Recreational Services) Bill 2000 will enable a corporation supplying defined recreational services to contract out of the statutory implied warranty that the services will be provided with due care and skill. The Committee has concerns that the bill focuses on surrendering consumer rights without reference to risk management; and it provides the possibility of total immunity from liability even in case of gross negligence.

### **Recommendation 1 (paragraph 3.73)**

**The Committee recommends that the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 proceed through Parliament to facilitate free and open debate and to be subject to close scrutiny.**

**Further, that the Government consider:**

- **amending proposed section 68B of the TPA Bill to make it clear that protection from liability does not apply to those service providers who are found to have been grossly negligent;**
- **establishing a national accreditation program for providers of recreational services—accreditation to be subject to a recreational service provider complying with specified risk management procedures and standards; and**
- **amending section 68B to provide that protection from civil litigation is conditional on the recreational service provider being accredited.**

10. The Committee considers that statutes of limitation should be standardised nationwide.

### **Recommendation 2 (paragraph 3.81)**

**The Committee recommends that the Commonwealth take the lead in ensuring nationwide uniformity in the various statutes of limitation.**

11. In light of the Commonwealth's intention to protect recreational service providers through the Trade Practices Amendment (Liability for Recreational Services) Bill 2002, the Committee considers that landholders should be similarly protected.

#### **Recommendation 3 (paragraph 3.84)**

**The Committee recommends that the Commonwealth:**

- **consider acting to protect landholders whose land may be used to conduct recreational services; and**
- **work with the states and territories to ensure that legislation is enacted to protect landholders.**

12. There are conflicting views on whether, or how much, volunteer and not-for-profit organisations should be given special treatment in respect of liability for negligence. This is a matter for further consideration.

#### **Recommendation 4 (paragraph 3.96)**

**The Committee recommends that Commonwealth, state and territory governments form a working group to examine how best to give protection to volunteer and not-for-profit organisations and their workers from civil action for damages based on negligence.**

### **CHAPTER 4—THE COST OF CLAIMS**

13. Total claim costs have been increasing at an average rate well above the increase of average weekly earnings. This is one cause of increasing premiums. It is argued that the incidence of very high court awards to the catastrophically injured is a significant element in this.

#### **Recommendation 5 (paragraph 4.20)**

**The Committee recommends that a working group of Commonwealth, state and territory officers be established to examine how best to provide for the long term care and treatment of persons who suffer catastrophic injuries as a result of someone's negligence.**

14. The Committee supports efforts to improve the management of claims and to reduce legal and court costs.

15. The Committee supports measures to improve risk management and recommends that the Commonwealth assist with this.

### **Recommendation 6 (paragraph 4.50)**

**The Committee recommends that the Commonwealth continue to assist organisations to develop their own risk management practices for their particular industry.**

16. The Committee considers that professional standards legislation has potential to reduce the number of claims through pro-active risk management, and suggests that the Commonwealth should encourage states and territories to adopt uniform professional standards legislation.

## **CHAPTER 5—UNDERSTANDING THE INSURANCE MARKET**

17. Many submissions commented that setting fair premiums for public liability and professional indemnity insurance is hampered by lack of detailed enough industry-wide data on risks and claims.

18. The Committee supports proposals that APRA should develop a database to record this information. The Committee notes that this will be a new role for APRA additional to APRA's present role of prudential regulation. APRA will need to be suitably resourced to undertake it.

### **Recommendation 7 (paragraph 5.38)**

**The Committee recommends that the Government:**

- **make a commitment to the development of a comprehensive national database on the insurance industry in Australia;**
- **put beyond doubt that APRA is to be given the responsibility for developing and maintaining this database;**
- **ensure that APRA has the statutory authority to require insurance companies and other relevant bodies to provide information; and**
- **ensure that it is adequately funded so that it has the resources and level of expertise to effectively collect, collate and analyse data on the insurance industry.**

**Further, the Committee recommends that APRA:**

- **look carefully at the evidence presented to the Committee on the nature and extent of information that is required to fully understand the insurance industry especially the pricing of premiums;**
- **make available a draft discussion paper that provides details of the data that it intends to collect and the procedures to be adopted in collecting this material;**

- **follow-up the publication of this paper with industry-wide consultation with a view to determining whether the new regime is going to meet the expectations of the insurance industry; and**
- **report to Parliament on its findings.**

19. There is a need for better quality, nationally comparable data on litigation relevant to insurance claims.

#### **Recommendation 8 (paragraph 5.47)**

- **In light of this ongoing problem of the lack of good quality, nationally comparable court data, the Committee recommends that the Commonwealth give high priority to the work being done by the Australian Bureau of Statistics in developing performance frameworks.**
- **It also recommends that the Attorneys-General treat this matter with urgency and, under the leadership of the Commonwealth Government, work together to ensure that good court data management systems are put in place throughout the country. The main objective is to have national standards apply so that the data across all jurisdictions is compatible, comprehensive and allows for consistency in interpretation.**

## **CHAPTER 6—INSURANCE CONSUMERS’ INTERESTS**

20. The Committee is concerned by the reports it received in evidence of inappropriate or exploitative conduct by insurers, particularly in relation to last minute offers of policy renewal on exorbitant terms. The Committee considers that at the least insurers should be obliged to give 14 days notice of proposed terms of renewal or proposed refusal to renew a policy.

#### **Recommendation 9 (paragraph 6.29)**

**The Committee recommends that the Government propose an amendment to section 58 of the *Insurance Contracts Act 1984* to ensure that insurers must give at least 14 days notice of the proposed terms of a policy renewal or proposed refusal to renew a policy.**

21. The Committee notes that the Minister for Revenue and Assistant Treasurer, Senator Coonan, has asked the ACCC to continue to monitor insurance premiums and report six-monthly.

#### **Recommendation 10 (paragraph 6.40)**

**Noting that the first update of the ACCC’s insurance industry market pricing review was made public in September, the Committee recommends that all subsequent six monthly reports be made public pursuant to section 27B of the *Prices Surveillance Act 1983*.**

22. The Committee notes that at present the ACCC has no power to ensure that savings from current insurance reforms are passed on to consumers. The Committee considers that the ACCC should have power to control price exploitation in relation to insurance reforms. Amendments to the Trade Practices Act made in connection with the introduction of the GST are a precedent.

#### **Recommendation 11 (paragraph 6.45)**

**The Committee recommends that the Trade Practices Act be amended to allow the ACCC to take enforcement action to ensure that any savings or benefits that accrue directly or indirectly from legislative reforms being implemented throughout Australia to minimise insurance premiums are passed on by the insurance companies to consumers.**

23. In the Committee's view an efficient, strong and competent prudential regulator will go some way to restore public confidence in the insurance industry.

#### **Recommendation 12 (paragraph 6.60)**

**The Committee recommends that the Government more actively monitor the activities of APRA and ensure that it has adequate powers and resources as well as a commitment to diligently supervise the industry.**

24. There appears to be some continuing public uncertainty about the roles of the ACCC and ASIC in consumer protection in relation to financial services. In the Committee's view this should be clarified.

#### **Recommendation 13 (paragraph 6.84)**

**The Committee recommends that, in close consultation, the ACCC and ASIC review and report publicly on their respective statutory obligations in regard to consumer protection and market integrity in the insurance industry with a view to:**

- **clarifying their respective responsibilities, giving particular attention to whether there is any unnecessary overlap; and**
- **establishing whether, in their opinion, the legislation provides adequate and appropriate consumer protection in the insurance industry and, if not, identifying the gaps or weaknesses in consumer protection, including the prices and insurance coverage that are being offered to consumers.**

**The Committee further recommends that the ACCC and ASIC actively promote their roles in consumer protection for all financial products, including general insurance.**

25. The statutory dispute resolution provisions of the *Financial Services Reform Act 2001* (FSR Act) apply only to individuals and small businesses, and only to certain listed classes of insurance, which do not include public liability or professional indemnity insurance (though the list can be enlarged by regulation). It is unclear

whether a complaint about price exploitation in a proposed policy renewal is within scope. The Committee sees no good reason for these limitations.

#### **Recommendation 14 (paragraph 6.101)**

- **The Committee recommends that the Government amend the FSR Act to allow not-for-profit organisations to be included in the definition of ‘retail clients’.**
- **The Committee recommends that the Government, by regulation, include public liability insurance and professional indemnity insurance in the classes of insurance covered by the dispute resolution provisions of the FSR Act.**
- **The Committee recommends that ASIC monitor the effectiveness of the dispute resolution provisions and report on this annually to the Parliament.**
- **The Committee recommends that ASIC review, as a matter of urgency, the General Insurance Enquiries and Complaints Scheme and in consultation with the Insurance Council of Australia ensure that it covers adequately public liability and professional indemnity insurance and not-for-profit organisations. Further that it re-examine definitions in the terms of reference, such as small business, to ensure that they are consistent with definitions in Commonwealth legislation.**

26. The industry’s General Insurance Code of Practice excludes not-for-profit organisations and small businesses, and effectively excludes public liability and professional indemnity insurance. The Committee sees no good reason for these limitations.

#### **Recommendation 15 (paragraph 6.111)**

- **The Committee recommends that the General Insurance Code of Practice be revised so that it provides remedies for community groups and small businesses who are affected by price exploitation in relation to public liability or professional indemnity policies.**
- **The Committee recommends that Insurance Enquiries and Complaints Ltd submit the revised code for ASIC’s approval under the FSR Act.**

27. The Committee notes suggestions to establish an Insurance Industry Ombudsman. However the Committee believes that this would add another level of bureaucracy to an already unclear situation. The Committee has recommended that the ACCC should have increased powers to control price exploitation (recommendation 11).

