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Re: Discussion Paper *Disclosure in General Insurance: Improving Consumer Understanding*

This submission is provided by Professor Allan Fels AO and Dr David Cousins AM in response to the January 2019 Treasury Discussion Paper (the Paper). We are currently appointed as Monitor and Deputy Monitor, respectively, for the NSW Government in relation to the reform of the Emergency Services Levy.

The views expressed in this submission are:

1. held by us as private citizens, and do not necessarily reflect those held by the NSW Government; and
2. based on our knowledge and observations of the practices of general insurance companies, gained principally through their roles in reforms to insurance-based levies, as well as knowledge and experiences of consumer protection, competition and policy and regulatory matters across a number of industries over their professional careers.

The submission is at **Attachment A**. We have also previously made submissions and gave evidence before hearings of the Senate Economics References Committee (Committee) enquiry into the general insurance industry, which are cited in the Committee's final report *Australia's general insurance industry: sapping consumers of the will to compare* (the Committee Report), and two submissions to the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Royal Commission).

The Committee's recommendations and the Paper's consultation questions seek to address issues relating to disclosure, product-level regulation of the general insurance sector, the intersection of insurance products with consumer behaviour, and facilitate information which may 'nudge' consumer behaviour in a way that enhances the effectiveness of competition in the industry.

We support measures to increase the effectiveness of disclosure and strengthening transparency over the pricing of insurance. As Treasury is aware, the Insurance Monitor has required insurers in NSW to disclose last year's premium on renewal notices for certain types of insurance policies, for renewals effective 1 July 2019 (referred to as the 'price comparison order'). Showing last year's premiums alongside this year's renewal premium makes insureds aware of any change in the premium. In doing so, it may prompt the insured to engage with their insurance renewal, by considering the policy's ongoing suitability with their own insurance needs, questioning the basis of any price change, and seeking quotes from other insurers. The importance of the message for policyholders to 'shop around' is underscored by monitoring of home and contents insurance quotes at a number of locations in NSW, which has consistently revealed large and unexplained variations in price for the same level of cover at a location.

We consider that improvements to the current 'standard cover' regime which facilitate product comparisons are central to resolving obstacles to greater consumer participation in general insurance markets, for reasons outlined in this submission.

Our focus and the examples provided in this submission usually concern the home (building and contents) market, but the issues and recommendations raised are likely to apply to other classes of general insurance.

In particular, we consider that there is merit in amending the Insurance Contracts Act and Regulations to:

- i) require all insurers who offer home building and contents insurance to offer a reference product offering coverage defined in accordance with standard terms and definitions set out in regulations / legislation (i.e. 'standard cover') particularly in respect of
 - the types of listed events covered
 - the limits and exclusions that apply
 - the 'sum insured' (including its components) and
 - terms governing decisions on repairs and total asset write-off (governing decisions as to: rebuilding, replacement and cash payouts).
- ii) Permit insurers to offer variants from this standard cover, so long as such products are benchmarked against the standard product in terms of price, coverage and any other terms and conditions; and
- iii) Require any variants to be specified on a PDS and KFS issued by the insurer, with reference to the ways in which that variant differs from the standard cover.

Standardising definitions, including key concepts such as the 'sum insured' in terms of the elements which make up that number, and its calculation, are necessary to enable the standard cover model to work as originally envisaged. We also consider that payment terms, insurer discretion and consumer's obligations on what to do when there is an event need to be framed in a more balanced way, distinguishing between circumstances where a property can be repaired and when it can be fully written off.

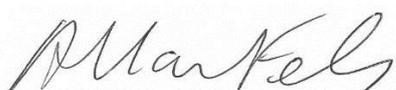
The availability of a reference or standard product that can be purchased from every insurer will help increase the comparability of policies from different insurers. Consumers comparing the standard product offer from different insurers will be able to see the differences in prices, and be confident that the price variation is not due to differences in the level of cover. This removes the risk of inadequate insurance that some consumers currently face, when they select the cheapest policy, because they cannot be certain that it provides the same coverage offered by a higher priced policy. Currently, many insureds find out that they are inadequately insured the hard way – when they have suffered loss or damage and are denied a claim because their policy does not cover the risk.

The standard cover redrafting exercise needs to consider, in detail, perhaps through a study or series of studies, the types of risks that the average consumer ought to be protected against, or what consumers expect their insurance policies to cover.

Whilst every insurer should be required to offer the standard cover product, there is no reason why individual insurers cannot also offer more innovative products that provide a higher or lower level of coverage. However, to ensure that the benefits of the standard cover model are preserved, the additional (or reduced) coverage offered should be selected by consumers based on opt-in (or opt-out) arrangements. This will enable the price for the higher (or lower) coverage product to be compared against the standard reference price. Insurers can provide guidance to consumers to aid their decision-making on the opt-in/opt-out choices available to them.

More effective and transparent disclosure on the pricing of insurance and greater standardisation in cover for key general insurance products are important steps towards empowering consumers and increasing their capacity to make informed purchasing decisions. We welcome positive reforms in this direction and appreciate the opportunity to participate in this discussion.

Yours sincerely



Professor Allan Fels AO



Professor David Cousins AM

About the authors

Professor Fels is a former Chairman of the Australian Competition and Consumer Commission (ACCC) and its predecessor bodies, the Trade Practices Commission and the Prices Surveillance Authority. He was the inaugural Dean of the Australian and New Zealand School of Government (ANZSOG) and remains involved in a broad range of public policy matters.

Dr Cousins is an economist who specialises in competition, consumer and economic regulation. He has worked in the Australian and Victorian public sectors, universities and the private sector as a consultant. He has held a Professorial appointment with the Law Faculty at Monash University since 2008 and is currently an Adjunct Professor.

Both authors previously led the activities of the Victorian Fire Services Levy Monitor (FSLM) which was set up by the Victorian Government in 2012 to transition the then insurance-based emergency services funding scheme to a property-based funding scheme. They currently hold the roles of Monitor and Deputy Monitor respectively, with the NSW Office of the Emergency Services Levy Insurance Monitor (Insurance Monitor). These appointments were made because a similar reform was originally planned to occur in NSW on 1 July 2017. However, the reform has been deferred and is now in a transition period.

The Insurance Monitor's primary role is to monitor the pricing and conduct of insurance companies who insure against loss or damage to properties in NSW and who charge an Emergency Services Levy (ESL) and ensure insurance companies do not charge unreasonably high prices or engage in false and misleading conduct in relation to ESL reform.

Submission

Premium increases and component pricing included in renewal notices

Our submission responds to all consultation questions under this heading except questions 7 and 9.

Consultation questions:

1. It has become apparent from discussions with industry stakeholders that there is no generally accepted definition of component pricing. What is understood by the term 'component pricing'?
2. What is the goal of disclosing a breakdown of an insurance premium on a renewal notice (component pricing)? How would consumers use this information?

The pricing of insurance is largely based on the risk of the insured asset, and many factors, including the location of the asset (e.g. whether it is in a flood or bushfire zone), its physical characteristics (e.g. type of construction) and the claims history of its owner, may affect the insurer's assessment of the risk associated with the asset.

The aim of component pricing is to make transparent to the insured, the elements of risk that are taken into account in determining the insurance premium they pay, and the financial impact of those risk factors on that price. For example, component pricing might reveal to an insured that because their home is located in a high-risk flood zone, 60 per cent of their premium covers the insurer for that risk. Component pricing can be implemented not only on renewing policies, but also on new customer policies.

Disclosing last year's premium in a renewal notice, is a measure to inform consumers at the point of renewal, the price that they previously paid. Showing such information alongside this year's renewal premium, makes insureds aware of any change in the premium. In doing so, it may prompt the insured to engage with their insurance renewal, by considering the policy's ongoing suitability with their own insurance needs, questioning the basis of any price change, seeking alternative quotes from other insurers.

Whilst there may be differences in views amongst industry stakeholders as to the practical difficulties of implementing component pricing and disclosure of last year's premium, we would argue that neither concept is new to the industry, although the industry may have made more progress on the disclosure of last year's premium than on component pricing. This is certainly the case in NSW, where the Insurance Monitor has required insurers to disclose last year's premium on renewal notices for certain types of insurance policies, for renewals effective 1 July 2019. This requirement has been in place since August 2017, providing insurers with a more than reasonable lead time for implementation.

The Insurance Monitor's requirement for insurers to disclose last year's premium on renewal notices (as reflected in the 'price comparison order') was originally instigated in the context of the NSW Government's plans to remove the ESL from insurance policies. In that scenario, the disclosure of last year's premium, and the ESL component of that premium, was intended to assist insureds in confirming that the ESL had in fact been removed from their insurance premiums and that they were receiving the benefit of that cost saving. That reform, however, has not proceeded as planned and the levy remains in place.

Nevertheless, the Insurance Monitor considers that there is a credible case for this disclosure requirement to remain in effect to ensure that NSW insureds not only remain aware of changes in the ESL component of their premiums, but are prompted to 'shop around' at renewal. Monthly monitoring of home and contents insurance premiums in NSW by the Insurance Monitor since October 2016 has indicated a persistent and large variation in premiums charged by insurers at eleven specific locations for an identical level of cover. Some of this variation is due to different ESL rates charged by insurers. Furthermore, there is no legislation which prescribes how insurers should charge ESL on relevant insurance policies in NSW. This further reinforces the need for transparency.

In the Senate Report, the recommendation that insurers be required to disclose the previous year's premium on renewal notices (Recommendation 3) was coupled with a requirement that insurers *explain* premium increases when a request is received from a policyholder.

That is, when a consumer is empowered and prompted to notice that there has been a change in their policy costs at renewal, an insurer should also be obliged to *explain why the price has changed* if asked.

Recommendation 4, which concerns ‘component pricing’, appears intended to complement such explanations by requiring insurers to provide consumers with measurable data, in a clear (presumably visual) way, about their changing risk profile or increases in material matters such as building costs (factored into sum insured escalations) or as a result of changing risks. This might include significant increases in relation to one or more risks that may be material to ‘listed events’, for example, flood or storm models, crime statistics and the like. Such changes may be more subjective and may differ from one insurer to another, as the actuarial pricing of different risks will depend upon the specific risk models operated by each insurer. In this regard, the implementation considerations faced by insurers in relation to component pricing might be more challenging. Nevertheless, a key benefit of component pricing is to allow the insured to understand what risks contribute most to their premiums. To the extent that the insured is able to mitigate or avoid the relevant risks in a more cost-effective manner, component pricing empowers them to take such actions.

3. Are there any risks associated with insurers providing a detailed breakdown of a premium’s components (i.e. commercial sensitivities)?

Our comments in relation to component pricing are to be read, noting that the specific obligations to which insurers may be held would need to be carefully evaluated. These comments are provided on an in-principle basis.

Insurance companies provide a lot of risk related information in the public domain, in many instances, down to the individual property level. They are also under listing and disclosure rules which places a considerable amount of information about their financial performance and operations in the public domain. Competitors and business analysts have the time, capability and incentive to analyse this information in detail.

While there may be some risks and commercial sensitivities to insurance companies in preparing and releasing information to individual consumers about the price of their policy, that information will be customised to the circumstances of individual customers. If a competitor were to obtain this kind of information from even a considerable number of policies, it appears unlikely to significantly compromise commercial secrets. A wide-scale data breach may be a different concern, but insurers presumably have experience managing such commercially sensitive material and a component pricing obligation appears unlikely to materially change their existing situation.

Consumers often face a paucity of meaningful detail about how different risk factors affect their policies; and often complain that they experience significant challenges obtaining information from their insurance company about how the price of their policy is determined, or why their premiums have risen. Suitably framed component pricing obligations appear, on balance, capable of enabling consumers to have more informed discussions with their insurance company about their risks and how to manage them.

Any risk to insurers is likely to be outweighed by the significant benefits this initiative is likely to provide for consumers.

4. If consumers act to mitigate some of the risks broken down in component pricing disclosure, how would insurers reduce their premium?

While consumers may be able to mitigate some risks, through various capital expenditures or changes in behaviour, their experience negotiating premium prices with their insurer to date, is (anecdotally) at best mixed. Consumers often report that significant capital expenditures do not commensurately reduce the price of their premium. In many circumstances, the listed events and risk modelling that underpins a policy price change (for example, flood, storm, crime) may not be able to be managed by the individual and instead may require community effort and investment. Communicating that need more effectively, and the price signals that component pricing may offer to a community, are likely to result in a longer-term benefit to the community as a whole.

At the individual consumer level, common responses to price changes or increases as a result of a risk event or profile changing, may prompt the consumer to negotiate, consider changing their cover or changing their insurer.

Clearly there can be mixed outcomes from such responses, but this does not obviate the pressing consumer need for this kind of information, to better inform their decision making.

5. Would the disclosure of component pricing on policy renewal notices be appropriate for any other type of general insurance product other than home building and home contents insurance?

Whilst we would support component pricing on all general insurance policies, we consider that the case for implementing component pricing may be stronger for household and motor insurance policies, and also policies issued to retail customers (e.g. small business).

We make this comment based on our understanding that insurance policies for larger commercial businesses are most likely to be transacted with the assistance of an insurance broker or intermediary. To that extent, such insureds are likely to be already receiving advice on the key risks affecting their insurance premiums.

6. What components would be most useful for consumers to see listed on their renewal notices? (For example, taxes, amount attributable to flood cover)
8. Where the previous year's premium is disclosed, should it be just the premium, or should it include taxes and charges? Should the amount of the insured value for the previous year also be disclosed?

Insurers should provide a full break up of the premium payable on a policy, including any taxes and charges included in the premium. Where the policy is intermediated, and the intermediary charges additional fees (e.g. an underwriting fee, or a policy fee) on top of the price charged by the underwriter, this should also be separately disclosed. This level of transparency is reflected in the Insurance Monitor's price comparison order in NSW.

10. Would the inclusion of the sum insured and any excess along with previous year's premium on renewal notices be more appropriate than only disclosing previous year's premiums?

As noted in our response to Questions 1 and 2, we would favour full disclosure of all component costs of previous year's premiums including all taxes and charges. We consider that there may be merit in also disclosing changes in the sum insured value of the policy from one year to the next. Our understanding is that most insurers automatically escalate the sum insured value each year to ensure that they keep up with escalating building costs. As such, some of the increase in premium on an insured asset from one year to the next will invariably be due to this change and insureds should be notified of the amount that the insurer has added on for this purpose.

11. What are the benefits and costs in mandating a link to the ASIC's MoneySmart website to be included in new quotes and renewal notices?

In our view, providing this link would benefit consumers.

This site provides a range of basic information about insurance and how to manage personal finances. In theory, it should enable consumers and policyholders to become better informed about insurance, including their basic legal rights. The site also provides basic information on how to manage personal finances. This in turn would encourage consumers to search the market for more affordable insurance policies (assuming the policy provides what they need).

More affordable insurance could mean more consumers becoming insured, thereby benefiting consumers (who would otherwise not be covered) and insurers (who will have customers who may previously have not been able to afford or were discouraged from taking out insurance).

Adding this site to new quotes and renewal notices would be consistent with the general theme of encouraging greater transparency coming out of the Royal Commission.

12. Are there any risks associated with disclosing the types of costs that count towards estimation of sum insured?
13. Would the disclosure of types of costs that count toward sum insured on insurers' sum insured calculator be appropriate?

We cannot see any material risks for consumers nor insurers in such disclosures. In fact, we see considerable benefits, as there are presently a wide variety of approaches to the estimation of the sum insured and its calculation under different company policies.

We understand that the vast majority of policies issued by insurance companies in Australia are likely to be 'sum insured' ("SI") policies. In practice, insurance companies adopt section 35(2) of the

Insurance Contracts Act 1984 and issue Product Disclosure Statements (PDS) that define matters including the sum insured (and other aspects of the cover) in ways that may differ markedly from that stated in section 20 *Minimum amounts* of the *Insurance Contract Regulations 2017*; and that bear little resemblance to the standard cover requirements (where those requirements are drafted precisely).

Our analysis of the SI calculators of 10 insurance brands indicates that there is a vast array of approaches to the calculation. The analysis consistently returned a range of values that varied from lowest to highest by approximately 44 per cent with a variance from the maximum to minimum value of approximately \$150-160,000, or +/- \$75,000 on an average property sum insured of \$450,000 and by +/- \$80,000 on an average property sum insured of \$480,000.

The insurer brands and the constituents to their calculator's values (as shown in the 'detailed reports' issued by those calculators, are shown in the table below.

Table 1 – Components that are quantified in insurance company's 'sum insured' reports

SI component	Insurance company or brand									
	Allianz	CGU	Coles	Comm-Insure	GIO	NRMA	QBE	Suncorp	Westpac	Youi
Building cost	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Professional fees	✗	✗	✓	✓	✗	✓	✓	✗	✓	✗
Demolition & Debris Removal	✗	✗	✓	✓	✗	✓	✓	✗	✓	✗
GST	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓

Each of the insurance companies or brands identified above used building cost data (and, presumably, online calculators integrated with their website's operations) supplied by Cordell. However, there are material differences in the types of costs that are included in the 'sum insured' by the insurance brands in this sample. There are two broad groups (with one permutation) that have similar components, being those that include:

1. the building cost and GST only, being CGU, GIO, Suncorp and Youi.
 - o Allianz, presenting the building cost only, on an 'ex-GST' basis (noting that Allianz' PDS page 72 will cover GST liabilities if the consumer is liable for it).¹
2. professional fees, demolition and debris removal as well as the building cost and GST, being Coles, CommInsure, NRMA, QBE and Westpac.

Such variations can be confusing for consumers, and add to the challenges they may experience in comparing insurance cover options between providers. As discussed in our response to Q. 14 below, a fundamental redrafting of the standard cover requirements is required. The exercise needs to define the constituent parts to be included in a 'sum insured'.

Information at a more granular level as to the component amounts covered by the 'sum insured' of the policy will enable consumers to be better informed and more aware of the adequacy (or otherwise) of their existing policy (that is, it should help address the issue of over and under insurance). With this information consumers should be able to better compare insurance pricing within the market (i.e. with other insurers), and will be more empowered to select the best value cover for their own needs.

Standard cover – is the current disclosure regime efficient?

14. Does standard cover achieve the purpose for which it was implemented? If not, how could it be improved?

Standard cover was introduced in response to the Australian Law Reform Commission (ALRC) 1982 Final Report No 20. "Insurance Contracts". Chapter 3 *The Variety of Policy Terms*, frames 'the problem' (para 48) as being to protect insurance consumers from unexpected limitations about the risks that are covered by a policy:

¹ Allianz Home Insurance Product Disclosure Statement, prepared on 31/5/2017, page 72 GST Notice

“48. In the preceding chapter, the Commission examined some of the factors which contribute to misunderstandings about insurance. Most of these misunderstandings concern the terms and conditions of individual policies. Copies of policy terms are often unavailable at the time of concluding final, let alone interim, cover. Some policies are barely legible. Many of them are expressed obscurely. Even if all these difficulties were removed, many insureds would continue to buy insurance on the basis of general description rather than actual content. They would remain ignorant of limitations on the risks covered, as also of obligations which are designed to control the risks covered and are imposed on them during the period of insurance. Unexpected limitations and obligations are contained in numerous policies purchased in this country. ... The question dealt with in this chapter is whether existing law offers adequate protection to the insured against his understandable ignorance of provisions like these or whether there should be some form of general control over policy terms.”

The ALRC contended at para 69, that the industry itself was not well positioned to self-regulate this aspect of insurance:

“[69] ... The insured’s ignorance remains undisturbed until he makes a claim. ... The control of policy terms is not a matter which can be left to self-regulation. The ICA model policies are themselves a form of self-regulation. In their present form, they do not provide adequate protection to the insuring public. Members of the ICA might agree to reconstitute the model policies and to warn intending insureds of departures from these models. The public would still not be fully protected. ... Even an industry-wide agreement would be inadequate. ... Moreover, there is simply no guarantee that even members of the ICA would adopt uniform practices in the event of a change in the relevant model policy. [examples cited] ... The Commission concludes that self-regulation would be insufficient. Standard cover should be prescribed by regulation.”

The insurance industry has dealt with the problem of consumers’ lack of awareness of the fine details about the cover they are purchasing, not by standardising cover the way the ALRC had proposed, but by disclosing variations from standard cover through the PDS. However, given the industry (through the ICA’s better disclosure taskforce) itself has found that people rarely read the PDS, this can hardly be called an effective solution.

Advances in the area of behavioural economics tell us that consumers are generally ill equipped to fully understand inherently complex financial products. As behavioural economics predicts, greater disclosure does not necessarily help consumers to make better purchasing decisions in these circumstances. The recent study by Monash University and the Financial Rights Legal Centre (cited previously), which tested the relationship between the provision of disclosure information and purchasing behaviour, confirms this.

The question remains whether insurance companies have an incentive to simplify their products in a way that advances the interests of their customers. The ever-increasing range of products (with different risk coverage, different inclusions / exclusions, different limits etc) and brands that are sold today suggests that they are not. Under these circumstances, we consider that it is timely to consider direct product intervention (e.g. interventions to influence the design or development of products), including removing unexpected limitations in cover through greater standardisation.

15. Are the current terms and conditions, including caps, limits, and exclusions included under standard cover seen to be adequate?

For reasons expressed in our responses to earlier questions in this submission, no they are not.

The ‘terms and conditions’ in the present regulations are confined to the ‘prescribed events’ (including exclusions) and ‘minimum amounts’ (which have been abandoned in favour of ‘sum insured’).

With the exception of the word “flood” which is defined at section 33 of the IC Regulations, most of the listed prescribed events are only a heading or one-word “definition”. For example, clause 19(1)(a)(i-iv) of the regulations, which defines the prescribed events for home contents insurance simply state that the prescribed events [include the destruction of or damage occurring to ... that is caused by or results from] ‘fire or explosion’ or lighting or thunderbolt’, but no further explanatory terms or definitions are provided, other than limitations to the cover permitted under s.19(2).

Even a cursory analysis of the product disclosure statements of a number of major insurance companies in respect of the listed events, will reveal an almost endless array of permutations for the definition of each term and its exclusions.

Without a significant amount of due diligence, even lawyers, economists and financial experts will struggle to identify whether these permutations materially vary the coverage of the event across different insurers' policies. Expecting a consumer to do so is clearly unreasonable.

The concept of standard cover has clearly not operated as originally envisaged by the ALRC. The provisions in the Insurance Contracts Regulations covering standard cover will need to be substantially revisited to give the concept its intended effect.

16. What would be the likely consequences if the standard cover regime was extended to cover a wider number of terms and conditions? What sort of areas might be usefully added to standard cover?

We reiterate our views that the standard cover redrafting exercise needs to consider, in detail, perhaps through a study or series of studies, what an ideal insurance product should resemble for the type of asset that is being insured. For example, an ideal level of cover for home building insurance might cover loss or damage due to certain natural perils (e.g. flood, bushfire, hurricane etc) as well as accidental damage, with a defined excess and limits on losses.

We consider that there are a number of elements which might be usefully defined within this context, including the sum insured (and its components, terms governing decisions on repairs and total asset write off (governing decisions as to rebuilding, replacement and cash payouts) and the listed events and their exclusions / limits.

Consideration should be given to specifying standards of service which reflect reasonable expectations around claims handling (to deal separately with claims for repair versus claims for rebuilding and to clearly define the total payout and which party decides how to proceed) are other key aspects that may need examination in the standard cover regime. Commencing on page 307 of its Final Report, the Royal Commission highlighted many challenges in relation to claims handling and recommended the legislative exemption from section 912A of the Corporations Act be removed. Complementary measures reflecting good practice in relation to matters which affect a policyholder's expectations about his/her payout, such as the ways insurers make decisions about claims, conduct negotiations on settlement, prepare estimates of loss or damage or likely repair costs and make recommendations about mitigation of loss, are additional areas that may be covered. The standard cover model could include a requirement that insurers commit to such standards of service, which could be incorporated into other parts of the Insurance Contracts Regulations.

Analysis to specifically identify terms in product disclosure statements in the market today that may fall under the purview of unfair contracts prohibitions may offer some further, fruitful areas that may be usefully added to standard cover.

17. Should there be a 'default cover' that insurers are required to provide without exception?

18. Should all insurers be required to provide products that provide standard cover as prescribed in the Insurance Contracts Regulations?

Yes. There would be merit in requiring all insurers who offer home building and contents insurance to offer a product consistent with the standard cover, and be able to quote a price for that product. This would facilitate easier comparison of product offers across insurers.

We do not consider that offering a default product consistent with standard cover would restrict insurers from offering other products with different cover and prices. Products with higher (lower) levels of cover, for example, could be offered and could be taken up by the customer through specific opt-in (opt-out) choices. However, such other insurance products should be benchmarked, in terms of both price and coverage, against their standard insurance product so variations in price can be linked with variations in coverage.

Through greater uniformity in definitions and level of cover, a standard cover regime could assist in reducing the problems consumers face due to product complexity and promote greater engagement by consumers in the purchase of insurance. Currently, there is a risk that consumers may purchase an

inadequate level of cover if they select the cheapest insurance policy, because it is not evident to them that the level of cover they are purchasing is different to that offered by another higher price policy.

The more engaged and informed consumers can become in relation to their insurance purchasing decision, the better chance they will have to making better decisions, and the more they are able to protect themselves, the less will be the need to rely on regulation for protection.

19. Is the requirement to ‘clearly inform’ a consumer that an insurance contract provides less than standard cover as it is commonly understood, an appropriate threshold for insurers to satisfy before they are exempted from providing standard cover?

No. Any insurer that wishes to offer products in any of the classes of general insurance, should be required to offer a ‘standard cover’ product. Allowing broad exemptions or carve-outs (which is the case with the current requirement to ‘clearly inform’) creates loopholes and encourages insurers to find ways to avoid compliance. As noted earlier, non-standard cover products can still be offered, but they should be benchmarked against the standard cover product.

20. Where insurers deviate from standard cover, should they be required to provide express disclaimers identifying where the policy deviates from standard cover?

As discussed in earlier responses, all insurers should be required to offer a standard cover product. They should also be allowed to deviate from standard cover, for example, by offering a product with higher or lower coverage.

However, as discussed previously, deviations from standard cover should be instigated by the customers (i.e. through opt-in or opt-out choices). In this scenario, the information that insurers should provide to these customers should make the customer aware of the implications of their specific choices.

21. What disclosure requirements could the Government look into in order to reflect the intended purpose of standard cover requirement?

As stated previously, consumer research to understand what consumers expect of their cover, is necessary to ensure these products and more precise regulatory requirements are aligned to the community’s needs and expectations.

There may also be public policy questions that may need to be considered, for example, the desirability of opt-out choices being offered for customers who are exposed to certain risks (e.g. flood risk for those who live in high flood risk areas).

Standardised definition of key terms

Consultation questions

What is the goal of standardised definitions?

1. Has the standard definition of flood reduced the number of complaints/disputes with insurers about coverage?

It is unclear to us, to what extent the standard definition of flood has reduced the number of complaints / disputes with insurers about coverage. As highlighted in our June submission to the Royal Commission, paragraphs 59 to 63, accurate reporting of claims, including separation of withdrawn and declined claims, and claim payout ratios, have been an issue since at least 2012. Indicators such as the value of claims sought by policyholders and ultimately paid by the insurer, as well as the level of disputes, are not available or are inconsistent.

Nevertheless, anecdotal information suggests that the current standard definition of flood, whilst meeting the industry’s technical definition of a flood, could be at odds with how insurance consumers naturally interpret that term. This is partly attributable to other related definitions adopted by insurers, for example, such as ‘actions by the sea’, ‘storm surge’ or ‘stormwater runoff’, which can sometimes be in conflict with the standard definition of ‘flood’, and can leave consumers confused about what they are in fact covered for.

To the extent that the number of complaints and disputes in relation to flood-related claims has reduced, we suspect that it is more likely that this has occurred because consumers have realised the true limitations of their coverage after loss or damage has been suffered and at the time they are considering

the merits of a claim, rather than at the time they purchased their insurance cover. In this regard, we consider that there remains scope for the definition of 'flood' to be revisited.

2. Should the Government mandate standardised definitions for a menu of key terms?

As per our response in preceding questions, yes.

3. If key terms were to be standardised, what definitions should the Government prioritise? What terms tend to be subject to dispute due to misunderstandings of meaning?

Please refer to our response to question 16.

4. What impact would standardising some definitions have on underwriting?

While insurers may need to re-negotiate their underwriting arrangements, over the longer term, standardised definitions mandated by law for at least one common product to be issued by each insurer, may spur greater competition amongst underwriters.

5. Should there be standard definitions for exclusions, for example, wear and tear?

Please refer to our response to question 16.

Review of the Key Facts Sheet

Consultation questions

27. Should the KFS be extended beyond two pages to convey more information, similar to the short-form PDS?
28. The form of the KFS is currently prescribed in the law, should this be removed to allow industry to take a more innovative approach?
29. Are there any legal issues industry would like to raise regarding the extension or modification of the KFS?
30. Are there items that would be more suitable for inclusion for consumers in a KFS?
31. In the context of home building and home contents insurance, what are considered to be the key policy elements that consumers need to know about for them to make an informed decision when comparing across policies?
32. Would there be merit in extending the KFS requirement to other forms of general insurance? What value does it add for the consumers?
33. How can the low awareness of KFS's be addressed and the difficulty of consumers in comparing different policies using KFSs overcome?
34. Should the KFS be replaced with a new approach? If so, what approach should be taken?

We note with interest the comments by various insurers and industry stakeholders about the inadequacies with the KFS, as highlighted in the Consultation Paper. We do not find these comments surprising.

As outlined earlier in this submission, insurance products are inherently complex, and becoming more so. This is in large part attributable to terms, phrases, exclusions and limitations that vary from one insurer or brand to another, making it difficult for the consumer to fully understand what cover s/he is purchasing. Whilst a KFS might identify that a certain listed event is 'covered' by a policy, it can sometimes be the case that that coverage is qualified by other definitions (e.g. storm, storm surge, flood, stormwater run-off, actions of the sea, tsunami, etc), conditions (e.g. where a storm surge occurs at the same time as a flood or storm, or where the loss or damage occurs within or outside of a specific period of the covered event), and other events.

Condensing this amount of information and fine print into a KFS, and keeping it brief, is likely to be challenging task, and as noted, could result in a misleading document. It is unlikely that the true value of a KFS can be realised, unless the underlying product is one that is simpler. We therefore concur with Treasury's closing statement on page 19, that if standard cover and standard terms were redrafted and reinforced, then the KFS would be simplified or could become redundant.

We note with interest the European Union's development of the insurance product information document. We concur with the views expressed in the discussion paper by consumer organisations and as expressed in relation to the *Issue* (pages 18-19 of the discussion paper).

We observe in relation to question 28, that if the KFS is retained, its form should be specified in the law in relation to each class of insurance to which the obligation applies. Specifying the requirements may minimise uncertainty and compliance costs for insurance companies and facilitate consumer education.

A modern approach to disclosure

Consultation Questions

35. Are there more effective or innovative ways to communicate information on policies to consumers?
36. Is the law currently preventing more effective methods of disclosure? If so, how?
37. How could the law facilitate new methods of disclosing the content currently required in the PDS, while still ensuring adequate consumer protections?

We agree that there are opportunities for insurers to communicate information on policies to consumers using more effective or innovative ways, aided by modern technology. The only caveat is that insurers should ensure that the methods and technology used are widely available and accessible, and do not inadvertently exclude certain segments of the consumer base.

Use of modern technology, however, also requires care to be taken to ensure that information being communicated to consumers reaches the intended recipient, and cannot be intercepted by unintended recipients.

We note issues relating to 'big data' are being considered by the Human Rights Commission's *Human Rights and Technology* research project. Similarly, the ACCC is also considering issues in relation to Open Data in the banking sector, and there may be strong parallels that may apply to the general insurance sector.

The Insurance Monitor's June 2018 [Occasional Paper: Monitoring insurance premiums in the world of big data](#) explores issues surrounding insurer's adoption of technology, specifically 'big data' techniques, and the potential implications for companies, consumers, policy makers and regulators. We draw the Treasury's attention to chapter 4 *Implications for regulation*, and its discussion of consumer protection concerns in relation to data security and privacy, discriminatory practices and access to insurance and marketing practices and product suitability.