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Standardising natural hazard definitions and reviewing standard cover for insurance

Thank you for the opportunity to comment on Treasury's consultation paper on standardising natural hazard definitions and reviewing standard cover for insurance. This submission is on behalf of Financial Rights Legal Centre, Mortgage Stress Victoria, WestJustice, CHOICE, the Consumer Action Law Centre and Financial Counselling Australia.

Overview

General insurance needs to be urgently reformed to ensure consumers, government and industry work more effectively together to mitigate against various increasing risks. This is particularly the case in a world where insureds have, for decades, misunderstood the insurance products they hold because of long, confusing, incomprehensible, and inconsistent product disclosure. This has led to insureds holding inappropriate products for their risks, unwelcome surprises at claims time, and endemic underinsurance.

Standardising insurance definitions and reforming standard cover are key to improving outcomes for insureds in this context. The goal of these reforms should be to ensure that:

- Australians are better informed of the risks that they face to their property;
- Australians are able to effectively compare and purchase affordable insurance products to effectively cover the risks they face;
- Australians will better understand:
 - how their insurance policy works;

- what their policy covers; and
- what is expected of them to meet the terms of a product,

with no surprises at claims time.

All key terms and exclusions (natural hazard or otherwise) prescribed by standard cover should be standardised. Prioritising which terms to standardise first is appropriate but if standard cover is to be effective all key terms should be standardised.

An independent panel – balancing competing stakeholder interests in a fair and sustainable insurance sector – should be established and resourced to assist government in a program of standardising general insurance terms and establishing standard cover. The panel should involve and consult all relevant stakeholders.

In line with best practice evidence-based policy development, a range of standard cover models should be subject to independent consumer testing and research to identify which is most effective at achieving identified objectives.

We do not support abolishing standard cover for other non-home building products, since no evidence has been provided to support their removal.

Standard definitions

1. To what extent is consumer misunderstanding of insurance policies leading to unintentional underinsurance or inappropriate insurance?

Consumers misunderstanding their insurance policies - including what risks are covered, how they are defined, what is excluded, for how much they are covered for – is central to the problems insureds face with respect to obtaining, engaging, and utilising general insurance products. These problems¹ materialise as:

- underinsurance, where consumers are not covered monetarily enough for their risks because they have incorrectly chosen a sum insured or are subject to claim limits;
- illusory insurance, where consumers are mistaken or misled into thinking they are covered for certain events when in fact they are not;
- inappropriate insurance, where consumers have a product that does not match their insurable risk mitigation needs;
- inflated premiums, since consumer decision-making is hampered by not being able to understand how a premium is priced, and are unable have any risk mitigation efforts reflected in the price;

¹ Evidence of these problems are well documented. For example, see: 2023 Joint Report by CHOICE, Climate Council, Financial Counselling Australia, Financial Rights Legal Centre and Tenants' Union of NSW: [Weathering the Storm: Insurance in a changing climate](#); 2020 ACCC [Northern Australia Insurance Inquiry Final Report](#); 2023 ASIC Report 768 [Navigating the storm: ASIC's review of home insurance claims](#)

- an inability to compare products and purchase appropriate insurance cover for their known risks, borne of huge variances in definitions, terms and products; and
- information asymmetry between insurers and consumers leading most if not all consumers unable to effectively engage with insurance.

Consumers consequently continue to be surprised and disappointed at claims time. This is the case both in claims arising out of extreme weather events and those that do not.

It is little surprise that consumers misunderstand their policies since insurers make it near impossible to understand. The design of the insurance market, insurance products and the way it has been regulated has allowed the sector to become a 'confusopoly'. A confusopoly is one in which a: "group of companies with similar products who intentionally confuse customers instead of competing on price."² The insurance market has long been recognised as a confusopoly by economists and consumer advocates.³

Consumers are faced with a soul crushing amount of inconsistent and confusing information and choice which is counterproductive, leads many to be unable to make a genuinely informed comparison and choice, reduces market transparency, and ultimately leads to poor consumer outcomes at claims time.

Just taking home and contents insurance as an example, consumers are faced with:

- at least 53 insurance brands to choose from;⁴
- at least 78 products with varying levels of coverage;
- a vast variety of Product Disclosure Statement (**PDS**) forms, designs, and multiple additional or supplementary documents;
- PDS lengths that range between 27 to 128 pages;⁵
- an overwhelming array of definitions such that no two definitions between policies are the same;⁶

² First coined by Scott Adams in *The Dilbert Future*, 1997 p. 159

³ Richard Cordray, Prepared Remarks by Richard Cordray Before the 2012 Simon New York City Conference, May 3, 2012, Gans, J. (2005), "The Road to Confusopoly", available [here](#)

⁴ CHOICE's 2024 survey identified 41 consumer facing insurance brands with 59 products CHOICE, Home and contents insurance reviews, 29 February 2024. AAMI; ahm, Allianz, ANZ, Apia; Australia Post Home; Australian Seniors Essential, Australian Seniors; Bank of Melbourne; BankSA; Bankwest; Budget Direct; CBA, CGU, Coles Everyday Insurance, GIO, Great Southern Bank, Honey, Huddle, Huddle, ING, Kogan, NAB, National Seniors, NRMA, People's Choice, Qantas, QBE, RAA, RAC, RACQ, RACT, RACV, Real Insurance, St.George, Suncorp, Sure, TIO, Virgin Money, Westpac, Youi. CanStar listed an additional 12 brands with a further 18 products in NSW/ACT including: 1st for Women, Aussie, Australian Unity, Bendigo, BOQ, Bupa, CHU, Guild, HSBC, IMB Bank, OziCare, and Shannons.

⁵ According to the 2018 Financial Rights survey: Overwhelmed An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making, September 2018

⁶ See Standardising General Insurance Definitions, March 2022.

- an overwhelming array of inclusions and exclusions⁷
- multiple ways to have their claims paid out⁸
- a variety of confusing naming conventions;⁹
- at least 29 different types of excesses beyond the basic level;¹⁰
- policies that can both exceed standard cover and contract out of standard cover at the same time on different issues and still be marketed as “top cover”;
- vastly different approaches to providing PDSs and Key Fact Sheets (KFSs) on websites, including downgrading its presence and effectively hiding this information; and
- multiple comparison websites and tools that inevitably focus on price rather than coverage and are influenced by payments by insurers for favourable coverage.

Two key issues emerging from this list that are the centre of this current consultation are the lack of standard definitions and the failure of standard cover. Inconsistent definitions actively undermine the risk mitigation partnership between the consumer and the insurer and creates an imbalance of power that advantages insurers. The lack of an effective standard cover regime and its lack of built in standard definitions is also central to the poor outcomes described above.

However, they are not the sole reason for the problems faced by consumers. It is the failure of disclosure as a consumer protection tool in insurance more generally that gives rise to many of the problems outlined in the consultation paper. The lack of standard definitions and an ineffective standard cover regime are a part of this failure, but there are other factors that need to be considered and addressed. These include:

- the lack of transparency of pricing, in particular what makes up the components of a premium;
- an inability to easily obtain, be confident in and easily update appropriate sum insureds taking into account increased building costs and standards;
- ineffective and poor communication practices from insurers in their written materials (websites, PDSs), and direct contacts with their customers pre- and post-claim;

⁷ See NSW Emergency Services Levy Insurance Monitor, [Home insurance in same suburb more than twice the price depending on insurer](#), 21 March 2017

⁸ Financial Rights, 2018, including paying a sum-insured; total replacement cover; “new for old” (which itself varies), legal liability cover (where potential costs for a claim and legal support are involved), or paying the costs for accommodation, the inclusion of professional fees and debris removal as well as other specific and different policy features.

⁹ As one example “Escape of liquid” is referred to as various “Water or other liquid damage”, “Water or liquid damage”, “Sudden and unexpected escape of liquid at the insured address...” “Bursting, leaking or overflowing”, “Water and Oil leaks”, “Water or other liquid”, “Bursting, leaking, discharging or overflowing of water or liquid” “Liquid or water damage” and “Escaping water”

¹⁰ Financial Rights, 2018, including everything from additional excesses based specifically on a risk assessed by the insurer to excesses for earthquake and/or tsunami claims and contents in storage cover excess

- conflicted and poorly design comparison websites that prioritise price over coverage; and
- the lack of success of Key Fact Sheets to promote understanding.

All these issues are well known to government and need to be considered in any genuine attempt to addressing the issues raised in the consultation paper. Placing this review within the broader context of disclosure failures is required to appreciate that the issues being sought to be addressed are not confined simply to outcomes post-extreme weather events and will not be solved by piecemeal action.

Broader context of failing general insurance disclosure

A series of government and industry reviews since the creation of the *Insurance Contracts Act 1984* and accompanying regulations have long identified the failures described above. Just looking at reviews and reports that have taken place following the introduction of the flood definition demonstrates this.

The 2014 Financial System Inquiry found that mandated disclosure, in itself, “is not sufficient to allow consumers to make informed financial decisions’ and that ‘although general insurance has a specific product disclosure regime, the industry lacks standard practice in describing a policy’s key features and exclusions.”¹¹

The 2014 Productivity Commission’s inquiry into National Disaster Funding found ‘consumers may not make efficient choices with respect to insurance in the absence of relevant and understandable information’.¹²

The 2015 ICA report *Too Long; Didn’t Read Enhancing General Insurance Disclosure* found that “[m]andated disclosure documents are not interesting or relevant enough to capture the attention of consumers before a purchase decision is made. As a result, the disclosure regime is not meeting its primary objective of helping consumers buy insurance that meets their needs.”

The 2017 Economics References Committee report *Australia’s general insurance industry: sapping consumers of the will to compare*, found that “aspects of the current product disclosure regime for general insurance are ineffective in enabling consumers to make informed decisions.”¹³ The committee was “deeply concerned by the apparent lack of transparency in the general insurance industry with regard to product disclosure, and the detrimental effect this has on consumers’ ability to effectively compare similar insurance policies.” The committee recommended – amongst other things that the government initiate an independent review of the current standard cover regime and the government work closely with industry and consumer groups to develop and implement standardised definitions of key terms for general insurance.

¹¹ Financial System Inquiry, Final Report, November 2014, p. 193

¹² Productivity Commission, Natural Disaster Funding Arrangements, Vol. 2, December 2014, p. 434.

¹³ Page 53, 2017 Economics References Committee report *Australia’s general insurance industry: sapping consumers of the will to compare*

The subsequent 2019 Treasury review into Disclosure in General Insurance was initiated but never completed.¹⁴ That review examined the potential to reform premium pricing (including considering the introduction of component pricing), standard cover, standard definitions, and Key Fact Sheets.

Five years and 15 official insurance catastrophes later¹⁵ the issues and range of proposed solutions remain the same. These catastrophes have simply highlighted and exacerbated the problems that are endemic to a general insurance sector that is failing to serve the community. Broad reform - not limited and narrow reform - is urgently needed.

2. What are the consequences of not addressing these issues?

The consequences of not addressing these issues are that Australians will continue to be confused, misled and underinsured. Disputes about claims and associated delays will also continue to increase, causing distress and costs for all parties. This is a bad outcome for insureds, insurers, and the broader community. Australians will continue to:

- not understand how their insurance policies work;
- be misled regarding what policies cover;
- have no idea what is expected of them to meet the terms of a product;
- be unable to effectively compare and purchase affordable insurance products to effectively cover the risks they face; and
- be surprised and disappointed at claims time with poor outcomes like those seen in the current Flood Inquiry.

Addressing these issues by only defining a handful of terms will not solve the problems identified.

All prescribed terms and exclusions in insurance products under standard cover as identified in the Insurance Contracts Regulations need to be defined.¹⁶

All prescribed terms and exclusions need to be defined because the industry has a history of circumventing defined terms, and we need to ensure that this will not happen again.

¹⁴ Disclosure in general insurance: improving consumer understanding, Discussion Paper, January 2019

¹⁵ Cat 195 2019/20 Black Summer Bushfires; Cat 196: SEQ hailstorms (QLD); Cat 201 January Hailstorms (NSW, QLD, ACT, VIC); Cat 202 East coast storms and flooding; Cat 203 COVID pandemic; Cat 204 Halloween Hailstorm; Cat 211 Perth Hill Bushfires ; Cat 212 Extreme Weather Event; Cat 213 Cyclone Seroja; Cat 214 Victorian Extreme Weather and Flooding; SE 215: Mansfield Earthquake; Cat 216: SA VIC Severe Storms; Cat 221 SE QLD and NSW Floods; SE 222: NSW Severe Weather; Cat 223: Victorian, NSW and Tasmanian Floods; SE 224: Central West Floods; SE 225: River Murray Floods; SE 231: Newcastle Hailstorm; Cat 232: Tropical Cyclone Jasper; Cat 233 Christmas & New Year Storms: Impacting Queensland, Victoria, and New South Wales

¹⁶ This is in line with both Recommendation 6 of the Senate Economics References Committee Report Australia's general insurance industry: sapping consumers of the will to compare, August 2017 and recommendation 17.1 of the ACCC Northern Australia Final Report, 2020.

Ten years ago, the government established a single definition for “flood”. Ten years later we found that insurers, including the NRMA, re-structured the definition within their policy offerings such that it automatically excluded other key concepts like stormwater and rainwater run-off from policies once a consumer opted out of flood cover, while in other circumstances consumers could opt out of flood cover whilst still being covered by stormwater run-off. In other words, the one term - “flood” - may have been settled, but insurers just moved on to linking it with other water-related events to vary the concept in practice and confuse people, to limit costs.

While fire, storm, stormwater, and rainwater run-off may, for example, be dealt with by this review if the government decides to maintain a limited approach to the issue, insurers will simply turn their minds to other directly or indirectly related natural hazards (such as earth movement or subsidence, rain bombs, explosions and lightning)¹⁷ or other terms of exclusion (such as defect clauses, coverage or exclusion of retaining walls, bridges, culverts and driveways) to reduce costs and limit coverage.

Unless *all terms* are defined we will all be back here a further decade hence, whacking definitional moles.

The problems will also not be fully solved by only addressing definitions and standard cover. We detail what other issues need to be addressed in answer to the next following question.

3. Aside from reviewing standard cover and standardising common terms, what other interventions may increase consumer understanding of insurance cover and reduce underinsurance or inappropriate insurance?

To ensure that problems of underinsurance and inappropriate insurance are dealt with properly, the government needs to look beyond introducing standard definitions and reforming standard cover. The government needs to introduce stronger protections for consumers that will decrease the burden placed on them by insurers under the current disclosure regime and shift the onus back on to insurers to provide appropriate insurance products.

As detailed above there have been a series of government and industry reports that have outlined the issues and made consistent recommendations to reform the sector’s failures in meeting community needs. With Australians still dealing with the impact of the extreme weather events, and the government taking yet another look at the failures of the insurance industry to meet community expectations following the 2022 floods, the time is ripe to introduce the following reforms:

- **Mandate premium pricing transparency**

There is significant information asymmetry with respect to how the cost of an insurance product (the premium) is priced. Information asymmetry favours insurers and hinders consumer decision-making.

¹⁷ Our Standardising General Insurance Definitions identified the following

Opaque pricing of insurance premiums makes it hard for consumers to understand how an insurer has assessed the risk of natural hazards impacting their property and how this affects the price of their insurance. Insureds are currently told very little, if anything at all, about the specific risks that they are insuring against and how much that specific coverage costs.

The government must review insurers' approach to disclosing the components of a premium to improve transparency, provide consumers with the information they need to consider their risks and provide a clear price signal with respect to any mitigation efforts.¹⁸ Where a renewal notice discloses a significant price increase for the same policy, the reason for the increase should also be explained, particularly if it is because the insurer considers a particular risk to have increased.

It is in the industry's, community's, and the consumer's interest to make decisions that help bring down their risk and costs. Removing this information asymmetry would ensure that there is a more active risk mitigation partnership between insureds and insurers.

- **Review the role of Key Fact Sheets**

Key Fact Sheets were introduced to improve understanding of insurance products and are prima facie not achieving their goal.¹⁹ A review of the utility of Key Facts Sheets as a means of product disclosure needs to take place.²⁰

- **Regulate comparison websites to improve outcomes**

Comparison websites are poorly designed, prioritise price over coverage and are rife with conflicts of interest. These issues are also not helped by the lack of standard definitions. The Government should review comparison websites with an eye on considering how best to ensure they don't mislead consumers.²¹

- **Ensure sum insured amounts are appropriate**

Despite the presence of an array of sum-insured calculators, consumers continue to be unable to easily obtain, be confident in and easily update appropriate sum insureds for their risks. This is exacerbated by increased building costs (generally and following an extreme weather event) and increasingly higher local building standards. Problems with respect to sum-insured lead to significant underinsurance at claims time.

¹⁸ See Recommendation 4 of Senate Economics Reference Committee, 2017 and Treasury, 2019. See also recommendations 15.1, 18.6 and 18.10 of the ACCC Report 2020 re: providing the premium difference (if any) over the life of a policy between paying annually and paying by instalments; disclosing the premium cost or saving for each optional inclusion or exclusion, and excess levels and sum insured they offer to a consumer; and capping premium increases for particular risks. See also recommendation 29, FRLC 2024.

¹⁹ See: Malbon, J, & Oppewal, H., 2018, (In)effective disclosure: an experimental study of consumers purchasing home contents insurance, Monash Business School and Monash Faculty of Law.

²⁰ Recommendation 7 Senate Economics Reference Committee, 2017

²¹ See: Recommendations 8, 9 and 10, Senate Economics Reference Committee, 2017 and Recommendation 18.7 ACCC, 2020

The government needs to examine and consult on reforming insurers approach to sum insureds to ensure greater accuracy, consistency and proactive updating.²²

- **Reform cash settlement**

Consumers are not adequately informed about how cash settlements work and the risks and full implications of a decision by an insurer to offer a cash settlement. This again leads to poor consumer decision making, poor claims outcomes, and can and regularly does result in significant underinsurance. The government needs to examine how this can be improved, review the success or otherwise of cash settlement fact sheets, ensure greater transparency to scope of works documents and establish greater protections for vulnerable consumers when subject to cash settlements.²³

- **Require greater proactivity in providing accommodation entitlements**

The recent floods have revealed poor and inconsistent approaches to temporary accommodation, with consumers not understanding their entitlements under a policy and insurers not proactively working with customers to enliven these entitlements. The Government needs to examine these issues closely.²⁴

- **Address ineffective communication practices**

Insurer communication practices via written materials (websites, PDSs, renewal notices), and direct contact pre- and post claim needs to be examined closely to identify where improvements can be made.²⁵ The Flood Inquiry has taken a significant amount of evidence that insurer approaches to working with their customers has led to re-traumatising of insureds and unnecessary consumer detriment.

4. Do you agree with the priority terms that are proposed for standardisation (fire, storm, stormwater, and rainwater run-off)?

As outlined above, limiting this review to only defining a handful of prioritised natural hazard terms will be ineffective and only partly address the problems highlighted by this review.

All key terms (natural hazard or otherwise) prescribed by standard cover need to be standardised. This is a position supported by both the ACCC and the Senate Economics Committee.

Defining all common terms that make up standard cover will:

- reduce the ability for insurers to re-define and structure their products in ways that mislead and confuse consumers;

²² Recommendation 18.4 and 18.5, ACCC, 2020; Recommendation 21, FRLC. 2024

²³ See recommendation 13, FRLC 2024

²⁴ See recommendations 14,15 and 16, FRLC 2024

²⁵ See Recommendations 7.1, 18.1, 18.2; 18.8, 18.9, ACCC, 2020. See also Recommendations 1, 6, 10, FRLC 2024

- prevent surprise on the part of the insured to an unusual term only considered at claims time;
- remove the confusopoly borne of the sheer variety of term definitions;
- improve consumer understanding of how their insurance policy works, and what is expected of them to meet the terms of a product
- reduce consumer confusion regarding what is and what is not included in their insurance coverage;
- increase knowledge of what risks their policy covers;
- ensure that Australians will be able to effectively compare and purchase affordable insurance products to mitigate the risks they face;
- facilitate the ability to exercise consumer choice given they'll be comparing like for like
- promote a shared understanding of each key element of coverage and improve financial literacy;
- assist in laying the foundation for better understanding when considering purchasing insurance that it is above a standard cover; and
- reduce the lottery that occurs at claims time, so a similar event does not impact a group of similarly placed and insured Australians in different ways.

To implement this, Government should establish and resource an independent panel to assist it in delivering a program of standardising general insurance terms. This panel should involve and consult representatives from industry, consumer groups, community groups, regulators, AFCA and government.

This independent panel should be charged with not just developing standard terms but also assist in the establishment of an appropriate standard cover regime.

Furthermore, the panel should be empowered to examine the current list of prescribed terms and exclusions to appropriately modernise this list to capture developments since 1985.

We *do* support conducting this standardisation process in a way that prioritises some terms over others but only in so much as the aim is to standardise all key terms. The three prompting questions for prioritisation outlined in the consultation paper may therefore be a useful starting point to establish the order in which standardisation is conducted.

Finally, the development of a standard definition of “maintenance” and “wear and tear” for example should *not* be led by industry. On principle, the process should be led by government with full participation of all stakeholders, not left to insurers. Consumer trust in insurers conducting this exercise without favouring their own interests is low to non-existent. As we understand it – for example, other closely related terms such as “defect” clauses and “pre-existing damage” will not be captured in this process, and thus will enable further arbitrage down the track.

Specific comments on the proposed prioritised terms

- **Fire**

This should address both fire and explosion concepts in line with the prescribed event “fire or explosion” at reg. 19(1)(a)(i) of the *Insurance Contract Regulations*.

The concept of fire will need to deal with the large variety of terms and concepts that we have identified in our research.²⁶

The concept also needs to cover both fires developed internal to a house and external to a house be it naturally occurring (bushfire, grassfire) or otherwise. Damage arising from smoke, heat also needs to be considered and made consistent.

See also CHOICE released a report called “How does your insurer define a fire?”²⁷

- **Storm**

We note that storm is grouped with other hydrology-related perils under reg 19(1)(a)(xiv) of the *Insurance Contract Regulations*:

“storm, tempest, flood (within the meaning given by section 34), the action of the sea, high water, tsunami, erosion or land slide or subsidence”

It is important to standardise all hydrology-related terms as a priority in order to avoid further definitional arbitrage.

We note that there are a significant range of storm -related phrases and concepts that we are aware of being used that will need to be considered. These include amongst others: snow; hail; wind; violent wind; lightening (lightening/thunderbolt); thunderstorm thunder; tornado; cyclone. Note too that the additional term “tempest” is used in the Insurance Contracts Regulations.

- **Stormwater and rainwater run-off**

Stormwater and rainwater run-off are terms that have been used to reduce cover and were not originally included in the regulations. However, given their common use (and misuse as the case may be) these should be standardized as a priority.

Other run-off/hydrology-related phrases that we are aware of being used need to be either captured by the standard definitions or be separately defined or dealt with in some manner. These include, amongst others, rainwater; heavy rain, rain, water run-off; run-off; surface run-off rainwater; sudden excessive run-off as a direct result of a storm; escape of rainwater; stormwater overflow from roof gutters.

²⁶ including amongst others: smoke; smoke (from fire); gradual smoke exclusion; smoke with no damage/fire; bushfire, grass fire; adjacent property; burning with flames; explosion; lightning (fire); arcing; scorching; melting; no flame

²⁷ Andy Kollmorgen, How does your insurer define a fire? Choice.com.au. 6 February 2020. Available at: <https://www.choice.com.au/money/insurance/home-and-contents/articles/fire-definitions-by-insurers>

Other terms considered but not proposed to be prioritised

We recognise that the proposed terms reflect the most recent catastrophes the community has experienced. However, our case work suggests there are other terms that would benefit from having standard definitions introduced as soon as practicable. These include:

- **Storm surge**

All hydrology terms should be prioritised since including storm surge and flood surge. Storm surge (and actions of the sea) are issues that arise in disputes following cyclones and impact many coastal regimes. Given an expected decrease in the number of cyclones but increase in their intensity, destructive nature and costs, this needs to be addressed.²⁸

- **Earthquake**

Earthquake has been an area of our casework where there has been considerable trouble where the definition has been critical to whether someone has been covered. Earthquake is also one where exclusions have been relied upon – particularly earth movement, wear and tear and maintenance.

Giulia's story - S275429 – Financial Rights Legal Centre

Giulia is 95 and does not speak English. Giulia's home was impacted by the Victorian earthquake with lots of cracks appearing where there weren't any before. She made a claim on her home building insurance. They sent out two lots of inspectors and rejected the claim twice. The assessors assert the reason for the cracks were earth movement and pre-existing damage not the earthquake. While Giulia's son (who is supporting her) accepts Giulia's home is not a new house, he believes her house is well maintained. Most cracks weren't present before the earthquake. Some cracks are so large you can see through them. Many have increased from 1mm to 5mm. In some places like the bedroom, there were no cracks but now the plaster has broken and fallen apart. Giulia's son can't understand the distinction between earth movement and earthquake. Isn't an earthquake earth movement?

Giulia's son has tried to contact engineers to get a second opinion however the cost involved is so high (\$4,000+) that he is not sure if it is worth the expense to go ahead.

Citing lack of subfloor clearance space and rising damp as the cause of the damage to the carpets and relying on the wear and tear/rising damp exclusion clause in the contract, the insurer declined the claim despite the identification of a source of escaped liquid.

²⁸ Climate Council, [Tropical Cyclones and Climate Change Fact Sheet](#), 2024

Spiro's story - S275929 – Financial Rights Legal Centre

Spiro raised a claim to get the walls fixed following the September 2021 Victorian earthquake. The same walls that were repaired by insurer in 2020, along with other walls, were damaged by earthquake.

The insurer declined the claim. The engineer assessed the damage and assert that the damage is due to “slab defects” in the building and “earth movement”, rather than earthquake.

The insurer’s engineer’s report asserts that earthquake was too far to have caused the damage – the epicentre of the earthquake being 125km away. The report then claims that the “Modified Mercalli Intensity (MMI)” of the property was too low for it to be earthquake related.

Spiro was at the home at the time. The house was shaking and he had to get outside. Afterwards there was a visible cracking in the interior.

Janice's story - S276148 – Financial Rights Legal Centre

Janice held insurance over a property when in September 2021 the Victorian earthquake hit. The property was damaged with large cracks in wall and the ceiling emerging directly after the earthquake.

Janice’s insurer declined her claim on the basis that the damage and gaps was caused by soil movement and the property moving over time.

Janice insists that the gaps weren't there before the earthquake. She has photos taken by a real estate from before the event. There were some hairline fractures but not big gaps. Janice has managed to obtain two independent builders to assess the damage. They both state that the structural damage was due to a tremendous shake of the property, such as an earthquake tremor.

The claim was still declined.

- **Actions of the sea**

Again all hydrology terms should be prioritised including actions of the sea. There is significant variance in the terms where the differences would be enlivened in any claim dispute.²⁹ In its submission to the Senate Inquiry, CHOICE provided evidence that:

*ANZ excludes loss or damage caused by 'actions by the sea' however it does not define a tsunami as an action by the sea and will in fact cover loss or damage caused by a tsunami. By contrast Coles considers a tsunami to be an act of the sea and excludes damage or loss 'caused by high tide, tidal wave, tsunami or other actions of the sea.'*³⁰

5. For those terms that are proposed to be standardised, are there any exclusions that you believe should apply?

While we understand that decisions will need to be made on the scope of each definition and their inclusions and exclusions, the following principles should be used in developing these.

1. All prescribed events, concepts and exclusions should be intuitive, easily understood by customers and meet community standards.
2. All defined terms should be consumer tested to ensure that the definition meets the first principle.
3. All terms must not be defined so narrowly to exclude most claims (i.e. be the lowest stave of the barrel), nor be defined to be so expansive to make insurance coverage unaffordable – a balancing act is required to ensure improved consumer outcomes and a sustainable insurance industry.
4. All terms should be developed in line with the principles of risk pooling to ensure the costs of natural and non-natural perils are spread amongst all policyholders so that the claims of the few can be paid out of the premiums of the many and
5. All definitions should be developed by an independent panel, advising government (as proposed above).

6. Are there any additional natural hazard terms you think should be standardised?

Other key natural hazard terms that should be defined:

The standard cover regime lists the following additional natural hazard terms that we believe should be listed to define.

²⁹ including amongst others: Tidal Wave, Actions of the Sea, Tsunami, High tide; Other oceanic activity

³⁰ Senate Economics References Committee, August 2017, Australia's general insurance industry: sapping consumers of the will to compare, p. 38.

- **Erosion or land slide or subsidence**

This has been a contentious issue in a number of case work matters where the definition has been critical to coverage.

Other non-natural hazard terms that should be defined as a priority

In line with our position described above we believe that all prescribed terms including non-natural hazard terms should be defined. To ensure priority is given to those non-natural hazard terms that are clearly causing issues currently, the following three should be prioritised:

- **bursting, leaking, discharging or overflowing of fixed apparatus, fixed tanks or fixed pipes used to hold or carry liquid of any kind; (in other words escape of liquid)**

Escape of liquid is a term that commonly arises in our casework.

Case study –Harry’s story –WestJustice

Isolated patches of mould damage gradually appeared in the carpets of a Harry's bedrooms. Harry lodged a claim to investigate the source.

The building assessor assigned to the claim stated that they could not access the subfloor to investigate underneath the carpet, but did not provide a reason why. The subfloor could have been accessed.

CCTV camera inspection found that the drain pipe for the kitchen sink and dishwasher was completely disconnected underneath the house, so all water and food scraps had been depositing underneath the house and creating humidity underneath the house. It is unknown how long the pipe had been separated.

Citing lack of subfloor clearance space and rising damp as the cause of the damage to the carpets and relying on the wear and tear/rising damp exclusion clause in the contract, the insurer declined the claim despite the identification of a source of escaped liquid.

Escape of liquid is referred to in a huge variety of ways, all with their own subtle differences in meaning.³¹

- **an action of a person acting maliciously (conduct of others clause);**

While there is some consistency regarding cover for malicious damage there is a general requirement by most insurers that the damage must not be caused by a person residing at the

³¹ The ACCC found significant variance between definitions: See ACCC 2020, Box 17.2. Financial Rights, 2018 found “Water or other liquid damage”, “Water or liquid damage”, “Sudden and unexpected escape of liquid at the insured address ...” “Bursting, leaking or overflowing”, “Water and Oil leaks”, “Water or other liquid”, “Bursting, leaking, discharging or overflowing of water or liquid” “Liquid or water damage” and “Escaping water”.

address or by someone who was at the address with the consent of someone residing at the address. This has a disproportionate negative impact on those people who are subject to family or domestic violence. For victims of family or domestic violence, they can be punished for being a victim of behaviour beyond their control. A number of insurers also require a report of the damage to the police. This too is controversial since police involvement has the potential to increase the risk of harm to the resident reporting the damage.

There has been some move in the industry to reform these clauses. AAMI introduced a 'conduct of others' clause to provide flexibility to pay a claim in cases of mental illness, substance abuse and/or an act of violence or intimidation by a co-insured, even where there is no legal requirement to do so. In 2023, Allianz followed suit, adding that it may pay claims arising from wrongful conduct from a family member where there was domestic and family violence or mental illness, even when cover had been varied or terminated with malicious intent.

Given the unfair outcomes of these clauses particularly for those experiencing family violence, malicious damage should be prioritised.

- **wear and tear, rust or corrosion (as well as related terms defect, maintenance, and pre-existing conditions)**

Consumer groups have long argued for the need to standardise maintenance, wear and tear, defect, and pre-existing damage/conditions clauses.³² As expressed above, we do not have confidence in the general insurance industry to develop a standard definition of "maintenance" and "wear and tear" without government overseeing and leading the exercise and listening to both sides.

Standard cover

7. How well is the current standard cover regime achieving its intended purpose?

Standard cover has failed for decades to achieve its intended purpose and needs to be reformed.

Standard cover was originally introduced to address difficulties caused by – amongst others – the complexity in the use of multiple terms, and the widespread use of unusual terms that surprise consumers³³ – both issues that continue to cause problems for insureds.

The original vision for standard cover was one in which insurers could be free to market policies that offered less than standard cover provided that insurers would have to draw the insured's attention to that fact.³⁴ The problem with the implementation of this policy was that the *Insurance Contracts Act 1984*³⁵ allow insurers to contract out of standard provisions so long as

³² See Submission by the Financial Rights Legal Centre, CHOICE, Consumer Action Law Centre and Westjustice, House of Representatives Standing Committee on Economics Inquiry into insurers' responses to 2022 major floods claims November 2023

³³ ALRC Report 20, Insurance Contracts p.xxii and xxvi <http://www.alrc.gov.au/report-20>

³⁴ As above.

³⁵ Sections 35 and 37

they merely provide a PDS. In other words, insurers don't have to "draw the insured's attention" to the fact that they are providing less than standard cover – they just describe the actual cover in the PDS and contract. The other key issue is that while prescribed events are listed in the regulations, the terms and exclusions are not defined. Without definitions, coverage can and does vary significantly.

Very few people use a PDS in their pre-purchase decision making: the ICA reports only 2 in 10 people.³⁶ While many consumers believe they are aware of the terms of their policy, actual tested comprehension levels were low in comparison to confidence levels.³⁷ Insurers therefore offer less than standard cover by telling their customers in a document few read and even fewer understand.

Insurer advertisements also tend to obfuscate and rarely comprehensively capture the nuances of policies, presenting an image of insurance that is at best manipulative and at worst misleading. Consumers are consequently often left frustrated, angry and disappointed when their claims experience fails to live up to expectations.

In practice, all insurers contract out of the provisions, rendering them pointless with consumers having no clue as to what is standard and what is not. Insurers therefore meet the letter but not the spirit of the regime.

The standard cover regime must be reformed in line with the principles outlined in answer to the following question, to institute a more effective regime that ensures that consumers can more easily compare insurance products and decrease the possibility that consumers will end up with an unsuitable product.

8. Which of the three options for intervention would best achieve the intended purpose?

A genuine standard cover regime that meets the broad goals/principles outlined above should include the following characteristics, depending on consumer testing:

- a. a minimum set of basic default standards that meet community expectations below which insurers cannot fall;
- b. a set of standard definitions for every inclusion, exclusion and commonly used term;
- c. an ability to cover specific risks in addition to that included in the minimum standard to ensure unique individual risks are insurable, if not available under standard cover;
- d. indexed minimum amounts for claims;
- e. a limit to the number of excesses able to be imposed.

³⁶ ICA, *Consumer Research on General Insurance Product Disclosures: Research findings report*, February, 2017, at page 18.

³⁷ *Consumer Research on General Insurance Product Disclosures Research findings report*, February 2017, http://www.insurancecouncil.com.au/assets/report/2017_02_Effective%20Disclosure%20Research%20Report.pdf

- f. applied to all forms of general insurance including initially motor vehicle insurance, home buildings insurance home contents insurance; travel insurance; sickness and accident insurance; and consumer credit insurance with a view to extending to other common general insurance products.

Specific comments on the options presented

- *Repeal the standard cover regime in its entirety;*

We do not support option 1. It will not improve consumer outcomes since it will not address the problems identified in the consultation paper, nor the problems that the standard cover regime was first introduced to address.

- *Amend the standard cover regime to mandate insurers offer a baseline level of coverage for home building insurance only; or*

While we support the principles outlined in option 2, we are not in a position to pick, choose and exclude options outlined within option 2 and option 3 on a hunch. Options 2 or 3 are potentially viable options, but their benefits need to be tested.

Best practice evidence-based policy development should be applied to selecting the appropriate model to give the much-needed and complex reform the best chance at succeeding. We therefore support the development of a small number of models to be consumer tested using independent research to identify which is more effective at meeting the desired objectives.

With respect to the four approaches to a basic minimum presented, we see little point in not standardising all events, exclusions and allowances.

Innovation has had mixed success from a consumer perspective. While innovation is important to ensure new real world developments and risks are captured in insurance, innovation for the sake of limiting coverage on key risks for profitability's sake, or to add bells and whistles to a product to attract customers has led to the confusopoly that we are grappling with today.

We *do* support innovation only in so much as that it promotes product development *above* the basic minimum standard or above any vertical tiers developed. Such innovation should not derogate from standard minimum cover.

Regarding the ICA's core cover concept, this should be an approach to be tested however we believe the ICA's original approach to this was too limited. The ICA had confined the concept to only 6 terms and did not mandate it for all insurers to provide in any or all of their products. The limited number of terms would not solve the problems described above, and the voluntary nature of it would not guarantee its take up. These fundamental flaws however could be overcome though in a more realistic and comprehensive model.

We also note that another option here would be to require insurers to offer a standard cover baseline product.

- *Amend the standard cover regime to mandate a vertically differentiated rating system for home building insurance.*

Consideration should be given to establishing a form of vertical choice - a limited number of clearly defined levels of cover above basic, default standard cover which insurers can compete on, for example: basic default cover, premium cover and deluxe cover (as opposed to gold, silver, bronze). This however needs to be fully consumer tested to ensure that consumers are more likely to purchase the correct cover.

There is little research into the success or otherwise of vertical choice in private health insurance in Australia. However, there is some evidence available internationally on the pros and cons of vertical choice in health.³⁸In summary they include:

- *Simplification*: Vertical choice decreases the number of choices and considerations leading insureds to consider their unique circumstances that may require increased levels of cover specific to their situation.
- *Customisation*: Vertical choice allows people to tailor their insurance coverage to their specific needs in limited fashion. They can choose a plan that aligns with their risk profile, finances and willingness to take on risk.
- *Competition*: Offering multiple coverage levels could encourage insurers to compete by providing better additional benefits, pricing, and service.
- *Improved ability to compare*: Empowers consumers by giving them greater control over their coverage, increasing transparency and improved informed decision-making.
- *Complexity*: Too many options (even 3 with variances on each) can still overwhelm potential insureds, making it challenging to compare plans effectively. Decision fatigue may ensue leading to poor choices.
- *Risk Segmentation*: Vertical choice could exacerbate risk segmentation.
- *Adverse Selection*: If premiums don't reflect individual costs, some insureds may choose levels that don't match their actual needs.
- *Over-insurance*: If designed poorly and not tested it could lead people to opting for higher levels when it may not be needed. Nomenclature like Gold Silver Bronze could encourage people to strive for Gold and avoid a bronze due to connotations associated with these terms. Basic, Premium and Deluxe may be a preferable approach to ensure understand the approach better.

We would also note that there is no clear guiding principle to demarcate levels/tiers of home insurance.

Finally consideration needs to be given to a new standard cover regime's interaction with the design and distributions obligations. The design and distribution obligations' aim is to shift the onus away from an over-reliance on consumer disclosure as the key consumer protection. It seeks to enhance consumer protection and safety by requiring financial service providers improve design and distribute appropriate products to appropriate target markets. Introducing

³⁸ Victoria R. Marone§ and Adrienne Sabety, [When Should There Be Vertical Choice in Health Insurance Markets?](#) Am Econ Rev. 2022 Jan; 112(1): 304–342.

vertical choice with say an ability to add on elements, shifts the onus back on to a consumer to pick and choose their product. This may be somewhat ameliorated by requiring insurers to offer products with chosen additions for particular target markets. Either way, consideration needs to be given to ensuring that a new standard cover regime does not inadvertently shift all the risk back on to consumers.

Removing standard cover on non-home insurance products

We do not support abolishing standard cover for other non-home building products. The consultation paper fails to provide any evidence for or against such a position.

On the contrary, our position is that those products already defined under the Insurance Contracts Regulations should also be standardised in a program of uplifting standard cover for key general insurance products including motor vehicle³⁹; sickness and accident⁴⁰; consumer credit⁴¹ and travel⁴². We note too that home contents insurance⁴³ (as distinct from home building insurance) has not been explicitly referenced in the consultation paper options despite its prescription under the regulations.

All these forms of insurance should continue to be subject to an updated and reformed standard cover regime.

While we understand that the vast majority of concerns raised with Treasury during the targeted consultation relate to home building insurance especially with regard to the context of the current increase in extreme weather events – the issues outlined above with respect to comprehensibility, comparability and being surprised at claims time equally apply to other forms of insurance.

For example, in travel insurance, Financial Rights assisted complainants who made claims on their travel insurance based on cancellations arising out of the COVID-19 pandemic, where insurers claimed that a pandemic was not a “natural disaster.”

Case study – Belinda’s story – Financial Rights - C178371

Belinda took out travel insurance for her trip to Europe but her trip was cancelled due to the COVID-19 pandemic. Belinda made a claim on her travel insurance.

While there is no exclusion in her policy for pandemics specifically her PDS says she is covered if her

³⁹ Subdivision B, Insurance Contracts Regulations 2017

⁴⁰ Subdivision E, Insurance Contracts Regulations 2017

⁴¹ Subdivision F, Insurance Contracts Regulations 2017

⁴² Subdivision G, Insurance Contracts Regulations 2017

⁴³ Subdivision D, Insurance Contracts Regulations 2017

“pre-paid scheduled public transport services or pre-paid tour have been cancelled or restricted because of severe weather, **natural disaster**, riot, strike or civil insurrection.”

The insurer contended that the pandemic was not a disaster caused by the forces of nature. Belinda disagreed and argued that the virus was plainly formed by nature and is not artificial. As such, the disaster caused by its spread is a natural disaster within the ordinary meaning of that phrase.

AFCA agreed with Belinda.⁴⁴

CHOICE have also identified significant variance in the definitions of regions that are covered⁴⁵ and the definitions contained in the PDS can contain surprises.⁴⁶

Consumer Credit Insurance too is a product that is rife with problems⁴⁷ and is generally considered a poor value product.⁴⁸ Many of the issues at the heart of its poor value is the lack of a standard definition of employment. Insurers have varied in their approach to establishing eligibility criteria with respect to the term which can exclude types of employment such as seasonal, casual, temporary, or fixed term employment – all variances from a normative understanding of “employment” that result in surprises at the time of claim.

The ability for insurers to pivot to the products not subject to standard to eke out savings by dabbling with definitions and standard cover variations, is also a significant risk.

We propose at a minimum that the current standard cover regime continues to apply and that the proposed independent panel to assist government in a standardising definitions also drive the reform of standard cover for these other key insurances. They should also consider applying standard cover to other forms of common general insurance products including strata and landlord insurance.

⁴⁴ See AFCA determination 724324.

⁴⁵ “For example, several insurers cover travel to Bali under their Asia Pacific policy but not to the rest of Indonesia, while some will only cover travel to Bali under their Asian region travel policy.” CHOICE, [Everything you need to know about buying travel insurance](#), 15 February 2023.

⁴⁶ “The word definition table might contain a few surprises – a good place to check on the definition of a 'relative' or a 'moped', for example”, CHOICE 2023.

⁴⁷ ASIC, [REP 622 Consumer credit insurance: Poor value products and harmful sales practices](#), 11 July 2019

⁴⁸ “Consumer credit insurance is poor value,” ASIC, [How consumer credit insurance works](#),

9. Which of the three options is least likely to achieve intended purpose?

Option 1

10. Are there any options to amend standard cover not listed above that you believe should be considered?

We are aware of three other potential models that could be considered but are from our perspective suboptimal options.

- As referenced above, a baseline product, featuring core level be required to be offered by each insurer.
- Reform the current standard cover by requiring that insurers genuinely inform consumers how each insurance product and term differs from standard cover in an accessible and easily comparable form. This was considered in the 2019 Treasury consultation where insurers would be required to provide express disclaimers identifying where the policy deviates from standard cover.
- In the US, insurance policies are largely standardised based on forms and guidance provided by national insurance advisory organisations such as the Insurance Services Office (ISO) or the American Association of Insurance Services.

11. Should the standard cover regime be retained for insurance products other than home insurance?

Yes, as above.

12. Under option 3, on what basis should the various offerings be differentiated?

This should be researched and consumer tested to identify what intuitively a baseline product should include, what a premium product would include and a deluxe product would include.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Drew MacRae, Senior Policy and Advocacy Officer, Financial Rights Legal Centre at drew.macrae@financialrights.org.au.

Kind Regards,



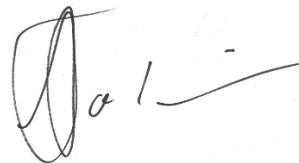
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