

23 March 2012

By email: icareview@treasury.gov.au

The Manager
Financial Services Unit
The Treasury
Langton Crescent
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Dear Sir or Madam

Home Building and Home Contents Insurance Policies Key Facts Sheets

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on Treasury's February 2012 discussion paper on home building and home contents insurance key facts sheets (**the discussion paper**).

We strongly support the introduction of key facts sheets (**KFS**) for home building and contents insurance policies. We believe that the use of KFSs will improve consumer understanding of insurance products they buy, and encourage competition between insurers.

Briefly, this submission:

- regarding discussion of **different policy types**, recommends that the front side of key facts sheets should:
 - list each of the three types of insurance policy;
 - include a short description of each type;
 - design the wording of the descriptions to warn consumers of the risk that sum-insured policies may leave them under insured, and encourage them to consider a total replacement policy.

- regarding **what events are covered** by KFS, recommends that:
 - the order and wording of the 'what is covered' section must be prescribed to ensure it is consistent between insurers, easy to understand and comparable;
 - the events prescribed to be listed on the KFS should be drawn from the list of prescribed standard cover events. However, the Government's decision of which events to list on the KFS should be guided by a consideration of which events have the most significant impact on consumers or cause the most confusion;
 - the KFS should also include a notification/product warning indicating whether or not the policy meets the standard cover requirements.

- does not recommend that **natural disasters** are included on the KFS merely because they are a natural disaster. Government's decision to include an event on the KFS should be based on their potential impact or the likelihood of consumer confusion.

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- regarding **what events are not covered**, recommends that:
 - the proposed KFS models in Appendices A and B are not suitable, and we have suggested a model which combines elements of both;
 - wholesale exclusions from standard cover should all be noted on the KFS, whether or not those events are prescribed;
 - where it is not possible to list all exclusions, insurers should be required to list those which would be unusual for that kind of policy, or that would be expected to cause confusion;
 - KFSs should note sections of the PDS that consumers can get more information about particular exclusions.

- Regarding **sub-limits and excesses**, recommends that:
 - sub-limits and excesses should be disclosed on the KFS;
 - We approve of including statements on KFSs that sub-limits or excesses may apply, as long as they are worded simply and refer to specific paragraphs in PDS where consumers can find more information. Text referring to excesses should note that paying an excess is not a pre-condition of making a successful claim.

- recommends that **cooling-off periods** should be disclosed on KFSs, and that statements regarding cooling-off periods are clear that they allow consumers to cancel their contract within this period without any cost

- does not oppose the inclusion of a '**How to use this KFS**' statement'

- does not recommend the inclusion of a '**general consumer warning/risk statement**'

- does not recommend the inclusion of a '**general health warning**' as proposed by the discussion paper, but:
 - supports the use of specific 'health warnings' as recommended by the NDIR panel report; and
 - recommends that health warnings be drafted in a way that encourages consumers to make 'healthy' choices, that is, to discourage consumers from making choices that will leave them under-insured.

- regarding **general formatting**, recommends that as many details of format and structure of the KFS should be prescribed as is possible

- regarding **provision of KFSs**, recommends that
 - KFSs should be made freely available for consumers who are shopping around for insurance, for example on insurers' websites;
 - insurers should be required to provide a KFS whenever they are providing a quote (subject to some reasonable exceptions); and
 - insurers should be required to provide a KFS on request, without exception.

- regarding **delays in provision of KFSs**, recommends that:
 - insurers should be required to provide a KFS immediately, except where this is impossible; and
 - where a KFS cannot be provided immediately, there should still be a duty on insurers to *dispatch* KFSs immediately.

- agrees that insurers should be permitted to provide KFSs electronically
- recommends that Government review the effectiveness of the KFS two years after their introduction.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

We also operate MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians experiencing financial difficulty.

Purpose of key facts sheets

We support the introduction of key facts statements for three main reasons:

- **Comprehension:** key facts statements will give consumers a better understanding of what their policy covers and what it does not, accepting the reality that very few people read and understand their PDS;
- **Comparison:** key facts statements will help consumers shop around for insurance by allowing easy comparison between competing policies, improving competition; and
- **Product safety warning:** key facts statements will give consumers important information relating to under-insurance, which is a serious and endemic problem in Australia—consumers must be warned as to whether a home building policy is sum insured or total replacement, and that purchasing a sum insured policy comes with considerable risk of not having sufficient cover to indemnify for loss.

Our suggestions below should be seen in light of these objectives.

We understand that some in the insurance industry have argued that, if KFS are provided, consumers will rely only on the KFS without reading the full details of their policy in the Product Disclosure Statements (PDS)¹. This argument entirely misses the point of KFSs.

We agree that that KFS should not be a substitute for PDS and, ideally, consumers should read and understand their PDS before buying an insurance policy. However, we accept the reality that

¹ 'Treasury to release discussion paper on key facts sheets', *Insurance News*, 20 February 2012. Accessed on 21 March 2012 from <http://insurancenews.com.au/regulatory-government/treasury-to-release-discussion-paper-on-key-facts-sheets>.

most consumers (even well educated consumers) simply do not read their PDS because they are overlong, dense and complex. Because of this problem, we would suggest that most consumers do not really understand what their insurance policy covers and what it does not.

This can cause considerable problems, as we saw in 2011 floods where many people affected simply were not aware that their policy did not cover them for the damage they endured. As well as creating problems for individuals, this lack of knowledge stunts competition in the insurance market. Where consumers are not aware of scope of the cover they are buying, they are not making fully informed choices between different products, and insurers are not receiving accurate signals about what consumers wish to purchase and the price they will pay for it.

A KFS does not replace a PDS because it cannot provide the same level of detail, but this is as much a strength as a weakness. The brevity of a KFS enables it to set out the most important points of the policy clearly and simply in a way that a PDS cannot. However, if a KFS and PDS are both provided either at the same time or separately, consumers will be able to retain detail while also improving clarity and accessibility. This will help consumers make better decisions about insurance coverage, which is good for consumers, the industry and the community at large.

Type of policy

Our position

KFSs should be required to specify the type of insurance policy on offer (that is, whether it is a 'sum insured', 'sum insured plus margin' or a 'total replacement' policy) and also to list the three different policy types with a short description. This feature is necessary to make consumers aware of the type of policy they on offer and others which may be available. Just as importantly, it could be used to raise consumer awareness of the risk that sum-insured policies will leave them under-insured and to encourage up-take of total replacement policies.

As ASIC's reports into this issue indicate,² sum insured policies are the most common cause of underinsurance. Most consumers are simply not in a position to accurately predict the cost of replacing their home and contents, and many rely on insurers to estimate these costs. This is particularly a problem after a large event like a natural disaster, when costs of repairing and rebuilding increase. The advantage of total replacement cover is that the burden of estimating the replacement value is placed on the party that has the tools and expertise to make that estimate - the insurer.

We are of the firm view that a greater take-up of total replacement policies will significantly reduce the underinsurance problem in Australia. For this reason, we recommend that the front side of key facts sheets should:

- list each of the three types of insurance policy;
- include a short description of each type;
- design the wording of the descriptions to warn consumers of the risk that sum-insured policies may leave them under insured, and encourage them to consider a total replacement policy.

² ASIC, *Getting home insurance right: A report on home building underinsurance*, Report 54, September 2005; ASIC, *Making home insurance better*, Report 89, January 2007.

Should a definitive explanation/ outline of the type of policy be on the front side of the KFS with general explanations of the different policy types provided on the reverse?

An explanation of each of the three policy types, and an indication of which type the KFS refers to, should be on the front side of the KFS. We are aware that there is limited space on the KFS, but improving awareness of the risks of sum insured cover (and the option of total replacement) is an important aim and should be a priority of the KFS. The reverse could also include a longer definition of each policy type if necessary.

What is covered by the KFS

Our position

In brief:

- the order and wording of the 'what is covered' section must be prescribed to ensure it is consistent between insurers, easy to understand and comparable.
- the events prescribed to be listed on the KFS should be drawn from the list of prescribed standard cover events. However, the Government's decision of which events to list on the KFS should be guided by a consideration of which events have the most significant impact on consumers or cause the most confusion.
- The KFS should also include a notification/product warning indicating whether or not the policy meets the standard cover requirements.

We strongly recommend that the list of events on the KFS (both in the 'covered' and 'not covered' categories) must be prescribed to ensure clarity about what is and is not covered by the policy, and to allow easier comparison between products. That is, if an event is prescribed, that event must be listed on the KFS whether covered or not.

Prescribing the events covered will ensure that exclusions for key events will be made clearer. Where a list of events is not prescribed, insurers may simply avoid mentioning events that they do not cover but that are not required to be listed in the 'not covered' section. This would be a poor outcome for consumers, who need this information in order to make an informed choice about which policy to buy.

Prescribing a list of events will also ensure that consumers are aware that similar types of events may be covered differently by the same insurer. Even with a standard flood definition, many consumers will not be aware that their insurance policy insures flood, storm and sea surge damage differently. For example, assume a policy covers storm damage but not flood damage and that a list of events is not prescribed. If the insurer includes 'storm' as an event that is covered but doesn't list 'flood'³ on the statement at all, consumers may reasonably assume that a flood following a storm will be covered under their policy. Where all three risks are listed, a consumer can clearly see that storm is covered but flood is not.

³ Where 'flood' is defined along the lines of the current proposed definition, that is, the covering of normally dry land by water that has escaped or been released from the normal confines of a lake, river, creek, other natural watercourse, reservoir, canal or dam.

Prescription is also important to ensure that only the most important events are listed on the KFS. This recognises that adding too much information will be counter-productive, as less useful information will distract users from more important elements. The Government's decisions of which events must be included on KFSs should be guided by consideration of the impact those events may cause, or their potential to cause confusion.

Prescribing the events listed will also prevent insurers from adding further events to make the policy appear more comprehensive and attractive, for example component parts of events that would ordinarily be considered one item or other standard elements of insurance policies. This would clutter up the statement, making it harder for consumers to read it and identify the most important elements, and potentially turn the statement into more of a marketing or promotional document, undermining the purpose of this reform.

Broadly speaking, we agree that the standard cover regime (as set out in the *Insurance Contracts Act 1986* (Cth) and the *Insurance Contracts Regulations*) provides the best starting point for events that should be included on the KFS. The existing list of events prescribed in the standard cover regulations is intended to reflect the most important events consumers would typically expect to be covered for under these policies, so it would be sensible to use the same list to determine the events most relevant for inclusion in a key facts statement. Using the existing list will also be administratively efficient and avoid delay in determining a new list.

Finally, we recommend that Government consider requiring insurers to indicate on KFSs whether the policy in question does or does not meet standard cover as defined by the Insurance Contracts Act and Regulations. We believe this could operate as an assurance that a policy meets minimum standards of cover and will encourage insurers to provide competitively priced policies which meet the requirement. The meaning of 'standard cover' could be briefly explained on the reverse of the KFS.

Natural disaster events

Should all of the natural disaster events that are considered to be prescribed events in the standard cover regime be included in the KFS? If not which natural disaster events should not be included?

Not necessarily. Events should be included on the KFS based on their potential impact or the likelihood consumers will be confused about whether or not they are covered. A natural disaster that does not meet these criteria should not be included in the list merely because it is a natural disaster.

What is not covered

Our position

- We do not believe the models in Appendices A or B of the discussion paper are a suitable model. We have suggested an alternative model which combines elements of both.
- Wholesale exclusions from standard cover events should all be noted on the KFS, whether or not those events are ones required to be included on the KFS. Not all partial exclusions or limitations will need to be listed, given space limitations.

- Where it is not possible to list all exclusions, insurers should be required to list those which would be unusual for that kind of policy, or that would be expected to cause confusion.
- KFSs should note sections of the PDS that consumers can get more information about particular exclusions.

We do not believe either the model in Appendix A or Appendix B of the discussion paper are suitable. However, as we suggested in our submission to the Government's *Clearing the Waters* discussion paper, we believe some elements of both can be combined to create an acceptable model:

Event/Risk	Is it covered?	Main Limitations / Exclusions
Fire or explosion (see PDS at x.yz)	√	Damage from ash or soot if there is no fire in your home is excluded (see PDS paragraph x.yz)
Stormwater/rainfall runoff (see PDS at x.yz)	√	None
Flood (see PDS at x.yz)	√	None
Tsunami/action of the sea (see PDS at x.yz)	x	
Theft (see PDS at x.yz)	√	Theft by persons living with you is excluded (see PDS paragraph x.yz)
Accidental glass breakage (see PDS at x.yz)	Up to \$750	Maximum payment for each event is \$750 (see PDS paragraph x.yz)
Sudden escape of liquid (see PDS at x.yz)	√	Damage from liquid escaping slowly is excluded (see PDS paragraph x.yz)

The advantages of this format are:

- It allows all prescribed events/risks to be listed in the table at the same place on all key facts statements, that is, in the left hand column in a standard order. Readability could further be enhanced by requiring that risks that are covered be shaded in green, those not covered in red and those partially covered in orange. Where the left hand column is headed 'What is covered' (as in the example in Appendix A) some insurers would list a risk in the left hand column and some in the right, depending on whether they covered it or not;
- it allows the right hand column to purely list limitations/exclusions of coverage of an event which is covered, making a cleaner, more easily understood table. In the model in Appendix A, some entries in the right hand column ('what is NOT covered') would be wholesale exclusions of events, and other entries would be limitations on events covered.
- it adopts the tick or cross system of the example at Appendix B, but will avoid some confusion about the meaning of tick symbol and the term 'partial'. In the Appendix B example, the tick symbol is both used to signify that an event is covered with no exclusions (storm and flood) and also that an event is covered, but with some exclusions (fire, theft, sudden escape of liquid). The example then uses the word 'partial' to signify

that an item is covered up to a certain amount. In effect then, the tick symbol can actually mean 'partial' (because coverage for the risk is partially excluded), and 'partial' actually means 'up to a certain amount'. It is also unclear whether a tick or the word 'partial' would be used to signify an event that is covered up to a certain amount, with some exclusions. Our suggested model clears up this problem;

- It clearly states if there are no exclusions to the cover of a particular risk. Where the 'exclusions' field is left blank (as in examples in both Appendix A and B), consumers may be unsure whether this means there are no exclusions, or simply that the exclusions are not listed.

What exclusions should be included in the “what is NOT covered” section?

Any wholesale derogations from a standard cover event, for example a total exclusion for flood damage, actions of the sea or damage caused by the escape of liquid, should be flagged on the KFS. This kind of exclusion should be mentioned on the KFS even if the standard cover event is not one that is otherwise prescribed to be listed in the 'covered' or 'not covered' section of the KFS. This may require an additional section of the KFS titled 'other exclusions'.

However, there may also be a number of partial derogations from standard cover events under a policy, for example, damage caused by the slow escape of liquid as opposed to any escaping liquid is a partial derogation. It may not be possible to list all partial derogations from standard cover on the key facts statement if they are too numerous, and indeed listing every exclusion in detail could make the key facts statement less accessible and so less useful.

Where it is not practical to list all exclusions, those listed should be the most significant derogations, for example, exclusions which are unusual or those which cause most confusion for that type of policy. This should be determined by looking to the reasonable expectations of an insured about that type of cover as a guide.

In addition, the consumer should be put in a position to easily find the other exclusions in their PDS. For example, after listing all exclusions as is practical for a particular event, text such as the following could be inserted:

Other exclusions such as [example] and [example] also apply. Please see paragraphs x.yz, x.yz and x.yz of your PDS for details.

Should the “what is NOT covered” section of the KFS only reflect the reverse of the “what is covered” section?

No. As mentioned above, any wholesale exclusion of a standard cover event should be mentioned on the KFS, even if this event is not required to be listed in the 'what is covered' section.

Should the “what is NOT covered” section reflect only events in relation to those contained in standard cover or should it be extended to include parts of the standard cover exclusions?

As discussed above, we believe the prescribed events under the standard cover regime are the best starting point for events that should be listed on the KFS. We do not propose listing events outside of standard cover at this point. However, Government should be open to changing the events listed on the KFS in future if this becomes necessary.

Sub-limits and excesses

Our position

In brief:

- Sub-limits and excesses should be disclosed in all cases.
- We approve of including statements on KFSs that an excess may apply, as long as they are worded simply and refer to specific paragraphs in PDS where consumers can find more information. Text referring to excesses should make clear that paying an excess is not a pre-condition of making a successful claim.

Sub-limits should be disclosed in all cases, as they significantly change the level of cover. Our suggested format discussed above provides an easy way to disclose sub-limits. In particular, the phrase 'sub-limits' should not be used on KFS as it is not widely understood by consumers.

The discussion paper suggests there may be times where a KFS cannot disclose sub-limits, for example where sub-limits are not a standard inclusion but can be chosen by a consumer to reduce their premium. We accept that sub-limits may not be able to be disclosed regarding these policies where the consumer is at an early 'shopping around' stage. However, where a consumer has made a decision about whether or not to apply the sub-limit (for example, when receiving contracts to sign, or when they have entered into contract over phone), the KFS should disclose the sub-limit so there is no doubt about coverage. This may mean that a KFS has to be provided twice in some circumstances, such as where consumer receives a KFS once during the shopping around phase, and again when they have made a decision about the sub-limit.

It is also important to disclose excesses on the KFS. Research by the Brotherhood of St Laurence has demonstrated that the amount of an excess is a significant factor in the assessment made by low income consumers of the value of insurance⁴. Requiring excesses to be noted on the KFS will assist low income consumers to consider costs of both premium and excess when shopping around.

Low income consumers can be discouraged from taking out insurance by the size of an excess and the misunderstanding that payment of the excess is a pre-condition of having a claim accepted. This is not the case. The New South Wales Supreme Court and the Financial Ombudsman's service have taken the view that an insurer cannot avoid liability simply because the consumer is unable to pay an excess. In these cases, insurers can still recover the excess amount by deducting it from the amount of any settlement⁵. It is important that any wording on the KFS regarding excesses is clear that payment of the excess is not a pre-condition of making a claim.

Consultation questions

Is it appropriate to include information on specific excesses in the KFS?

Yes. We have addressed this question above.

⁴ Dominic Collins (2011) *Reducing the Risks: Improving Access to Home Contents and Vehicle Insurance for Low-Income Australians*, Brotherhood of St Laurence, p 29. Accessed 23 March 2012 from

http://www.bsl.org.au/pdfs/Collins_Reducing_the_risks_insurance_2011.pdf

⁵ See discussion of this point in Collins (2011), p 17.

Is it appropriate to include a statement in the KFS acknowledging that sub-limits/ excesses apply in relation to a HBHC insurance policy?

Sub-limits and excesses should be disclosed clearly on the KFS.

It is appropriate to include a statement to the effect that sub-limits or excesses may apply, as long as it is worded simply. As argued above, all references to the PDS should refer to specific paragraphs to allow consumers to find the information easily.

Is the wording of the statement [on page 19 of the discussion paper] regarding sub-limits and excesses appropriate?

No. The statement should include references to the sections of the PDS that refer to the excess.

Is it appropriate to include information on specific sub-limits in the KFS or should sub-limits be required to be acknowledged on the KFS with a reference that more information should be obtained from the relevant PDS?

Sub-limits must be disclosed on KFS, as discussed above.

Cooling off period

Consultation questions

Should the time period for the cooling off period be in the KFS?

Yes. Cooling-off periods will assist many consumers to ensure they have time to properly consider their policy before finally committing to it. Any cooling-off rights should be clearly disclosed. However, we would stress that cooling-off periods are not a complete protection. They do not, for example, make a PDS any simpler to read and understand.

Is the wording of the cooling off period statement appropriate?

No. The statement should be clear that the cooling off period allows a consumer to cancel their contract without any cost. As above, the wording of the cooling of statement should be made as simple as possible, and should be consumer tested for comprehension.

Statement on how to use the KFS

Our position

Broadly, we recommend that standard statements such as the 'How to Use a KFS' statement, (and the 'general health warning' and statement on the Wayne Tank principle discussed below) should be used sparingly if at all. Paul O'Shea's study of simplified disclosure models for consumer credit products found that there was little evidence that these kinds of "statements of other information" provided any benefit and there was a risk that they would distract users from more important elements.⁶

⁶ Paul O'Shea, *Simplification of Disclosure Regulation for the Consumer Credit Code: Empirical Research and Redesign - Final Report*, Prepared for the Standing Committee of Officials of Consumer Affairs by Uniquet Pty Limited, 12 March 2010. Pages 89, 119.

We do not oppose the inclusion of a statement noting the limitations of the KFS as long as it is simple and concisely worded. However, based on O'Shea's findings we do not believe it will have any significant impact on users.

Consultation questions

Is a "How to use a KFS" statement required?

We have no concerns with including a general statement on the purpose of the KFS as long as it is simple and concise and does not detract from other more important information on the KFS.

We also have no concerns with this statement advising consumers that they should also read and understand their PDS before entering into the contract. However, it is unrealistic to expect that this kind of statement will prompt anybody to read their PDS. Consumers are already aware that they should read their PDS, but most won't do so because PDS' are dense, complex and difficult (if not impossible) for many consumers to understand. A generic warning will not overcome that problem.

We suggest that a better option may be to ensure that the KFS refers consumers to refer consumers to specific paragraphs of the PDS which are particularly important. For example, where the KFS discusses what is not covered, it could also note which sections of the PDS set out the policy exclusions in more detail.

Is the wording of the proposed "How to use a KFS statement" appropriate?

We suggest that the wording of this statement be tested and refined through consumer testing.

General consumer warning/risk statement

Discussion questions

Is a "General consumer warning/ Risk statement" required?

AND

Is the wording of the proposed "General consumer warning/ Risk statement" appropriate?

No. A statement like the one proposed on page 22 (which simply tells consumers that insurance costs a lot of money and they shouldn't buy a policy which does not meet their needs) does not tell consumers anything that they do not already know, and does not provide any help to select the right insurance policy. That being so, it will only distract users from useful information and so should not be included.

Health warning

Summary of our position

- We are in favour of 'health warnings' as recommended by the Natural Disaster Insurance Review (**NDIR**) panel's final report.⁷ However, we do not support the kind of 'general health warning' proposed by the discussion paper.
- An indication on KFSs of whether the policy meets standard cover may be a more useful 'general health warning'.

⁷ See pages 103-4.

The NDIR panel's final report recommended that 'health warnings' be provided to consumers purchasing insurance to ensure they are aware if the policy does not provide cover for flood. This recommendation was made because the NDIR panel found (and we agree) that the magnitude of harm caused by floods and consumer confusion around flood cover is so great that a specific, high impact warning is required for this risk. The intent is that this warning will prompt consumers to not continue with a purchase of insurance that does not cover against flood (if they are aware they face a flood risk) and make further enquiries about securing flood cover.

A 'general health warning' like the one proposed on page 23 of the discussion paper is not the same kind of warning as that proposed by the NDIR panel. Like the 'general consumer warning/risk statement', does not provide any useful information—it simply re-states that natural disasters can cause financial hardship and that consumers should choose cover that is right for their needs. Nor does it assist consumers to either assess their risk or choose the best policy for them.

A more useful 'general health warning' than the one proposed by the discussion paper could be to require insurers to tell consumers about the implications of a sum insured covered and be specifically designed to encourage demand for total replacement policies. A warning could be along the lines of the following:

Warning: Sum insured: "the policy will only cover you up to a fixed amount"
Total replacement: "the policy will cover all repairs or replacement, whatever the cost"

Similar warnings should be provided in policies that include significant exclusions. It must be understood that the purpose of a health warning is to encourage choices that would be "healthy", and to discourage choices that will leave consumers under-insured. A bland health warning such as that is included in the discussion paper does nothing to encourage consumers to seek insurance cover that will not leave them under-insured.

Discussion questions

Is a general health warning required? If so, where should it appear – front or reverse side of the KFS?

AND

Will a general health warning be beneficial for consumers when looking at particular policies?

No, for the reasons discussed above.

If a health warning is on the KFS, should the warning also focus on the potential risks for failing to secure appropriate insurance cover? Or the adverse effects of underinsurance?

Warnings about the adverse effects of underinsurance should be given as part of a warning that sum insured cover may leave consumers underinsured.

The Wayne Tank Principle

We do not believe it will be useful to include a general statement on the Wayne Tank principle on the KFS. Although the application of this principle may cause unexpected detriment to consumers, including this kind of statement will not assist consumers to avoid or insure against this risk (for example, by shopping around).

Additional information statements

We believe that the KFS should prioritise information necessary to draw consumer attention to key elements of their policy and allow them to compare competing policies. Additional statements risk cluttering the KFS and distracting attention from more important elements, so should only be included if they will provide extra benefit.

Of the items listed on pages 24-25 of the discussion paper, we suggest that the following should be included:

- a brief explanation of the three policy types (for the reasons mentioned above);
- a statement warning that other exclusions and limitations may apply, and referring consumers to the PDS (this note should appear on the front of the KFS at the point that exclusions are listed, and should refer consumers to specific paragraphs in the PDS);
- a statement about consumer rights to internal and external dispute resolution (this could appear on the reverse of the KFS).
- sources of additional relevant information (only if space allows, and only on the reverse of the KFS); and

If included at all, the other statements should only be included on the reverse of the KFS.

Structure

Refer to the discussion in the 'What is not covered' section above for our comments on structure.

General Formatting

As many details of format and structure of the KFS should be prescribed as is possible. This should include the terms used to describe particular events, the order in which events are presented, font size and layout. This will ensure that KFSs are standard across providers, able to be understood and able to be compared.

When the KFS is required to be provided

Our position

Broadly, we are of the view that:

- KFSs should be made freely available for consumers who are shopping around for insurance, for example on insurers' websites to promote informed decision-making and competition;
- insurers should be under a positive duty to provide a KFS whenever they are providing a quote whether written, online, or via phone (subject to reasonable exclusions, discussed below)
- insurers should be required to provide a KFS on request, without exception.

Further, the regulator must be undertake regular compliance to ensure that KFS are being provided. We note that CHOICE undertook a home loan key fact sheet shadow shop recently

and found significant non-compliance.⁸ Without compliance with these requirements, the requirements will be meaningless.

Discussion Questions

Are the situations where a KFS is not required to be provided as outlined above appropriate?

AND

How will consumers be affected if the scope of any potential exemptions from the requirement for insurers to provide a KFS is wider than those outlined above?

It is important that KFSs be made freely available if the policy aims of the KFS regime are to be realised (that is, increase understanding of cover, reduce the possibility of underinsurance, and promote competition)

We acknowledge the reasoning for the exemptions proposed on page 27 of the discussion paper (essentially that a KFS does not need to be provided if the consumer either already has one or has said that they do not want one). However, we would object to further exemptions which may undermine the intent of the KFS scheme.

Delays in the provision of KFS

Our position

- Insurers should be required to provide a KFS immediately, except where this is impossible (for example, where a telephone quote is given to a consumer with no internet access).
- Where a KFS cannot be provided immediately, there should still be a duty on insurers to dispatch KFSs immediately.

Are there any circumstances where it is appropriate to allow for insurers to provide a KFS at a later date if it not possible to provide it at the time of inquiry?

In our view, there will be very few situations in which an insurer is not able to provide a KFS at the time a consumer requests one or makes a relevant inquiry. The only situation we can envisage where a KFS could not be provided immediately would be where an inquiry was made by phone and the consumer did not have internet access. Even in this situation, however, a consumer could receive a KFS via post within a few working days at most. There is no reason why it should take 14 days for a consumer to receive a KFS.

Even where there are situations where it is reasonable for a delayed receipt of a KFS, insurers should be under an obligation to dispatch KFSs immediately.

Should the issue of the quotation of HBHC insurance policies over the telephone be considered in the context of the provision of the KFS?

Obligations on insurers to provide a KFS for phone quotes should be made clear in the relevant Act/Regulations to remove any doubt. However, we see no need for a departure from the requirement that insurers must either provide or at least dispatch a KFS immediately on inquiry.

⁸ CHOICE, 'Home loan key fact sheet shadow shop', February 2012, available at: <http://www.choice.com.au/reviews-and-tests/money/borrowing/your-mortgage/home-loan-key-facts-sheet-shadow-shop.aspx>

Method of providing the KFS

We approve of insurers proving KFS electronically to ensure that consumers can receive a KFS as quickly as possible.

Review of effectiveness

We welcome the commitment to consumer test a prototype KFS once this round of consultation is complete. However, we believe it will also be useful to review the KFS scheme after it has been in operation.

We recommend that Government review the effectiveness of the KFS scheme two years after their introduction to test how well they are meeting their objectives. This review should include testing of:

- whether wording or format could be changed to improve consumer understanding of key points and usefulness as a comparison tool; and
- whether the matters included on KFS are the most important points.

Please contact David Leermakers on 03 9670 5088 or at david@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

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