



11 January 2012

By email: economics.reps@aph.gov.au

Committee Secretary
House of Representatives Standing Committee on Economics
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Secretary

Review of the Insurance Contracts Amendment Bill 2011

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to contribute to the review of the Insurance Contracts Amendment Bill 2011 (**the bill**).

We strongly support the introduction of a standard definition of 'flood' and key facts sheets for consumer insurance contracts. We have recommended some minor amendments to the bill 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.

Since September 2009 we have also operated a new service, 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.

General remarks

Consumer Action strongly supports both proposals in the bill—the introduction of a standard definition of flood and a key facts sheet regime for prescribed insurance contracts.

Our previous submissions have articulated why both proposals are necessary to reduce consumer confusion about flood cover and indeed consumer insurance products more generally.

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We attach a joint submission to the Treasury discussion paper, *Clearing the Waters*, for your information.

However, these proposals do not address problems relating to availability or affordability of flood insurance and so are only a part of the solution. Consumer Action supports the findings of the Natural Disaster Insurance Review panel that a central funding pool and a system of premium discounts will be necessary to ensure flood insurance is available to all consumers who need it.¹ A large number of consumers are currently uninsured or underinsured for flood. This problem may grow if insurers are required to offer flood cover in all home and contents policies, as currently proposed by the Government.² Unless this scheme is complemented by measures to improve affordability, the cost of home and contents insurance may become prohibitive and those on the lowest incomes will be more likely to be uninsured.

We acknowledge that this point is strictly out of scope of the current inquiry, and will be considered by a separate discussion paper *Reforming Flood Insurance: A Proposal to Improve Availability and Transparency*. However, the proposals in the bill are responses to the same problems, and need to be considered with the broader reform context in mind.

Definition of Flood

Proposed section 37C: duty to "clearly inform" consumers whether contract provides flood cover

We welcome the intent of proposed section 37C that insurers would be required to inform consumers if an insurance contract under consideration by the consumer did not provide flood cover. However we are concerned that the current wording of 37C will make this provision ineffective.

Proposed section 37C requires insurers to "clearly inform the insured in writing" whether a contract provides flood cover. However experience with this phrase in the Insurance Contracts Act, particularly with the standard and unusual cover provisions at sections 35-37, has shown that the "clearly inform" requirement has not operated to ensure consumers understand the effect of non-standard and unusual terms in their policies.

Section 35 aims to define the risks that should form part of an ordinary version of a particular class of consumer insurance contract and requires that, if a claim is made under a prescribed contract for damage caused by one of the standard risks, the insurer cannot refuse to pay the claim. The exception is that the insurer will not have to pay the claim as required by the standard cover scheme if:

- they have "clearly informed the insured" that that type of risk was not covered; or
- the insured knew, or a reasonable person in the circumstances could be expected to have known that the contract would not require the insurer to pay the claim.

¹ The Panel's report is available here: <http://www.ndir.gov.au/content/Content.aspx?doc=report.htm>

² See the discussion paper *Reforming Flood Insurance: A Proposal to Improve Availability and Transparency*.

The purpose of this provision is to ensure that insurers either offer coverage equivalent to standard cover or ensure consumers are aware that they are receiving coverage which is less than the standard.

However, an insurer can satisfy the "clearly inform" requirement simply by disclosing in a policy document or PDS that a relevant risk is not covered. This is despite broad recognition that PDS' are not an effective tool for informing consumers of the contents of a contract, as they are too complex for many consumers to understand or even read.³ This means that section 35 fails to ensure that consumers are made aware of critical exclusions from their insurance cover. We note that this problem seems to have been recognised in proposed section 33D, which states that provision of a key facts sheet is not to be taken as "clearly informing" a consumer of the information within it.

This problem has been recognised for some time—the Final Report of the 2004 Review of the Insurance Contracts Act acknowledged this problem and recommended that the 'clearly inform' requirement in sections 35-37 be replaced by a requirement that the information be presented to consumers in a 'clear, concise and effective manner'.⁴ Amendments to these provisions were included in the lapsed Insurance Contracts Amendment Bill 2007.

It is important that the requirement at proposed section 37C is a more effective provision in comparison to that in section 35, rather than repeating the same problem.

Recommendation

We recommend that proposed section 37C be amended to

- replace the terms "clearly inform" with a requirement that the information be presented in a "clear, concise and effective manner"; and/or
- provide that, in addition to any statements in the PDS, contract or other documents, an insurer must take steps to ensure that the insured knows, or a reasonable person in the circumstances could be expected to have known whether the contract provides cover for flood.

Key Facts Sheets

Electronic provision of key facts sheets

We agree with intent expressed in the Explanatory Memorandum⁵ that insurers can satisfy their obligations by providing a key facts sheet electronically, as long as consumer consents to receive it in electronic format. In general, we are of the view that insurers should be encouraged to provide key facts sheets as early as possible after a consumer makes inquiries about a relevant product.

³ For example, see paragraphs 4.48 to 4.60 of the regulation impact statement for the key facts sheet proposal.

⁴ Review of the Insurance Contracts Act, June, 2004, Chapter 5: standard cover, available at: <http://icareview.treasury.gov.au>.

⁵ at paragraphs 2.30-2.35.

However, we believe that as a general rule any document that is provided electronically should be subject to the *Electronic Transactions Act 1999* (Cth), and appropriate safeguards including:

- clarity;
- consent by the recipient to electronic communication and nomination by the recipient of an information system for that purpose;
- ability to print and retain the communications; and
- certainty of time and place of origin and receipt.

We note that this was recommended by the 2004 Final Report of the Review into the Insurance Contracts Act.

Transition period

The explanatory memorandum suggests that key facts sheet regulations will allow for a two year transition period for insurers to make necessary changes.⁶

While we recognise that insurers will need time to put processes in place to comply with the key facts sheet requirements, we query whether two years is necessary. We note that much shorter transition periods apply to the introduction of key facts sheets for home loans (around six months) and credit cards (around 12 months).⁷

The key facts sheet regime was proposed because the natural disasters in 2010 and 2011 clearly demonstrated that many consumers do not understand the extent of their coverage and face considerable financial and emotional distress if they only find out after it is too late. It is critical that this reform be introduced as quickly as possible. We urge the government to limit the transition period to the minimum time necessary.

Recommendation

We recommend the Government reconsider the length of the transition period and ensure it is as short as possible.

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

Yours sincerely

CONSUMER ACTION LAW CENTRE



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⁶ At paragraph 2.44.

⁷ *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011*. This Act received royal assent on 25 July 2011. Home loan key facts sheets provisions came into force on 1 January 2012, the credit card provisions will commence on 1 July 2012.