

## KEY FACTS SHEET (KFS) AND THE IMPACT FOR INSURANCE BROKERS

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### OVERVIEW

The Insurance Contracts Amendment Regulation 2012 (No.2) was registered on 9 November 2012 and amends the *Insurance Contracts Regulations 1985* (Regulations) to require an insurer to provide a consumer with a one page key facts sheet (KFS) for insurance contracts containing certain home building and/or home contents insurance that meets specific content requirements.

The aim of the KFS is to enable consumers to easily access key information about, and compare, similar insurance contracts.

A KFS must be provided by the insurer when the consumer seeks information about the relevant contract and when a consumer enters into a contract.

It need not be provided where the customer is represented by an insurance broker.

The changes affect insurers and their agents, not insurance brokers acting for an insured.

Insurers must provide KFSs from 9 November 2014.

However, there are a number of concerns that have been identified with the KFS content which are currently being considered by Treasury and ASIC and there may be further developments.

We set out below a summary of the requirements.

### GENERAL REQUIREMENTS

The KFS requirements apply to the following classes insurance:

- a home buildings insurance contract; and
- a home contents insurance contract,

as defined in the Insurance Contracts Regulations 1985 (regulations 9 and 13).

A reference to a contract of insurance includes a reference to a proposed or possible contract.

The effect of the Regulations definition is that any *policy/contract* that contains the home buildings or home contents *cover* as defined in the regulations is caught.

This will include standard home and contents policies.

However, other policies can be caught such as landlords insurance, strata or package policies (e.g farm packs) that contain such cover by reason of the way the definitions are drafted in the Regulations. Unfortunately, whether they will be caught or not can depend on the risk insured.

It will be for the insurer to determine if the policy is caught or not. As with PDSs, insurers may choose to issue a KFS if there is a risk an insured risk may in limited cases be caught. Others may avoid doing so by restructuring the policy or underwriting acceptance criteria.

While technically the whole contract is caught, the KFS is only intended to apply to the relevant home buildings and/or home contents cover and not to other covers in the contract.

The confusion that can arise in such cases is obvious and insurers have expressed concerns to Government in this regard.

### **Formatting Requirements**

A KFS must contain the information, and be completed, in the way specified in the Forms attached in Schedule 3 to the regulations (See KFS Forms section below). The value to a consumer of the information required, much of which will differ between insurers and policies, is questionable.

The KFS is subject to set criteria regarding size (A4), font (Arial), font size (varies for different headings, contents and footnotes) and colour of font and backgrounds (which is multiple). A document that is solely in black and white is not permitted.

### **When and how a KFS is to be provided**

The regulations set out when and how it can be provided as well as certain exceptions:

- Subject to the exceptions noted below, it must be provided (from 9 November 2014) as soon as reasonably practicable, but not later than 14 days, after the consumer:
  - first requests information about the contract; and
  - enters (including renewals) into the contract or potential contract with the insurer (but excluding any extension, variation or reinstatement of the contract).

The Explanatory Statement states that:

*“Where an insurer is required to provide the consumer with a key facts sheet as a result of the consumer entering into a contract and it is not practicable to do so, the requirement to provide the KFS as soon as reasonably possible will be considered to be before or at the same time as the provision of other disclosure documentation such as the Product Disclosure Statement was provided (that is within 5 days).”*

This means a KFS should be provided at the time of giving a PDS where a PDS is required to be provided. In some situations a customer may have already been provided with the PDS for a contract and they only require the KFS in which case it should be provided as soon as practicable and within 14 days.

An insurer (or an agent of the insurer) may provide the KFS by electronic means, including by a link sent in an email to the customer’s email address at the consumer’s request.

The word ‘provide’ is not defined. The Explanatory Statement states:

*“When demonstrating that the provision of a key facts sheet occurred, consideration will be given to:*

- *direct evidence of the provision, such as a copy of email correspondence and/or the recording of the email address provided by a consumer for the purpose of receiving a key facts sheet;*
- *the usual practices of the insurer in relation to the provision of key facts sheets, including information on the way the usual practices are monitored and enforced; and*
- *relevant training practices imposed on the staff of the insurer in relation to when a key facts sheet is required to be given to a consumer.”*

Provision of the KFS by electronic means must be at the customer’s request. Where delivery is requested by electronic means, the safer option will be to ‘provide the KFS via a link sent by email to the consumer’s email address’ (as explained in the Explanatory Statement).

Alternatively, providing a copy of the KFS as an attachment to an email will also meet the requirement to provide the KFS as long as the document is in the format prescribed by the regulations.

It is possible that a KFS may be provided by electronic means other than by email, for example access to a secure website or other electronic communication mechanisms.

However, messaging services such as SMS are not likely to facilitate delivery of the KFS in the format prescribed, so unless the KFS can be displayed or easily accessed in the required format, a particular delivery method, such as SMS, may not be suitable.

If an insurer has a website that is accessible by members of the public, the insurer must keep a copy of the most current/most recent version of each KFS for a contract on the website, in a format that may be downloaded by members of the public. This would appear to apply to agents of the insurer with such sites.

The Regulations do not require that earlier versions of a KFS be retained on a website if they are not the most current version. Timeframes for retaining a KFS are also not prescribed. It would appear sensible to retain them for at least 7 years after the time in which the KFS is no longer current.

Insurance brokers acting as agent of the insurer may be requested by the insurer to also retain copies on the insurance broker’s website.

#### **When a KFS does not need to be provided**

- An insurer is not required to provide a consumer with a KFS for a contract:
  - if:
    - the insurer has already provided the consumer with the KFS; and
    - the KFS has not changed since then, other than any change to the date of the KFS; or
  - if:
    - the insurer believes, on reasonable grounds, that someone else has already provided the consumer with the KFS; and
    - the contract has not changed since then, other than any change to the date of the KFS; or
  - if the consumer:
    - requests information about the contract from an insurance broker; or
    - enters into the contract through an insurance broker who is not acting as an agent of the insurer in relation to the contract; or
  - if the consumer does not provide the insurer with the consumer’s address (postal or electronic) to which the KFS is to be sent; or

- if the consumer informs the insurer that the consumer does not want the KFS.

### **When does an insurance broker need to provide a KFS?**

The requirement to provide a KFS rests with the insurer. It will need to meet the obligation directly or through its agents.

There is no direct obligation on an insurance broker to provide a client with a KFS.

### ***Acting as agent of insurer***

Insurance brokers who act as agent of the insurer, for example under a binding authority, will need to provide the client with a KFS in their capacity as agent of the insurer where the relevant triggers arise (unless the insurer can practically do it for them) ie:

- the consumer first requests information about the contract; and
- if the consumer enters into the contract or potential contract with the insurer (excluding any extension, variation or reinstatement of the contract).

It is important to remember that under the Act, the provision by an insurer of a KFS to a person does not constitute clearly informing the person of the matters contained in the KFS (i.e. for compliance with section 35).

### ***Acting on behalf of the client***

*Insurance brokers acting on behalf of the client are not required to provide the client with a KFS.*

An insurance broker providing personal advice should never rely on provision of a KFS to meet their obligations to their client, just as it would not be prudent to simply rely on provision of the PDS to the customer.

There seems to be little value in insurance brokers acting on behalf of a client seeking to provide clients with a KFS.

Provision of a KFS to a client by an insurance broker runs the risk of creating unnecessary confusion, as the KFS is an extremely limited summary of prescribed information about the policy only and in our view, flawed in many respects.

If a client requests one, an insurance broker could obtain a copy from the insurer and pass it on to the client making sure that they clearly advise the insured of the limited nature of the information provided and otherwise meet their obligations at law in advising the client.

### **IMPORTANT NOTICE**

**This document is designed to provide helpful general guidance on some key issues relevant to this topic. It should not be relied on as legal advice. It does not cover everything that may be relevant to you and does not take into account your particular circumstances. It is only current as at the date of release. You must ensure that you seek appropriate professional advice in relation to this topic as well as to the currency, accuracy and relevance of this material for you.**