



National Insurance Brokers Association.



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NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA (NIBA) RESPONSE TO REFORMING FLOOD INSURANCE CONSULTATION PAPER ABOUT NIBA

NIBA is the voice of the insurance broking industry in Australia. NIBA represents 500 member firms and over 2000 individual qualified practising insurance brokers (QPIBS) throughout Australia.

Over a number of years NIBA has been a driving force for change in the Australian insurance broking industry. It has supported financial services reforms, encouraged higher educational standards for insurance brokers and introduced a strong independently administered and monitored code of practice for members.

The 500 member firms all hold an Australian financial services (AFS) licence under the Corporations Act that enables them to deal in or advise on risk insurance products.

ABOUT INSURANCE BROKERS

The role of insurance brokers

The traditional role of insurance brokers is to:

- advise customers on what insurance is appropriate for the customer's needs
- assist customers to arrange and acquire insurance; and
- assist the customer in relation to any claim that may be made by them under the insurance.

In doing the above the insurance broker acts on behalf of the customer as its agent. Insurance brokers offer many benefits to consumers:

- assistance with selecting and arranging appropriate, tailored insurance policies and packages
- detailed technical expertise including knowledge of prices, benefits and pitfalls of the wide range of insurance policies on the market
- assistance in interpreting, arranging and completing insurance documentation

- experience in predicting and reducing risks
- assistance with claims and a higher success rate with settlements (about 10 per cent higher than claims made without a broker).
- in limited cases insurance brokers may act as agent of the insurer not the insured but where such a relationship exists the customer is clearly advised up front.

NIBA supports the work being done to reduce that confusion for those affected by the recent floods and to try and stop such confusion and heartache from happening again in the event of another natural disaster.

The issues are complex and NIBA's view is that it will involve more than just the insurance industry making changes to address the issues that have arisen.

For ease of reference NIBA has simply set out the relevant sections of the consultation paper below and inserted its comments on each of the proposals in the report where relevant in *yellow italics*.

PART A: PROPOSALS FOR CONSULTATION

PROPOSAL 1: STANDARD DEFINITION OF FLOOD

WHAT IS THE PROBLEM?

17. There are various possible sources of inundation that can cause damage to property. The Insurance Council of Australia has suggested the risks can be divided into three broad categories, summarised below:
 - A. Stormwater/rainfall runoff: These terms refer to high intensity, short duration storms producing localised flooding. Most insurance policies (but not all) cover this risk. Some insurers also use the term 'flash flooding' with similar intent.
 - B. Riverine/inland flooding/flooding: Inundation caused by watercourses or catchments overflowing their banks due to long duration rainfall over large areas. Some insurers provide cover for this risk, but many exclude it. Whether included or excluded, the definitions of this risk can vary greatly.
 - C. Actions of the sea/sea level rise/storm surge: Inundation caused by movement of seawater. Few insurance policies cover this risk.
18. Aside from various definitions for category B (riverine flooding), some policies use terms such as flash flooding, accidental flooding and tidal flooding, to describe other types of inundation risk.
19. In the wake of the recent floods in Queensland and Victoria, a number of policyholders have reported that they were surprised that their policies did not cover the type of inundation that occurred. The majority of these cases relate to policies that do cover category A but exclude cover for category B (riverine flooding).
20. The variations in usage of the term 'flood' and 'flooding' in policies are a potential source of confusion for many consumers. For example, a policy which is stated to cover 'accidental flood' or 'flash flooding' could give the initial impression that the policy covers risks arising from rivers breaching their banks. However, the policy might contain an exclusion for riverine flooding cover that would be evident on a careful examination.

21. The different approaches taken in policies to 'flood' and related terms and potential confusion for many consumers makes product comparison difficult and may lead to underinsurance for flood risk.
22. The issues described above have been highlighted on a number of occasions.

For example, the Australian Securities and Investments Commission noted in a report of 2000 that due to difficulty in understanding policies on the issue of flood insurance, consumers may not be aware whether they are covered for flood and, if they are, about the importance of the distinction between flood and other storm damage. In 2008, the Australian Consumer and Competition Commission (ACCC) stated that a number of reports have highlighted a lack of consumer awareness in respect of flood cover — in particular: whether policies offer cover for flood damage; and the importance of the distinction between flood and other storm damage.

WHAT IS THE OBJECTIVE?

23. The objective is to help consumers to better understand whether an insurance policy includes cover for flood. In particular, it should be very clear to consumers how an insurance policy treats category B (riverine flooding). Reducing confusion about flood cover may reduce the risk of inappropriate cover and the associated negative consequences for affected policyholders if a relevant event were to occur.
24. The accessibility and affordability of category B (riverine flooding) cover in Australia is a complex issue that involves a range of factors, including availability of flood mapping data, mitigation strategies, availability of reinsurance cover, and others. Such matters are being considered in the Natural Disaster Insurance Review (see above). It is not the objective of this proposal to have all relevant policies cover category B (riverine flooding) risk.

WHAT IS THE STANDARD DEFINITION PROPOSAL?

25. The ongoing issue of consumer confusion over the meaning and extent of 'flood' coverage may be best addressed by standardising the definition of 'flood' and restricting the use of the terms 'flood' and 'flooding' to the standardised definition. Standardising the definition of flood in policies has been recently called for by industry and consumer representatives. It is the first point of the '10 Point Plan to Tackle Disasters' released by the Insurance Council of Australia and the first point of the twelve point plan 'A Fair Go in Insurance' released by a coalition of consumer advocacy and legal aid organisations.
26. The primary objective is to provide greater clarity on whether or not policies provide cover for category B (riverine flooding). The standard definition proposal under consideration by the Government has two elements:
 - introducing a standard form of words to describe category B (riverine flooding) risk, which is suitable to use by way of both an inclusion or an exclusion, and which would be required to be used by insurers in all relevant policy language; and
 - reserving the term 'flood' and 'flooding' for that specific purpose, so that potential confusion with other types of inundation risk is minimised.

A proposed definition

Flood means the covering of normally dry land by water that has escaped or been released from the normal confines of:

- A. any lake, or any river, creek or other natural watercourse, whether or not altered or modified; or
- B. any reservoir, canal, or dam.

A proposed restriction on usage

- 27. The definition would be associated with rules which provided that insurance contracts of the relevant class (see below) must not include the term 'flood' or 'flooding', except in association with the proposed standard definition. That restriction would also prevent those contracts from including compound phrases based on 'flood' (for example, 'flash flood' and 'accidental flooding').

ISSUES AND QUESTIONS

General approach

- 28. **Stakeholders may wish to make some general observations in relation to the proposal.**

NIBA has no issue with the three typical sources of inundation that can cause damage to property as described.

NIBA agrees that to reduce confusion for consumers in understanding what "Riverine/inland flooding/flooding inundation" risks are covered or not, a standard definition is preferable. Consideration as to whether the word used should be "flood" or a form of words that makes the limited riverine/inland nature of the concept clearer is worth reviewing.

The difficulty with the term "flood" is that a consumer's understanding of what the term may or may not mean (without a definition in a policy) is very broad, as is the case with the typical dictionary definition.

NIBA notes that the minimum cover prescribed events in the Insurance Contracts Act Regulations 10 and 14 relevant to inundation risks are "storm, tempest, flood, the action of the sea, high water, tsunami, erosion or land slide or subsidence" and "flood" is not defined. This will need to be changed to reflect any standard definition.

As an overall comment NIBA believes:

- *it is important that there be consistency as to the basic riverine/inland/flooding/flooding inundation definition;*
- *insurers seeking to cover "flood" as defined, but limiting the cover in certain respects, should be obliged to make the fact that there are such limitations clearer to insureds;*
- *insureds could be advised on where to obtain information on the flood risk of their area e.g local council - assuming such information is available;*
- *insureds could be informed of the basic loss types that such flood cover may protect them from so as to assist in their decision making;*
- *insureds could be generally informed of the other flood risks that may exist ie storm, sea surge, bursting pipes etc; and*
- *insureds should be informed that they should seek personal advice from an Australian Financial Services Licensee if they are unsure.*

The standard definition and other proposals will not however address the issues that commonly arise in relation to flood claims, notably, is it flood or not that was the "real or effective" cause of loss and the operation of the Wayne Tank principle where

there are concurrent causes of loss ie mixing of flood waters and storm waters where flood is excluded and storm is covered. In such a case the claim would be excluded by reason of the flood definition even though the storm water is covered. Such matters cause great concern and confusion for insureds and are a common area of dispute dealt with in flood insurance case law.

Consideration of whether a more cost/time effective solution to such issues in the case of disasters should be considered further e.g:

- independent expert binding both parties on such flood issues in cases of disasters;
- a legislative provision overriding the Wayne Tank principle in relation to home building and home contents policies e.g applying a "pro-rata" payment so insureds are not left without cover; or
- notices explaining the above issues – this may lead to some insurers seeking to obtain a commercial advantage by changing their stance through amendment of contractual terms.

Consultation questions:

A. Are the concerns noted above regarding consumer confusion about flood cover still valid?

NIBA believes they are given the variety of flood definitions in use.

B. If so, is a standard definition of flood cover a suitable means of addressing consumer confusion?

Yes it is a suitable means of addressing confusion but not on a stand-alone basis. See NIBA suggestions in 28 above as to what else may assist in addressing the flood issues. NIBA notes that if the restriction relates solely to the use of the term "flood", some insurers could avoid the issue by not using the term.

It appears from the proposal that insurers are not prevented from seeking to write back limited flood cover or provide flood cover but can if they choose, apply exclusions or limits to the scope of cover. If this were not the case the end result would be too inflexible and would most likely be to the detriment of insureds.

Assuming insurers must use the standard definition but can amend the scope of cover relevant to the definition, the end result of the proposal would be that insurers are able to choose to:

- exclude cover using the standard flood definition – section 35 would require notice of any such exclusion to the consumer;
- exclude cover but write back cover to a limited extent in the clause e.g we do not cover flood [as defined by standard definition] but we do cover you for #;
- provide cover using the standard flood definition;
- provide cover but limit the flood cover in the clause or elsewhere e.g we do cover flood [as defined by standard definition] except in the following respects # or subject to the following limits – section 35 would require notice of any such exclusion to the consumer;

The potential for confusion will arise in the second and fourth bullet point scenarios. There is only potential consumer detriment in the fourth bullet point scenario. The only way to stop this would be to impose a restriction on insurers from representing they provide "flood cover" where the standard cover is limited ie the scope of cover

for flood as defined in the standard clause is limited or if there are lesser flood specific limits (as opposed to limits to items of property that apply to non flood specific cover too). It may be that a requirement that an insurer warn the customer of the limits when referring to flood could help more clearly identify that the cover is not standard.

Appropriate advice from professionals such as insurance brokers can assist in reducing confusion and the proposed change will make it easier for insurance brokers to advise their clients. Consideration should also be given to including standard notices that inform insureds of the matters referred to by NIBA in 28 above.

What is the preferred form of the standard definition?

29. The draft proposal appearing above does not necessarily represent the Government's final position. Persons making suggestions may wish to take into consideration that a standard definition of category B (riverine flooding) would ideally be framed so that it:
- allows consumers to consider the extent to which the risk exists in their location;
 - is suitable for insurers to express either the inclusion or the exclusion of flood cover (that is, while not mandating provision of cover for riverine flooding, insurers that decide to exclude the cover would be making the identical exclusion); and
 - could be adopted without impacting negatively on the extent of flood cover currently provided.

Consultation questions:

Is the proposed wording of the standard definition appropriate?

NIBA believes it is.

However, consideration could be given as to whether the word used should be "flood" or a form of words that makes the limited riverine/inland nature of the concept clearer.

In relation to the point on whether the definition should allow consumers to consider the extent to which the risk exists in their location, the current clause doesn't cover such a concept. NIBA believe it is a good idea to have a notice to this effect where possible along with other forms of notice. See NIBA comments in 28 above.

The notice concept is like the notices insurers must provide in Product Disclosure Statements under the Corporations Act warning insureds where the insurer is an unauthorised foreign insurer and the risks associated with doing so. See Regulation 7.9.15 (in particular (c) which seeks to identify the risks of dealing with an unauthorised foreign insurer).

NIBA supports the concept of standard Flood information being provided in a PDS that identifies key generic matters consumers should consider to determine whether a policy without flood cover may be appropriate for them or not. Consultation between insurers, brokers and consumer groups and possibly FOS could come up with useful key messages of the type referred to above. Identifying who the consumer can contact to determine the flood risk in their area may be helpful, but only where such information is available e.g local council.

The clause as drafted would appear to be suitable for insurers to express either the inclusion or the exclusion of flood cover. NIBA notes that the scope of cover could be limited as discussed above.

In relation to the question of whether the standard definition could be adopted without impacting negatively on the extent of flood cover currently provided by insurers, nothing stops insurers from providing greater cover. However insurers will need to amend the existing clauses to add any cover they currently provide that is in excess of the standard definition. The risk is that if the standard definition of flood is less than that currently provided in the market, some insurers may seek to revert to the lesser cover. Commercially this is likely to be difficult where business is sold through insurance brokers. It is likely to be more of a risk for direct sales. For insurers that provide cover for "flood", the issue is simply whether the standard definition proposed is as extensive as the term "flood".

NIBA notes that the standard definition and its meaning may still be affected depending on where it is used and the relevant context. For example, if it is used with other expressions, such as "storm and tempest", either in the same or in other parts of the policy. For example, in the UK case of *Young v Sun Alliance & London Insurance Ltd (1976) 2 LI Rep 189* it was found that a cover for storm, tempest or flood limited the meaning of flood so that to be triggered there had to be some element of violence, suddenness and abnormality and not merely a shallow covering of a significant part of the insured's land.

B. Are there different wordings or different approaches that should be considered?

30. Paragraph (a) includes a natural watercourse that has been 'altered or modified'. Sometimes water channels are constructed within natural watercourses, following the natural drainage lines of the terrain.

Consultation questions:

A. Should water escaping from water channels constructed within natural watercourses be treated in the same way as water escaping from natural watercourses for the purposes of the proposed standard definition?

NIBA believes it should.

B. Does the language in proposed paragraph (a) cover those water channels and, if not, would it be appropriate to add some further elements to paragraph (a) or (b) to ensure that such water channels are included?

Case law seems to support the view that it would – see *Provincial Insurance Australia Pty Ltd v Consolidated Wood Products Pty Ltd (1991) 25 NSWLR 541*, but to avoid confusion and argument on the issue and the need for those insurers wishing to be clear on the issue to amend the standard definition, the definition could be amended to make it clear that water escaping from a built water channel/waterway is covered in the definition e.g by amending paragraph (b) to read "any reservoir, canal, dam, or other form of water channel or waterway, whether altered, modified or purpose built".

How could the proposal be implemented?

31. The proposed standard definition and the restriction on usage could be implemented through including appropriate provisions in the *Insurance Contracts Act 1984* (**the Act**).
32. Although the existing 'standard cover' regime in section 35 of the Act might be used as a platform, there are likely to be advantages in making the proposal independent of that framework because:
 - under the existing 'standard cover' regime, it would be possible for insurers to modify the standard definition, provided that they 'clearly informed' policyholders of the changes;
 - permitting modification may undermine the benefits of the standardisation; and
 - making the statutory framework for the standard definition independent of the existing standard cover regime would provide some additional flexibility over which policies it applies to, should that be required (see below).

Consultation questions:

A. Are there other options that should also be considered?

NIBA agrees that the Insurance Contracts Act is probably the most suitable option. The concept of a standard definition for flood does not really fit within the minimum cover type provisions. It is more of a standalone concept. The term flood in the minimum cover regulations – see regulations 10 and 14, would need to match the standard definition.

The Corporations Act PDS requirements are another alternative assuming the standard definition is to be limited to retail clients. This could also allow for the imposition of notice requirements linked to the PDS. The impact of any Insurance Contracts Act changes on Regulation 7.9.15E should be considered.

Consideration should also be given to an appropriate transition period in which policy changes can be made and implemented. Systems and documentation changes can take some time and there are obligations that apply in relation to PDSs that will need to be taken into account in drafting the transition period. NIBA expects that a period of between 18 -24 months before changes are actually required may be reasonable. Feedback from insurers is necessary in this regard.

B. If the standard cover regime is not used as the platform for the standard definition, should the definition of 'flood' for that purpose also be aligned with the standard definition required to be used in policies?

Yes it should.

To what types of insurance policies should the proposed new rules apply?

33. The proposal could be restricted to home buildings and home contents insurance policies. Classes of such policies are already legally defined through the operation of the standard cover regime in the Act, and Corporations Regulations 7.1.12 and 7.1.13.
34. To extend the reach of the proposal beyond that class, for example, to retail premises/contents, would require the creation of a new category of policy.

Within such a class would be many policies that are not subject to either the standard cover regime under the Act, or even the consumer protection rules in the Corporations Act 2001 applicable to retail customers of financial services.

35. A possible advantage of extending the rule beyond home buildings and home contents policies would be that the benefits of standardisation would be available to a broader category of policyholder (for example, body corporate/strata insurance, small businesses with commercial insurance covering retail shops/fit out etc). Possible disadvantages are:
- Business policyholders are more likely than homeowners to use the services of insurance brokers for advice and are less likely to be confused by language in policies. Some business policyholders may prefer to negotiate (via brokers) a policy that covers their specific preferences regarding inundation risk and a standard definition would rule out such tailoring.
 - Creation of a 'special' class which partially overlaps with, but does not correspond to, the existing categories of policy offered special protections under the Act (standard cover policies) and Corporations Act (retail client policies) creates a further layer of regulation which adds to regulatory complexity and administrative burden.

Consultation questions:

A. Are the considerations valid, and what other factors should be considered?

These considerations may be valid. NIBA believes that a common definition of flood in all policies may reduce confusion for all insureds whatever policy type. The risk and concept is essentially the same for all. If extended beyond home buildings and contents policies, NIBA assumes only policies covered by the Insurance Contracts Act would be caught.

Use of different definitions for all has the risk of creating confusion e.g client as retail client for home policy understands flood means the same as the standard definition. They are then involved in buying other policies covering first party loss using the term flood in a non-standard form e.g business package policy. Without professional advice this is likely to cause issues. Even with professional advice, the different terms could still result in confusion and a standard form may be preferable. The main issue will be the cost and practicality of implementing such changes versus the benefits of the changes and if the cost identified by insurers materially outweighs the benefit for consumers, NIBA may not support an extension. NIBA would not support the proposal if the standard definition cannot be qualified/amended in a policy as referred to above as this would not be workable for commercial arrangements, especially the larger ones. Further consultation on this issue is required. For example one possibility if the view is that all policies should not be caught, would be (if appropriate) to catch those small business policies covered by the FOS terms of reference e.g small business insurance products.

B. If the scope of the rules were extended beyond home buildings and home contents policies, how should the broader class of policy be defined?

The main policies affected will be those that provide cover for damage to an insured's property and consequential loss arising from this. A definition along these lines may

not catch all policies using the term flood though. The rules could be extended to apply to any policy that covers or excludes flood or any or all of the inundation risks of the type specified in the standard definition. In this way specific policy types including or excluding flood need not be listed. It may be that after identifying insurer concerns regarding any extension a different line can be drawn that addresses any specific concerns raised by them.

How will the standard definition interact with other categories of inundation risk?

36. The reported confusion in relation to inundation risk is most commonly related to category B (riverine flooding), particularly when that category is excluded. The proposed standard definition for that category is directed at addressing that issue.
37. The proposed standard definition for category B (riverine flooding) will still allow insurers to use their own definitions of other types of inundation, including category A (stormwater/rainfall runoff) and category C (actions of the sea).
38. An alternative might be to have several standard definitions which, when taken together, cover the entire spectrum of inundation risk. A possible advantage of such an approach is that the definitions could be drafted in such a way that they do not permit the possibility of any inundation events that are not covered by one of the categories. This may be of benefit in relation to the interaction between the definitions of category A (stormwater/rainfall runoff) and category B (riverine flooding).
39. However, this possible advantage should be balanced against the following factors:
 - most of the reported confusion regarding flood cover arising from 'flood' terminology relates to the unexpected application of an exclusion for category B (riverine flooding);
 - standardising all categories of inundation risk would have greater implications for the risks that policies cover; and
 - standardising terms across all categories of inundation risk may have implications for competition and product innovation.

Consultation questions:

- A. Are there many cases of consumer confusion about flood cover unrelated to the application of category B (riverine flooding risk)? If so, what is the source of the confusion?**

Most confusion arises from the fact that consumers have very different views on what flood means generally and rarely read their policies that seek to define such terms e.g insureds could think flooding cover includes inundation caused by burst pipes that is not within the standard definition. Even those that read the definition in one policy may make similar assumptions in relation to a subsequent insurer's policy use of the term which could be entirely different. Given the standard definition appears to allow insurers to seek to extend or limit flood cover as set out in the standard definition, the same risk of confusion will still arise.

NIBA believes that it is important that:

- *there be consistency as to the basic riverine/inland/flooding/flooding inundation definition;*
- *insurers seeking to cover "flood" as defined, but limiting the cover in certain respects, should be obliged to make this clearer to insureds;*
- *insureds could be advised on where to obtain information on the flood risk of their area e.g local council - assuming such information is available.*
- *insureds be informed of the basic loss types that such flood cover may protect them from so as to assist in their decision making;*
- *insureds be generally informed of the other flood risks that may exist ie storm, sea surge, bursting pipes; and*
- *insured be informed that they should seek personal advice from an Australian Financial Services Licensee if they are unsure.*

NIBA also noted that the main areas of confusion/dissatisfaction in relation to the other flood loss types arise in relation to causation issues and the operation of the Wayne Tank principle, rather than the definitions used by insurers. The NIBA comments in 28 are worth considering in this regard.

Are the possible advantages and disadvantages of standardising a broader spectrum of inundation risk noted above valid, and are there other factors that should be considered?

The same level of confusion does not appear to arise in relation to the other flood concepts. NIBA expects this proposal would be difficult to achieve as the riverine concept, storm damage concept and action of the sea concepts are all distinct. A standard wording incorporating all concepts would be practically difficult to manage as insurers may want to cover some (e.g riverine) and not others (e.g storm surge).

PROPOSAL 2: KEY FACTS STATEMENT

WHAT IS THE PROBLEM?

40. In the wake of recent natural disasters, a number of policyholders reported that they were not aware, until after the event, of important aspects of their insurance policies.
41. Information about the terms and conditions of general insurance policies is required to be provided by a combination of the Insurance Contracts Act 1984 and the Corporations Act 2001. The combination of these requirements means that insurers produce, in respect of each relevant type of policy, a Product Disclosure Statement (PDS). The PDS must be issued by the insurer to persons when they first enter the contract. The PDS is required by the law to contain a range of information, including:
 - the terms and conditions of the policy;
 - the costs, any amounts that may be payable;
 - information about the dispute resolution system and how that could be accessed; and
 - information about the cooling off regime.
42. The information must be presented in a 'clear, concise and effective' manner. If the PDS relates to certain class of household/domestic contracts that are

- prescribed under the Insurance Contracts Act 1984, then it must also 'clearly inform' the consumer of any terms of the contract that differ from the standard cover for that type of contract.
43. The broad objective of the PDS is to help consumers to compare the key elements of financial products so that they can check whether the products meet their needs and make informed choices.
 44. There is considerable variation among PDSs. These variations relate to:
 - in cases of home buildings and home contents, whether one or two PDSs cover those policies;
 - how inclusions and exclusions are presented;
 - use of terminology (including 'flood' and 'flooding' as discussed above);
 - style of presentation (for example, with photos, in tabular style etc);
 - structure; and
 - length (usually between 10,000 and 35,000 words).
 45. Concerns have been raised by a number of stakeholders that the PDS rules for general insurance, as currently implemented, may not be as effective as they could be for informing consumers about the policy, and enabling comparisons between policies. This is likely to be connected with the length and complexity of PDSs and the variations in presentation.
 46. If key information about policies is not readily accessible to consumers, there is a greater risk of consumers acquiring insurance that does not fully match their requirements, and may contribute to underinsurance.

WHAT IS THE OBJECTIVE?

47. The objective of the proposal is to allow consumers to quickly and easily check the basic terms of the insurance policy, including the nature of cover and any key exclusions. This would help consumers to select appropriate products and compare the features of various offerings.
48. It is not the intention to create a substitute for the PDS. However, it is recognised that a proportion of consumers do not read the PDS, either before or after purchase.
49. Although the objectives noted above could apply across a range of household/domestic insurance products, the scope of the proposal at this stage is limited to home buildings and contents policies.

WHAT IS THE KEY FACTS STATEMENT PROPOSAL?

50. Recent recommendations of both the Insurance Council of Australia and consumer representative groups have called for summarised product disclosure.
51. The proposal being considered by the Government involves requiring issuers of home buildings/contents insurance policies, in addition to their PDS, to offer to consumers a short statement (one A4 page in length), which contains a set of key facts about the policy.
52. It is proposed that the contents and format of the key facts statement would be prescribed to some extent, and each insurer would need to create a key

facts statement for its policies that accorded with the requirements. Options for the nature of the requirements are discussed in the 'Issues and questions' section, below.

53. The reverse side of the A4 page might be used to display generic information common to all key facts statements.
54. A draft sample of such a statement, for consultation purposes, appears immediately below. Issues and questions corresponding to each of the headings in the draft statement appear following the draft statement. General issues and questions are raised following the specific issues.
55. Following incorporation of feedback through this consultation process, a revised key facts statement will be subject to focus group testing to ensure that the lay out and information is useful and accessible.

ISSUES AND QUESTIONS

Issues/questions relating to specific items on the draft sample statement

Key facts about your insurance policy

56. As mentioned above, the proposal is directed at home buildings and home contents policies. When the proposal is refined in relation to those policies, an assessment will be made about whether the initiative could be extended to other classes of policy.

NIBA supports this initiative

Policy name

57. Here the insurer would be required to state the name of the policy. It is proposed that a separate key facts statement would be required for each PDS, in cases where insurers issue separate PDSs for home buildings and home contents. If a single PDS is issued for both building and contents cover, only one key facts sheet would be required.

Consultation question:

Are there any disadvantages with a combined key facts statements where a PDS is also combined?

NIBA believes that if the PDS contains other non-retail covers the PDS requirements only apply to the retail client type products. Would the KFS only need to provide details on the retail products? It would not be appropriate in most cases for the KFS to contain details of the non- retail covers as well.

Policy type

58. One of the factors that consumers should be aware of when considering a home buildings/contents policy is its type. Policies may be framed in three general ways:
 - offer cover up to an agreed sum insured;
 - offer cover up to a sum agreed with the policyholder, but with an additional margin (usually 10 25 per cent) to help cover increased costs (for example, costs of rebuilding); or
 - total replacement cover.

59. An agreed sum insured set at too low an amount is a potential cause of underinsurance.
60. Having regard to the importance of the type of policy, it is proposed that the key facts statement would specify the type of policy toward the top of the statement. This categorisation could be supported by:
- a description on the front of the page of 'covered amount', which explains in more detail the type of policy offered; and (possibly)
 - a generic description on the reverse side of the three types of policy (sum insured/sum insured plus margin/total replacement) so that the consumer is aware of the other types of policies that are available.

Consultation question:

Is the proposed treatment of policy type appropriate?

NIBA supports the above, assuming the descriptions are appropriate, accurate and standardised for all insurers so there is no room for confusion/ manipulation. At present the 3 types listed do not fit the policies on offer. Further consultation with the Financial Services Advisory Disclosure Panel on whether this approach is workable based on what is available is required.

How to use this statement

61. The key facts statement could be required to include a note about the intended use of the statement, warning that it is a summary only and encouraging consumers to read the full PDS.

Consultation question:

Should the wording of a note on how to use the statement be prescribed?

NIBA believes it should to avoid inconsistency. NIBA also believes there should be a recommendation that consumers seek appropriate personal advice from an authorised Australian Financial Services Licensee if appropriate.

What is covered

62. It is proposed that the key facts statement would summarise what events are covered by the policy.
63. It would be possible to prescribe a 'minimum list' or a standardised list of covered events that should be referred to, possibly by reference to the events prescribed in the standard cover regulations under the Insurance Contracts Regulations (see in the case of home buildings insurance, regulation 10 of the Insurance Contracts Regulations). The order of the list could also be prescribed so that key facts statements of different insurers could be readily compared.

Consultation questions:

A. What advantages and disadvantages would there be in prescribing events that should be addressed in the 'what is covered' list?

NIBA believes that the advantage is that it will assist in comparability. The disadvantage is that it will only ever be comparable at the minimum coverage level and in the form of a summary. Consumers may end up being misled or seek to rely on this document as an explanation of the cover rather than the PDS and this can have significant consequences. In addition, other benefits in the PDS that may be of

relevance to insureds will not be dealt with. These matters can have a significant impact on the appropriateness of the policy to insureds.

B. Is the list of prescribed events in the standard cover regulations suitable for that purpose?

NIBA notes that the standard cover events have not been updated for some time and it may be worthwhile undertaking this exercise having regard to current cover. It may identify other areas that are worthwhile including. See comments above on what would not be included and the risks for insureds.

C. If an order of events were to be prescribed, what is an appropriate way to determine the order?

NIBA believes consultation via the Financial Services Advisory Disclosure Panel should be able to determine an appropriate list and order. A proper consideration of existing cover in the market and the key concepts is the starting point for this process. Such an approach will also identify what is not possible and practical.

64. There are various ways a covered event could be described — ranging from a single word to a word with a description/example (as in the 'fire' example in the consultation draft).

Consultation question:

Should there be any prescription of how the covered event is described in the list? What sort of rule could be appropriate?

This will depend on the event itself. Consultation of the type referred to above should be able to resolve the issue once the events are identified.

65. Some policies may include special benefit limits for some covered events (for example, cover is offered for an event, but only to a maximum dollar or proportion of sum insured). Those are limits that affect all holders of the policy - they are not tailored to an individual policyholder.

Consultation question:

If a covered event is subject to a special benefit limit, should that limit be

Yes, but this is likely to make the KFS longer and in many case the actual amount of the limit may not be agreed until the policy is entered into e.g may be options to choose from. A "limits apply" type generic statement that warns the customer that limits apply may be a simpler approach, pointing the insured to the PDs for details where available. The key point is to make the insured aware limits apply and to ask what they are.

What is NOT covered

66. It is proposed that adjacent to the 'what is covered' list would be another list that sets out the key conditions and exclusions applicable to the policy.
67. One possible format would be to list the key conditions/exclusions specific to the covered event adjacent to the relevant covered event, as in the 'Fire' example above. Another possibility is to simply list 'what is not covered' in some other order - perhaps by reference to experience on what conditions/exclusions commonly cause confusion.
68. The 'what is NOT covered' section might also be used as a vehicle to note any derogations from standard cover (as required under section 35 of the Insurance Contracts Act).

Consultation questions:

A. Is it feasible, in a single page format, to require all derogations from standard cover to be mentioned in the 'what is NOT covered' list?

NIBA does not expect it will be feasible in most cases and is likely to require a complex explanation in many cases. This may defeat the purpose of the KFS. Consultation on whether it is practically possible or helpful for consumers needs to take place as proposed above.

B. What other exclusions/conditions should be required to be included on the 'What is NOT covered' list?

This is a difficult issue as what is "key" for one person is not key for another and insurers may have different views as to what is or is not key.

It is likely to cause the same issues that arose in the PDS regarding what are and are not "significant benefits" ie insurers ended up specifying everything to avoid argument because of the subjective nature of the test. It may be that Government should identify what it believes needs to be dealt with at a minimum. The risk is that there will be other exclusions/conditions in the policy not listed that are more appropriate for the insured than others and the effect of the KFS may be to result in such insureds taking a cover that may not have been more appropriate for them. This is where insurance brokers add value for insureds by providing personal advice services. In NIBA's view an appropriate warning of this risk is required.

Possible alternative format for what is covered and what is not

69. Rather than listing 'what is covered' and 'what is NOT covered' in adjacent lists, another possibility would be to have a table describing events/risks, whether that risk or peril is or is not covered, and a space to note any key exclusions or limitations in the policy applicable to that event/risk. If there is a special benefit limit so the cover is partial only (see paragraph 65 above), this could be highlighted. An example of how such a format could appear is below.

Event/risk	Is it covered?	Main limitations/exclusions
Fire or explosion	<input type="checkbox"/>	Damage from ash or soot if there is no fire in your home is excluded
Stormwater/rainfall runoff	<input type="checkbox"/>	
Flood	<input type="checkbox"/>	
Tsunami/action of the sea	<input type="checkbox"/>	
Theft	<input type="checkbox"/>	Theft by persons living with you is excluded
Accidental glass breakage	PARTIAL	Maximum payment for each event is \$750
Sudden escape of liquid	<input type="checkbox"/>	Damage from liquid escaping slowly is excluded

Consultation questions:

A. Is it feasible to summarise the key elements of home buildings and home contents policies in that format?

It is likely to be confusing if the relevant terms are not fully defined and the concept of "main" is subjective when applied to each insured. See comments above.

Accidental damage cover would be difficult to deal with in such a way as well. The key concepts are probably what is most important to customers ie education on whether the cover is accidental damage or defined events and what this means. The risk of a summary is that if it is too brief it is of little use and may mislead customers or at the least make them think the cover is better than what it is when looked at as a whole. Such an approach is likely to be difficult to achieve practically and if properly done would result in a large KFS.

B. Would a list of prescribed events/risks in that format provide advantages, for comparison of policies or otherwise, compared to the 'what is covered' and 'what is NOT covered' lists set out in the draft sample key facts statement?

NIBA does not believe the above is likely to assist clients in properly comparing products. To do so would require a level of information that it not possible to include in such a short form document. The preferred approach is to identify for clients the key concepts and differences relevant to such policies they need to be aware of and consider when reading PDSs.

Covered amount

70. It is proposed that the statement would include a brief description of the relevant type of policy (sum insured/sum insured plus margin/total replacement). Generic descriptions of the alternative types may also be included on the reverse side (see below).
71. It would not be expected that the sum insured would be tailored to individual consumers.

Need to consider risks

72. The key facts statement could be required to include a short statement noting the need for the consumer to consider whether the policy covers the risks that are likely to be faced by the particular property.

Consultation questions:

A. Should the wording of this statement be prescribed?

NIBA believes it should be prescribed for consistency of approach if comparability is the end aim.

B. Would the statement be better placed as a generic statement on the reverse side?

Consultation via the Financial Services Advisory Disclosure Panel should be able to agree on a standard form of words. Different words may cause issues.

Cooling off

73. It is proposed that the key facts statement would be required to include a short statement noting applicable cooling off rights.

Consultation question:

Should the wording of this statement be prescribed?

NIBA believes it should be prescribed for consistency of approach if comparability is the end aim. Consultation via the Financial Services Advisory Disclosure Panel should be able to agree on a standard form of words. Different words may cause issues.

Excess

74. The key facts statement could be required to include a short statement noting the excesses applicable to the policy.
75. In cases where the excess is standard across all policies of that type, it would be possible to list the actual dollar figure, rather than referring to the PDS. Some policies, however, enable the excess liability to be varied for individual policyholders. For example, the excess payable could be reduced by paying a supplementary premium. Some policies have different excesses applying to different types of risk.

Consultation questions:

- A. Is it feasible to require that a standard excess be disclosed (in dollar value), and a note to the effect that it may be varied (if applicable)?**

If the excess can be varied for policyholders, the disclosure of the amount is of limited value and could be used to mislead consumers.

- B. If there is a reference to the PDS, is it feasible to refer to specific pages/paragraphs, rather than to the PDS generally?**

This should be possible.

Matters for possible inclusion on the reverse side

76. Some matters that might be suitable to include in a 'generic' section on the reverse of the key facts sheet (or immediately below the key facts statement, if delivered electronically) would be:
 - A. a brief explanation of policy types (sum insured/sum insured plus margin/total replacement);
 - B. a note that the key facts statement is for information only and does not amount to a binding contract;
 - C. statements encouraging consumers to consider carefully whether the policy adequately covers the risks that are faced by their property;
 - D. statements encouraging consumers to consider other policies; and
 - E. sources of additional relevant information (for example, relevant consumer websites).

Consultation questions:

- A. Are the above matters suitable to prescribe for inclusion on a generic reverse side?**

NIBA believes that it is important that consumers not be led to solely rely on the content of the KFS for the reasons noted above. A notice to this effect should be on the front. Notice regarding their duty of disclosure and existence of FOS may also be useful.

- B. What other matters could be mentioned as part of such generic information?**

In relation to other notices on the back, NIBA believes statement that they might want to consider obtaining personal advice from an AFSL Holder would be useful.

General issues/questions

When should a key facts statement be provided to consumers?

77. There are several ways that a key facts statement could be made available to consumers. It is possible that a key facts statement would be made it available online on insurers' websites, in conjunction with the PDS.
78. In terms of delivering a copy to consumers, options could include:
- in conjunction with provision of a written quote (in hard copy or electronically);
 - during the cooling off period after initial purchase, in conjunction with the PDS and/or policy schedule; and
 - in conjunction with a renewal notice.

Consultation questions:

A. When should a key facts statement be required to be provided, including for telephone/internet sales?

It should not be provided any earlier than the PDS is required to be provided. In relation to telephone sales, the time critical exception should apply in relation to the KFS as well as the PDS.

B. Could the document be incorporated into the PDS? Should this be required?

It could be made flexible so that insurers could incorporate it if they wish in the PDS.

C. What are the main advantages and disadvantages associated with the various options?

If provided with a quote it could be required before the PDS is required which is not appropriate and would result in an additional costly compliance process for little added value.

Defining what is and is not a quote will also cause issues. ASIC is grappling with this at present in relation to their CP 144. In sales over the telephone the time critical exception should apply for the KFS as well and it and the PDS would be provided within 5 business days of the call. For non telephone sales it should be provided at the same time as the PDS ie before the sale and not during the cooling off period. It should not need to be provided with a renewal notice if the information is unchanged and the insured received it for new business or on a prior renewal. To require otherwise is a costly exercise for no real benefit. At most a notice referring the insured to it and/or the ability to obtain another copy should be sufficient.

NIBA queries whether the notice should be required at all where the insured is provided with personal advice by an insurance broker ie in much the same way that the Insurance Contracts Act notices (such as section 22 duty of disclosure notice) do not need to be given by an insurer in such circumstances.

What should happen if a requirement regarding the key facts statement is not met?

79. If it is a mandated requirement that a key facts statement is provided at a particular time, the question arises as to what happens if an insurer either:
- does not provide the statement at all; or

- provides a key facts statement, but the statement does not contain all the required information, or is in some other way defective (for example, contains misleading and deceptive information).
80. There are a range of possibilities. Options that have been identified for comparable requirements include:
- exposure to specific civil and/or criminal penalties at the instigation of the Australian Securities and Investments Commission (ASIC);
 - giving ASIC a power to seek withdrawal of the product from the market until the defective statement is rectified (akin to a stop order for a PDS);
 - allowing affected persons to bring civil action for any losses as a result of the defect; or
 - limiting reliance by insurers on exclusions that did not appear in the key facts summary.
81. Note that some generic remedies and sanctions may also be available in the absence of specific provision. For example, the remedies associated with prohibition in the Australian Securities and Investments Commission Act 2001 on engaging in misleading and deceptive conduct in relation to financial services could be applicable.

Consultation question:

What is the appropriate sanction/remedy if an insurer:

- A. fails to provide the key facts statement at the appropriate time; or**
- B. provides a key facts statement which is non compliant with the requirements?**

Similar sanctions/remedies to the PDS breaches would seem appropriate given the document will be just as significant to insureds.

Relationship of the key facts statement to the PDS

82. Connected to the issue about remedies and sanctions is the question of how the proposed key facts statement relates to the PDS. Of necessity, a short form document cannot include the level of detail of a PDS. Accordingly, cases may arise where it is asserted that the short form summary does not properly reflect the underlying policy.

Consultation question:

Is there any need to clarify or prescribe the legal status of the key facts statement – in particular its relationship to the policy terms and conditions in the PDS?

It will be important to make it clear to consumers that the document does not form part of the policy terms. However, insurers must not be allowed to use the document in a way that skews the decisions of those insureds who choose not to read the PDS.

Rules on format

Consultation question:

Should there be prescribed in detail the format (for example, font size) for various items, or is it preferable to leave some flexibility in presentation?

The PDS formatting rules would seem to be appropriate for the KFS.

PART B: OTHER INITIATIVES

FLOOD MAPPING DEVELOPMENT FRAMEWORK

83. In order to develop the most appropriate and effective community strategies to deal with the risk of natural disasters, it is essential that the amount and quality of available information relating to those risks is maximised. In relation to flood, meteorological information for predicting weather events, and geospatial data indicating elevation levels and other physical characteristics of flood prone properties, are considered to be vital.
84. Accurate data of this nature can assist with appropriate decisions about land use and development and ensure that home and business owners are fully informed of the risk of flood associated with their properties. Discussions with the insurance industry following the recent spate of flooding has highlighted that data of this kind are also critical to the pricing and development of flood risk insurance products. Improved access to reliable flood risk information could be used by insurers to better assess risk and possibly increase the range of flood risk products they offer.
85. In recognition of the role of reliable geospatial data in assessing and mitigating risk from flood, the Council of Australian Governments (COAG) has tasked the National Emergency Management Committee to scope a potential work program to map areas of risk relating to riverine flooding, flash floods, storm surge and coastal inundation. From the Commonwealth's perspective, this work is being progressed by the Attorney General's Department.
86. Given the importance of reliable flood risk mapping to the insurance industry, the Australian Government has invited the Insurance Council of Australia (ICA) to play a key role in the process of scoping a potential work program to map areas of risk relating to riverine flooding, flash floods, storm surge and coastal inundation. The ICA has agreed to consult with government during the scoping of this potential government project. This will help ensure that any outcomes developed through the COAG process will take full account of the industry's views on the technical and other requirements of any flood risk mapping. Ultimately, the goal is to ensure that communities, planners, emergency services, individuals, property owners and insurers understand the flood risks that they face, and that effective flood insurance products can be developed, potentially increasing their affordability and availability for community members with flood exposures.

NIBA supports such flood mapping as it will allow insurers to better price the risk and insureds and their advisers to better identify where the risk exists or not.

TIME LIMITS FOR CLAIMS HANDLING

87. When an insurance claim is submitted, insurers must decide whether to admit, admit in part, or deny the claim. The General Insurance Code of Practice includes timeframes within which this should occur. There are requirements to keep insureds advised of progress at regular intervals. However, there is no overall time limit from the time of claim lodgement to the time when a decision is made, except in cases where all necessary information has been received at the time the claim is lodged and no further assessment or investigation is required.

88. If a retail policyholder is dissatisfied with the handing of a claim, they may take their complaint or dispute to internal dispute resolution (IDR) processes. These processes are subject to timeframes set out in ASIC guidance and the General Insurance Code of Practice.
89. Consumer representatives are concerned that in a small minority of cases the time to reach an outcome has been unnecessarily lengthy, and have called on the ICA to amend the General Insurance Code of Practice so that insurers must make a final determination on a claim within six months of the claim being notified, unless there are exceptional circumstances.
90. The ICA has agreed to consider amending the Code to include an overall time limit from the date a claim is lodged to the date a decision on the claim is made by the insurer. The Government welcomes this initiative. If implemented, it will provide an additional level of protection for consumers, particularly those whose claims are complex.

NIBA supports such an approach.

CENTREPAY PROCESSING OF PREMIUM PAYMENTS

91. Consumer groups have called for insurance companies to offer payment options by way of Centrepay. Centrepay is a voluntary, free direct bill paying service offered to customers receiving Centrelink payments. It is designed for convenience, and avoids the necessity to pay large bills every month or quarter. Rather, bills are paid in manageable amounts from fortnightly Centrelink payments, making it easier for Centrelink's clients to manage their budget. The range of bills that can be paid through Centrepay include rent, phone, electricity, gas and water, education expenses, and court fines.
92. The Australian Government has agreed to include home and contents and motor vehicle insurance premiums amongst the kinds of expenses that can be paid using Centrepay. Insurance companies interested in using the Centrepay service for the payment of home building and contents and motor vehicle insurance premiums should contact Centrelink. Contact details can be found on the Centrelink website under 'Business' at <http://www.centrelink.gov.au/business>. Individual policyholders who are in receipt of Centrelink benefits and wish to use the Centrepay facility should, in the first instance, contact their insurance company.

NIBA supports such an approach.

Yours sincerely



Noel Pettersen
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