



*National Insurance Brokers Association.*



## **NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA (NIBA)**

### **KEY FACTS SHEET DISCUSSION PAPER: HOME BUILDING AND HOME CONTENTS INSURANCE POLICIES**

#### **ABOUT NIBA**

NIBA is pleased to be able to respond to the Key Facts Sheet Discussion paper which is a significant initiative and one which can have important ramifications for consumers and the insurance industry.

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.

Brokers handle almost 90% of the commercial insurance transacted in Australia, and play a major role in insurance distribution, handling an estimated \$16 billion in premiums annually and placing around half of Australia's total insurance business. Insurance brokers also place substantial insurance business into overseas markets for large and special risks.

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:

- assist customers to assess and manage their risks, and provide advice 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 their agent. Insurance brokers offer many benefits to customers and consumers:

- assistance with selecting and arranging appropriate, tailored insurance policies and packages
- detailed technical expertise including knowledge of prices, terms and conditions, benefits and pitfalls of the wide range of insurance policies on the market;



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- assistance in interpreting, arranging and completing insurance documentation;
- experience in predicting, managing and reducing risks; and
- 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.

The above puts NIBA and its members in a prime position to provide practical feedback on the KFS.

### **EXECUTIVE SUMMARY**

NIBA has provided a detailed response to all of the discussion papers questions. NIBA's responses are inserted in the attached paper in **yellow**.

NIBA's general position can be summarised as follows:

- NIBA supports the KFS initiative and what it is trying to achieve given the fact that it is generally acknowledged that consumers tend not to read the PDS and even where they do so, are generally not well equipped to understand and compare insurance policies given the broad variety of cover available.

However, consumers should not be encouraged to rely on the KFS as a tool for comparison purposes except at a very high level and it is crucial this message be given clearly.

This is because by the very nature of the KFS' limited content the end result is that a consumer *will not be making a decision based on all of the information they need to take into account to properly protect their interests.*

The KFS should be identified as a document setting out information that the Government believes consumers should generally consider before deciding to buy the insurance. Consumers must be made aware that the information does not cover all relevant matters they need to consider as what is right will depends on their circumstances.

- In relation to the types of policy content NIBA has concerns that this may mislead consumers. NIBA provides a detailed explanation of why it believes this is the case.
- In relation to the what is covered and not covered content, the real cause of potential confusion for the consumer is that insurers will generally (as permitted by the law) seek to meet their obligations under section 35 of the *Insurance Contracts Act 1984 (Cth) (ICA)* by providing the policy wording containing the covers.



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In many cases the basic cover will be provided at a high level but there will be qualifiers attached (in the cover section itself, definitions, exclusions conditions or endorsements etc) that restrict the cover to less than the minimum cover.

For example:

- earthquake cover has a 72 hour limitation in many cases.
- The definition of “family” and “flood” used in a policy can impact on whether it is minimum cover or not depending on the view taken as to the meaning of the relevant term which are not defined in the regulations.

As insurer wordings do not typically identify where cover provided is in fact less than the minimum cover specified in the regulations, it is left for the consumer to determine this.

As much can depend on the inclusion or exclusion of a single word in various or multiple locations, it is a difficult task. NIBA does not believe the above proposal will address this issue. The net result seems to be that the insurer will be required to say yes or no to the prescribed cover event being covered or not.

Obviously there will be an incentive for the insurer to cover these minimum events to avoid saying “no”. However, depending on the event and reinsurance availability they may all have to say “no” for certain events. This **means insurers would simply say no to the minimum cover and a consumer would be left having to seek to identify to what extent if any, cover is provided for the event.**

One option may be to have insurers identify where the cover is less than the prescribed ICA:

- : minimum cover; and
- : minimum limits (which is not dealt with in the paper)

with the assumption being that minimum cover is otherwise provided. The insurer could do a cross reference to the part of the policy that is less than the minimum cover and limits or explain it in the KFS (obviously there will be space issues with the second option for some insurers).

If the above is not done NIBA sees little benefit in the proposal.

- NIBA notes that a full review of the prescribed cover provisions and their continued relevance etc has not been done since the Insurance Contracts Act’s inception in any detail. NIBA believes that consultation with consumer groups and an analysis of the determinations issued by FOS



may provide the most useful means of identifying other cover areas of concern. Discussion with insurers is also required to determine what is practically possible.

- The issues the KFS is seeking to address emphasises the importance of a consumer seeking personal advice from a licensed insurance broker in making a decision about an insurance policy.

This is especially the case where most government discussions with stakeholders acknowledge the reality that consumers are not inclined to read or even where they do, are not well equipped to understand, the relevant policy documentation. The KFS will not solve the above problem.

A recommendation that a consumer considers seeking personal advice from a licensed insurance broker is a valuable recommendation and should be included in the KFS. It is no different to contracts recommending consumers seek legal advice before entering into the contract.

- NIBA recommends that a meeting be arranged in which key stakeholders can discuss the key issues identified by the discussion paper further.

If you would like to discuss any aspect of this matter further do not hesitate to contact us.

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**National Insurance Brokers' Association of Australia**

# Key Facts Sheet: Home Building and Home Contents Insurance Policies

Discussion Paper  
February 2012

## 2 PRESCRIBING THE KEY FACT SHEET

### 2.1 CONTENT

#### 2.1.1 The name of the policy

1. The name of an insurance policy is considered to be an essential feature of that policy, be it a Home Building policy, a Home Contents policy or a HBHC policy. A separate KFS will be required for each policy.

NIBA has no issue with this proposal.

#### 2.1.2 Type of policy

2. To provide insurance cover to meet a wider range of consumer needs, insurers offer a number of different types of cover in their policies. Three common types of policies are:

##### Sum-Insured Policies

- Sum-insured policies give consumers the flexibility to select the maximum available payout for loss in respect of the home building or home contents.

While this may have the benefit of reducing insurance premiums (as a low maximum payout may be selected), the ability for an insured to set their own maximum payout may result in underinsurance if a significant insurance event, such as a flood, occurs. It can also be difficult for consumers to properly estimate their potential maximum losses as they lack the tools and expertise to make this determination.

#### Sum-Insured Policies plus Margin

- Some insurance policies also offer an additional level of payout amount above the maximum payout amount in relation to the sum-insured selected by consumers (this may be an optional or mandatory feature of the policy). This additional payout amount is usually between 10 and 25 per cent. With the provision of this additional payout amount, consumers are less likely to face the adverse consequences of underinsurance (although, if consumers select a low maximum payout, underinsurance may still occur). However, we note that there has been a tendency for building costs to rise after natural disasters by more than this additional amount, due to trade person and material shortages.

How much and what is it for or misleading

#### Total Replacement Policies

- Total replacement policies are also available for home buildings. These policies require consumers to provide information regarding their home so that the insurer can estimate the home's value. Total replacement policies provide for the full replacement of the home building in the event of a significant insurance event, thus effectively removing the possibility of underinsurance.
3. The differences in the cover provided in relation to different types of policy tend only to be recognised by consumers when a significant insurance event occurs that results in extensive damage or total loss. When these events/situations occur, the differences between the different policy types become apparent. As a result, some consumers are significantly underinsured, having chosen an insurance policy with an inappropriate type of cover, even where rebuilding costs have been correctly estimated.
  4. Submissions to the consultation paper indicated that due to the diversity within the HBHC insurance market and the length limitations of the KFS, information regarding the type of policy should be restricted to cover only the policy in question and not include potential policy types.

NIBA agrees this would be difficult but one option may be to have a link to a websites that provide information about the various types that consumers could access or links helping consumers to identify persons authorised to provide personal advice such as e.g link to NIBA website.

5. To ensure consumers are fully aware of the importance of choosing the appropriate type of policy for their needs, it is proposed that insurers will be required to specify on the KFS the type of policy being considered. In addition to specifying the type of policy the KFS will also be required to provide a description of the 'covered amount' in respect of the policy, explaining in more detail exactly the type of policy offered.

NIBA's main issue is whether the "type" of policy heading will be misleading. We discuss this in detail below.

6. A generic description of the three main types of policy (sum-insured/sum-insured plus margin/total replacement) may also be included on the reverse side of the KFS to further increase consumer awareness of the other types of policies that are available.

NIBA's concern is that the approach is too simplistic. NIBA also notes that consideration should be given to a website link as noted above.

## Discussion Questions

- Are there practical difficulties in classifying insurance policies into the types of insurance policies outlined above? If so, how should the type of policy be outlined in the KFS?

NIBA is concerned with the proposed classifications would be likely to give the impression that total replacement is the most appropriate type of policy for an insured when this may not in fact be the case. We set out an explanation below.

There are fundamentally 2 “types” of policy in the market:

- (1) Defined or Specified or Listed Events (these policies cover the insured for specified events only and not for any events that are not specified. the specified events are also subject to various exclusions and limitations.
- (2) Accidental Damage (these policies cover all sudden and unforeseen ie accidental damage not specifically excluded by the policy. Typically this provides a broader type of coverage (not taking into account limits) as it is not limited to specified events only.

The above important concept is not dealt with in the KFS.

Which cover is ultimately better for an insured will of course depend on factors such as:

- the actual coverage provided (excluding limits) after taking into account all of the policy exclusions and conditions – for example an accidental damage policy may provide lesser cover in certain areas than a defined events cover and vice versa depending on the exclusions. What is better for one insured may not be for another.

It may also be that a policy may be better because of the additional benefits provided e.g some policies provide up to 30 additional benefits.

- how the insurer may settle claims and up to what limits if any. This is where the concepts of:
  - sum insured;
  - sum insured plus margin; and
  - total replacement,

become relevant.

The only risk to policyholders is intentional or unintentional under-estimation of their Building &/or Contents sum insured for full replacement values.

The Sum Insured basis of cover is just another feature – not a type of policy as proposed in the paper. Where the sum insured selected is appropriate there is no issue with such a policy. The important issue is whether the right limit has been selected to avoid underinsurance and whether there are any sub limits affecting the relevant claim.

Sum insured plus margin basis – this theoretically provides a margin that can reduce the risk of underinsurance but what is important for consumers to know other than that applying to sum insured policies, is what the margin is or is not limited to. Policies can limit the margin for Catastrophe events only and not generally.

Most insurers / distributors provide sum insured calculators to their customers / clients either by hard copy or more likely on their websites so there is a mechanism in place for correct sums insured to be obtained by policyholders if they have the will to do so.

For total replacement value policies the risk of underinsurance ie the risk of the insured not selecting an appropriate figure appears to be removed, but whether this is the case can depend on the wording. The only such policy NIBA is aware of is a defined events cover, not an accidental damage cover which provides that:

**If we agree to pay a claim for loss, theft or damage to the building, we will decide if we will:**

- **repair damage to the building;**
- **rebuild the building;**
- ***pay you what it would cost us to repair or rebuild the building.***

**If we rebuild (or pay you what it would cost us to rebuild), we will rebuild on a `new for old' basis.**

**If we repair (or pay you what it would cost us to repair), we will at our option repair on a `new for old' basis or repair to a similar condition to what the building was in before the loss or damage occurred.**

**We may offer you a voucher or stored value card for the amount it would cost us to repair or rebuild *[our italics]***

NIBA is concerned that consumers will be led by the KFS to believe that the total replacement policy is the best option. As you will see from the above the insurer only has to pay what it would cost the insurer to replace the building if they choose to do so at their option. If the insurer makes a payment and its rebuilding costs are less than the insured's the insured is left underinsured.

In addition, replacement cover will be of no consolation to an insured where the "defined event" is not covered and would have been covered by an

accidental damage cover with a sum insured.

It also does not avoid the intentional misrepresentation risks.

Typically insurance brokers will recommend cover on a reinstatement or replacement basis although there is a sum insured which caps the cover and this amount could be inadequate.

The key distinction in home owners policies which insurance brokers advising the consumer focus on is between Defined Events cover and Accidental Damage cover. NIBA believes that an explanation of this should be on the KFS.

NIBA believes the current proposed distinction is insufficient and likely to mislead consumers.

Further consultation is required but at the very least the policy types should be broken into:

- : Accidental damage cover

- : Defined/specified events cover

With the following listed as sub sets of either as applicable:

- : Sum insured

- : Sum insured plus margin

- : Total replacement

A basic form of explanation of what the above means should be included to reduce the risk of consumers being misled/confused.

We assume ASIC would be very concerned about the issues raised by NIBA as ASIC requires industry to ensure qualifications to its representations are included in the same place as the representation and in a prominent fashion.

The KFS must clearly note that it makes no recommendation as to which type of cover is appropriate because what is appropriate can depend on the consumer's circumstances and the terms and conditions of the policy.

This is the "reality" we are dealing with that a one page document cannot change. What we need to ensure is that consumers are not misled into making poor choices because of the KFS.

The KFS as will never enable consumers to *adequately* "compare and access different policies in order to make appropriate insurance decisions". This is because the information provided is limited and in short form and many of the other benefits provided in such policies that may be of real relevance to consumers will not be included in the KFS.

NIBA is concerned that the KFS will in fact mislead consumers into thinking that policies which are vastly different in *overall* coverage e.g due to additional benefits available etc are similar because of the limited basis for comparison provided in the KFS. The risk is that the KFS as proposed will work in favour of insurers providing limited benefits and possibly lead other insurers to reduce their additional benefits where choices made by

consumers won't (because of the KFS), be based on any consideration of all of the benefits contained in the PDS.

The importance of a consumer seeking personal advice in making a decision about an insurance policy cannot be underestimated. This is especially the case where most government discussions with stakeholders acknowledge the reality that consumers are not inclined to read or even where they do, are not well equipped to understand, the relevant policy documentation. The KFS will not solve the above problem. A recommendation that a consumer considers seeking personal advice from a licensed insurance broker is a valuable recommendation. It is no different to contracts recommending consumers seek legal advice before entering into the contract.

NIBA is happy to work with Government, consumer groups and other industry groups to come up with an explanation that is not likely to be misleading.

- 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?

Subject to the type of policy outline issues being resolved, this is the only practical solution although not at all ideal. We expect ASIC's view would be similar to that taken in relation to industry practice ie a representation to be appropriately qualified should have the qualification on the same page.

- Will including information on the type of policy increase costs for industry? If so, please elaborate and provide the magnitude of costs where possible.

Unlikely given the KFS needs to be provided in any case. The costs arise from having to provide the KFS. Content such as this is unlikely to have a major impact.

### 2.1.3 What is covered

7. When consumers are considering HBHC insurance policies, they tend to only seek information on a few key areas of the policies. One of the most common areas where information is sought is on the insurance coverage of different policies. In particular consumers focus on determining what events are and are NOT actually covered under those policies. The importance of understanding what is actually covered by particular policies was recognised in the proposal outlined in the consultation paper and reinforced in the submissions received in response to the paper.
8. When discussing the possible content of the "what is covered" section, the consultation paper indicated that it would be possible to prescribe a 'minimum list' or a standardised list of covered events that should be referred to. Submissions received reinforced this idea, with a significant number of respondents indicating that the standard cover regulations provided under the Insurance Contracts Regulations (ICR) would be a logical starting point. The submissions also

indicated that further consultation would be required in order to establish the events to be included in the final “what is covered” section of the KFS.

9. To increase comparability of insurance policies, the consultation paper also suggested that the order of covered events contained in the “what is covered” section be prescribed, ensuring consistency across all KFSs. This idea was also positively received in submissions, however, consistent with consideration of the events to be included in the “what is covered” section, further consultation was sought in respect of this suggestion.

### **Standard Cover**

10. The standard cover regime in Part V of the ICA ensures that any exclusions and limitations that may apply in relation to particular insurance contracts are brought to the attention of insureds prior to any contract being entered into.
11. Section 35 of the ICA requires an insurer to bring to the attention of an insured, before the contract is entered into, the terms of the insurance contract that differ from the standard terms of a prescribed contract. The Explanatory Memorandum to the *Insurance Contracts Bill 1984* when discussing standard cover stated that:

*“Where an insured makes a claim under a prescribed contract (i.e. a contract to which the standard cover provisions apply) and that claim is in respect of loss arising from an event prescribed in the [Insurance Contracts Regulations], the insurer must pay [the insured] the minimum amount specified in the regulations. This is so even where the amount of the insurance cover is not provided by the contract is less than the minimum amount, or insurance cover is not provided by the contract at all [section 31(1)] unless the insurer proves that:*

- *Before the contract was entered into [the insurer] clearly informed the insured in writing that less cover ( or no cover ) was provided; or*
- *The insured knew, or a reasonable person in the circumstances could be expected to have known that less cover, or no cover as the case may be, was provided [sec35(2)]”<sup>1</sup>*

12. HBHC insurance policies, to which the KFS requirements will apply, are both contracts to which the standard cover provisions apply.
13. The regulations which outline prescribed events are a good starting point for considering the content of the KFS.

### *Standard Cover Regulations for both Home building and Home contents insurance*

The prescribed events for both Home building and Home contents insurance include:

- The destruction of, or damage occurring to, the home building on the site, being destruction or damage that is caused by or results from **and** the destruction of, or damage occurring to, the contents of a residential building which is specified in the contracts, at the time when they are in the residential building or on the site of the residential building, being destruction or damage that is caused by or results from:

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<sup>1</sup> Insurance Contracts Bill 1984, Explanatory Memorandum, page 53-54

- Fire or explosion;
- Lighting or thunderbolt;
- Earthquake;
- Theft, burglary or housebreaking or an attempt to commit theft, burglary or housebreaking;
- A deliberate or intentional act;
- Bursting, leaking, discharging or overflowing or fixed apparatus, fixed tanks or fixed pipes used to hold or carry liquid of any kind;
- Riot or civil commotion;
- An action of a person acting maliciously;
- Impact by or arising out of the use of a vehicle (including an aircraft or water-borne craft);
- Impact by:
  - (a) Space debris or debris from an aircraft, rocket or satellite;
  - (b) An animal (other than an animal kept on the site or a domestic animal);
  - (c) A falling tree or part of a tree; or
  - (d) A television or radio aerial that has broken or collapsed;
- Storm, tempest, flood, the action of the sea, high water, tsunami, erosion or land slide or subsidence;

*Applicable only to Home building insurance*

- Accidental damage that is breakage of any fixed glass, fixed shower base, fixed basin, fixed sink, fixed bath, fixed lavatory pan or fixed cistern;
- Loss by theft, burglary or housebreaking;
- The insured or member of the insured's family ordinarily residing with the insured incurring the liability as owner or occupier of the home building to pay compensation or damages to some other person.

*Applicable only to Home contents insurance*

The prescribed events of Division 3 of the ICR include:

- Accidental damage that is breakage of glass forming part of an item of furniture (including fixed or unfixed glass table tops), at a time when it is in the residential building or on the site if the residential building (only applicable to Home contents insurance);
- Loss by theft, burglary or housebreaking of contents while in the residential building on the site;
- Where:
  - The insured is a tenant or lessee of the residential building; or

- The residential building is a unit (however described) created by the subdivision of strata (however described) in a building and the insured is the owner of the unit;
- The insured or a member of the insured's family ordinarily residing with the insured incurring a liability as occupier of the home building to pay compensation or damages to some other person.

14. While the prescribed standard cover events provide an appropriate starting point for the content of the "what is covered" section, there is a limit to the number of events that can be included in a one page KFS. Therefore, it is essential that the prescribed events that are most beneficial for effective consumer decision making are covered. As such, it is proposed that events listed on the KFS be restricted to those events that lead to the most confusion or have the most significant financial impact.

## Discussion Questions

- Of the prescribed events in the standard cover regime, which events (if any) lead to consumer confusion or lack of understanding about what is covered by the policy? What evidence is there that this confusion leads to adverse outcomes? Will the inclusion of these events (if any) in the KFS reduce the level of consumer confusion?

The question asked does not deal with the fact that a lot of Home Building policies are not triggered by a specific event but by accidental damage (i.e. everything is covered unless excluded).

NIBA notes that there are differences between policies in relation to the defined events but usually the differences relate to events which are more obscure.

NIBA notes that the difficulty will be that what is of concern to one type of person may not be for another and emphasising some events as opposed to other events can adversely affect persons who are not "typical".

Some warning to this effect is required or an explanation (possibly on the back cover as to the rationale behind the choices) may be warranted.

In any case, NIBA is not certain that this is the right approach.

The real cause of potential confusion for the consumer is that insurers will generally (as permitted by the law) seek to meet their obligations under section 35 by providing the policy wording containing the covers.

In many cases the basic cover will be provided at a high level but there will be qualifiers attached (in the cover section itself, definitions, exclusions conditions or endorsements etc) that restrict the cover to less than the minimum cover.

For example:

- earthquake cover has a 72 hour limitation in many cases.
- The definition of "family" and "flood" used in a policy can impact on whether it is minimum cover or not depending on the view taken as to the meaning of the relevant term which are not defined in the regulations.

As the wording does not identify where cover provided is in fact less than the minimum cover specified in the regulations, it is left for the consumer to determine this.

As much can depend on the inclusion or exclusion of a single word in various or multiple locations, it is a difficult task. NIBA does not believe the above proposal will address this issue – or that it can address it in one page.

The net result seems to be that the insurer will be required to say yes or no to the prescribed cover event being covered or not.

Obviously there will be an incentive for the insurer to cover these minimum events to avoid saying "no". However, depending on the event and reinsurance availability they may all have to say "no" for certain events. This

means insurers would simply say no to the minimum cover and a consumer would be left having to seek to identify to what extent if any, cover is provided for the event.

NIBA notes that a full review of the prescribed cover provisions and their continued relevance etc has not been done since the Insurance Contracts Act's inception in any detail.

One option may be to have insurers identify where the cover is less than the prescribed ICA:

: minimum cover and

: minimum limits (which is not dealt with in the paper)

with the assumption being that minimum cover is otherwise provided. The insurer could do a cross reference to the part of the policy that is less than the minimum cover and limits or explain it in the KFS (obviously there will be space issues with the second option for some insurers).

If the above is not done NIBA sees little benefit in the proposal.

NIBA believes that consultation with consumer groups and an analysis of the determinations issued by FOS on section 35 may provide the most useful means of identifying the main events of concern. Discussion with insurers is required to determine what is practically possible.

- Of the prescribed events in the standard cover regime, which events, if they occur, are most likely to have a significant financial impact on consumers? Is there any evidence that the inclusion of these events in the KFS will reduce the potential for significant financial loss to occur?

For Home buildings insurance, any events that could give rise to a total loss in relation to the home building would be caught. The issue is then which events should be prioritised over others e.g flood before space debris? The best starting point would appear to be FOS statistics and consumer feedback.

Failing any useful statistics, order based on the likelihood of loss would be sensible.

For contents, what events may cause a significant financial loss to one person may not for another, as much can depend on a particular person's circumstances.

This is why underwriters price differently for certain risk profiles. The best starting point would appear to be FOS statistics and consumer feedback.

Failing any useful statistics, order based on the likelihood of loss would be sensible.

- In general, what standard cover events should be included in the KFS? What standard cover events should not be included in the KFS?

**NIBA view on inclusions - Standard Cover Regulations for both Home building and Home contents insurance (Assuming total loss risk is key test)**

– The destruction of, or damage occurring to, the home building on the site, being destruction or damage that is caused by or results from **and** the destruction of, or damage occurring to, the contents of a

residential building which is specified in the contracts, at the time when they are in the residential building or on the site of the residential building, being destruction or damage that is caused by or results from:

: Fire or explosion;

: Lighting or thunderbolt;

: Earthquake;

: A deliberate or intentional act;

: Bursting, leaking, discharging or overflowing of fixed apparatus, fixed tanks or fixed pipes used to hold or carry liquid of any kind;

: Riot or civil commotion;

: An action of a person acting maliciously;

: Impact by or arising out of the use of a vehicle (including an aircraft or water-borne craft);

: Impact by:

(i) A falling tree or part of a tree; or

: Storm, tempest, flood, the action of the sea, high water, tsunami, erosion or land slide or subsidence;

**NIBA view on inclusions as applicable only to Home building insurance (Assuming total loss risk is key test)**

- The insured or member of the insured's family ordinarily residing with the insured incurring the liability as owner or occupier of the home building to pay compensation or damages to some other person.

**NIBA view on inclusions as applicable only to Home contents insurance (Assuming total loss risk is key test)**

The prescribed events of Division 3 of the ICR include:

- Loss by theft, burglary or housebreaking of contents while in the residential building on the site;

– Where:

: The insured is a tenant or lessee of the residential building; or

: The residential building is a unit (however described) created by the subdivision of strata (however described) in a building and the insured is the owner of the unit;

the insured or a member of the insured's family ordinarily residing with the insured incurring a liability as occupier of the home building to pay compensation or damages to some other person.

- Are there any other events outside standard cover that should be included?

The identification of such additional events would need to be done as part of

a major review of the standard cover and home building and home contents market. Consumer feedback should be considered too.

In the limited time available for the KFS feedback we have not been able to do any comprehensive analysis. NIBA is happy to undertake further enquiries in this regard.

- Will costs (monetary and non-monetary) for industry increase with an increase number of standard cover events? If so, please elaborate and provide the magnitude of costs where possible.

Costs would increase as new training would be required to take into account the changes and documentation and systems amended where appropriate.

### **Natural Disaster Events**

15. In the National Disaster Insurance Review (NDR) conducted last year into disaster insurance in Australia, concerns were raised about the current disclosure regime and its failure to sufficiently inform consumers of the relevant terms and conditions of insurance policies in relation to natural disaster events. In this regard it was reported that many policy holders affected by the 2011 floods in Queensland discovered, reportedly for the first time, that their HBHC insurance policies would not fully cover them for flood damage.
16. In this context, the NDR's report (released on 4 November 2011) endorsed the introduction of a KFS and indicated that the KFS should list the natural disaster events, identified as events to which standard cover in the ICR applied (recommendation 33).
17. The standard cover regime currently identifies the following natural disaster events: fire; earthquake; flood; tsunami and land slide.

## Discussion Questions

- 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?

NIBA has no issue with all being included.

- Are there any other natural disasters that should be included?

[Specific RAC feedback]

- Will the inclusion of the natural disaster events in the KFS increase costs for industry? If so, please elaborate and provide the magnitude of costs where possible.

Unlikely given the KFS needs to be provided in any case. The costs arise from having to provide the KFS. Content such as this is unlikely to have a major impact.

### 2.1.4 What is NOT covered

18. As noted, the insurance coverage of different policies is an area of key interest to consumers. In this regard, consumers place a considerable focus on exclusions that may apply in relation to their insurance policies; that is, what events are not covered.
19. When looking at the potential content of the “what is NOT covered” section of the KFS the consultation paper indicated that the “what is NOT covered” list should be in essence the reverse of the “what is covered” section.
20. However, to ensure appropriate consumer outcomes are achieved, further consideration and consultation regarding the content of the “what is NOT covered” section is required.
21. In this regard, information regarding exemptions provided in the ICR in relation to standard cover and information about the prescribed standard cover events not covered in the “what is covered” area must be taken into consideration.
22. Taking this approach provides consumers with a comprehensive understanding of the key information regarding the status of the exceptions and conditions of the particular HBHC insurance policy/ policies under consideration.

#### Exemptions provided in relation to cover insurance policies

23. Currently under the ICR, standard cover insurance contracts for Home building insurance and Home contents insurance have a number of exemptions which include:
  - depreciation;
  - wear and tear, rust or corrosion;
  - the action of insects or vermin;
  - destruction of, or damage occurring to:
    - an electrical machine or apparatus as a result of the electric current in it;
    - or

- any property as a result of it undergoing a process necessarily involving the application of heat

Applicable only to Home building insurance

- destruction or damage, or the incurring of a liability in respect to the insured or member of the insured's family ordinarily residing with the insured incurring the liability as owner or occupier of the home building to pay compensation or damages for home building insurance as a result of:
  - the expropriation of the home building;
  - war or warlike activities;
  - the use, existence or escape of nuclear weapons material, or ionizing radiation from, or contamination by radioactivity from, any nuclear fuel or nuclear waste from the combustion of nuclear fuel;
  - the use of the home building for the purposes of a business, trade or profession; or
  - tree-logging or felling by the insured or a person acting with the express or implied consent of the insured; or
  - or intentionally incurred, by:
    - (1) the insured; or
    - (2) a member of the insured's family ordinarily residing with the insured; or
    - (3) a person acting with the express or implied consent of any of them;
- where the home building is unoccupied and has been unoccupied for a continuous period of more than 60 days — destruction or damage occurring otherwise than as mentioned in subparagraph by lightning or thunderbolt; or earthquake; or theft, burglary or housebreaking or an attempt to commit theft burglary or house breaking; or riot or civil commotion; an action of a person acting maliciously; impact by or arising out of the use of a vehicle (including an aircraft or water-borne craft); or impact by space debris or debris from an aircraft, a rocket or satellite an animal (other than an animal kept on the site or a domestic animal) a falling tree, or part of a tree, or a television or radio aerial that has broken or collapsed; or a storm, tempest, flood, the action of the sea, high water, tsunami, erosion or land slide or subsidence, or the incurring of liability in respect to the insured or member of the insured's family ordinarily residing with the insured incurring the liability as owner or occupier of the home building to pay compensation or damages to some other person;
- destruction of, or damage occurring to:
  - a free-standing or retaining wall (whether or not part of the home building), or to a gate or fence, as a result of a storm or tempest;
- theft by a person ordinarily residing with the insured at the time of the theft;

- in the case of destruction or damage that is caused by or results from bursting, leaking, discharging or overflowing of fixed apparatus, fixed tanks or fixed pipes used to hold or carry liquid of any kind or impact by a television or radio aerial that has broken or collapsed — damage to the apparatus, tanks or pipes or the television or radio aerial, respectively;
- the incurring of a liability in respect to the insured or member of the insured's family ordinarily residing with the insured incurring the liability as owner or occupier of the home building to pay compensation or damages for home building insurance:
  - to the insured or a member of the insured's family ordinarily residing with the insured; or
  - as a result of:
    - (1) the insured; or
    - (2) a member of the insured's family ordinarily residing with the insured; or
    - (3) a person acting with the express or implied consent of any of them, using a vehicle (including an aircraft or water-borne craft) on the site.

Applicable only to Home contents insurance

- destruction or damage, or the incurring of a liability where the insured is a tenant or lessee of the residential building; or the residential building is a unit (however described) created by the subdivision of strata (however described) in a building and the insured is the owner of the unit, as a result of:
  - the expropriation of the home building;
  - war or warlike activities;
  - the use, existence or escape of nuclear weapons material, or ionizing radiation from, or contamination by radioactivity from, any nuclear fuel or nuclear waste from the combustion of nuclear fuel;
  - the use of the residential building for the purposes of a business, trade or profession; or
  - tree lopping or felling by the insured or a person acting with the express or implied consent of the insured;
- destruction or damage intentionally caused, or a liability where the insured is a tenant or lessee of the residential building; or the residential building is a unit (however described) created by the subdivision of strata (however described) in a building and the insured is the owner of the unit, intentionally incurred, by:
  - the insured; or
  - a member of the insured's family ordinarily residing with the insured; or
  - a person acting with the express or implied consent of any of them;
- where the residential building is unoccupied and has been unoccupied for a continuous period of more than 60 days — destruction or damage occurring otherwise than by lightning or thunderbolt: or earthquake; or theft, burglary or

housebreaking or an attempt to commit theft burglary or house breaking; or riot or civil commotion; an action of a person acting maliciously; impact by or arising out of the use of a vehicle (including an aircraft or water-borne craft); or impact by space debris or debris from an aircraft, a rocket or satellite an animal (other than an animal kept on the site or a domestic animal) a falling tree, or part of a tree, or a television or radio aerial that has broken or collapsed; or a storm, tempest, flood, the action of the sea, high water, tsunami, erosion or land slide or subsidence; or the incurring of liability where the insured is a tenant or lessee of the residential building; or the residential building is a unit (however described) created by the subdivision of strata (however described) in a building and the insured is the owner of the unit;

- accidental breakage of:
  - a television picture tube or screen;
  - the picture tube or screen of an electronic visual display unit;
  - a ceramic or glass cooking top of a stove;
  - glass in a picture frame, a radio set or a clock;
- theft by a person ordinarily residing with the insured at the time of the theft;
- in the case of destruction or damage that is caused by or results from bursting, leaking, discharging or overflowing of fixed apparatus, fixed tanks or fixed pipes used to hold or carry liquid of any kind or impact by a television or radio aerial that has broken or collapsed — damage to the apparatus, tanks or pipes or the television or radio aerial, respectively;
- the incurring of a liability where the insured is a tenant or lessee of the residential building; or the residential building is a unit (however described) created by the subdivision of strata (however described) in a building and the insured is the owner of the unit.
  - to the insured or a member of the insured's family ordinarily residing with the insured; or
  - as a result of:
    - (1) the insured; or
    - (2) a member of the insured's family ordinarily residing with the insured; or
    - (3) a person acting with the express or implied consent of any of them, using a vehicle (including an aircraft or water-borne craft) on the site.

*Prescribed standard cover events not covered in the “what is covered” section*

24. If the prescribed events used in the “what is covered” section, form the basis for the “what is NOT covered” section, insurers will be required to disclose any derogations from these events in accordance with the standard cover regime.
25. It must be noted that while the KFS may be seen to disclose any derogations from standard cover as required under section 35 of the ICA, in respect to the covered events, the KFS will not be able

to be used as a way of satisfying the clearly inform requirements in the ICA as the KFS is only a guide outlining the key information on the insurance policy.

### The proposed content of the what is NOT covered section

26. While using the approach outlined above to determine what should be included in the “what is NOT covered” section of the KFS may be more complex to establish, the potential benefits for both consumers and insurers is likely to outweigh this complexity. It is recognised that if this approach is taken, the prescribed standard cover events that are not covered in the “what is covered” section would be required to be included and given the length restrictions, only those exceptions that are deemed to be critical being included.

#### Discussion Questions

- What exclusions should be included in the “what is NOT covered” section?  
If all exclusions were listed, the KFS would be too long. Other than for things like war, all of these exclusions are in reality important. Most policies have a broader range of exclusions than those which are listed; e.g. one which commonly arises is that the loss was caused by a structural or design defect in the building.  
If the KFS is limited to addressing the prescribed covers, the requirement that the insurer identify where it is less than the prescribed cover as suggested by NIBA above would warn customers of the less than standard cover.  
NIBA is happy to consider consumer feedback on any exclusion they believe should be added which is not part of the prescribed covers.
- Should the “what is NOT covered” section of the KFS only reflect the reverse of the “what is covered” section?  
See above.
- 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?  
It would seem to only make sense to link it to the events covered, otherwise consumers may be confused.
- Will costs for industry increase with an increase number of excluded events and exemptions? If so, please elaborate.  
Unlikely given the KFS needs to be provided in any case. The costs arise from having to provide the KFS. Content such as this is unlikely to have a major impact.

#### 2.1.5 Sub-limits and Excesses

27. To limit the financial liability associated with some types of insurance cover, a number of insurers have introduced one or more sub-limits (or caps) for events covered in their policies. Insurance policies may include sub-limits for insurance events such as flood and fire, which restrict the maximum payout if one of these events occurs. When policies contain sub-limits, the sub-limits are generally set at significantly lower amounts than either replacement or sum-insured values.
28. When looking at the issues surrounding sub-limits the NDIR stated that:

*“While the provision of flood cover with a sub-limit may be better than no flood cover at all, the Review Panel considers that flood cover when included should be on the same basis as cover for other perils.”<sup>2</sup>*

29. The rationale for this is that the community expects insurance to provide the same protection for the insured in the event of a natural disaster, whether it be storm, bushfire, earthquake or flood , and may not understand that a total loss may result in a lower payout, if caused by certain events.
30. Excesses are another way that insurers are able to limit the insurance coverage provided in their policies. In contrast to sub-limits, instead of restricting an insurer’s exposure to large claims when an insurance event occurs, excesses effectively reduce the number of small claims under policies.
31. The consultation paper proposed that where an excess is standard across all policies of that type, the actual excess could be printed on the KFS. However where policies enable excesses to be varied for individual policyholders, the KFS would need to contain a statement that refers consumers to the PDS.
32. When considering excesses, the NDIR indicated that many of the difficulties that arise in relation to policy exclusions apply where insurance policies contain high excesses.
33. This needs to be balanced against the benefits of sub-limits and excesses improving the affordability and accessibility of insurance.
34. In the recent consultation paper “Reforming Flood Insurance: Improving flood insurance availability and transparency” the issue of sub-limits and excesses was raised in the context of a proposal to provide mandatory flood cover, with the ability to opt out, for consumers purchasing HBHC insurance policies.
35. If the proposal to introduce mandatory flood cover, with the ability to opt out, is adopted the incidence of sub-limits may significantly increase in order for insurers to maintain affordability, although the use of sub-limits and excesses in relation to flood cover is the subject of a separate Government consultation.
36. To ensure consumers are fully aware of the relevant factors when considering the level and type of insurance cover they require, disclosure of key financial information such as excesses and sub-limits are considered to be essential.
37. It is proposed to include, where a policy contains one or more sub limits or excesses which may be selected by the consumer, a statement on the KFS indicating that the PDS should be read prior to entering into the policy.

**PROPOSED WORDING OF THE STATEMENT REGARDING SUB LIMITS AND EXCESSES**

*The insurance contract to which this KFS applies contains one or more sub limits and/ or excesses. You should carefully read the product disclosure statement and the policy schedule of the insurance policy to which this KFS applies before entering into the policy.*

38. In addition, if sub-limits or excesses apply consistently across a HBHC insurance policy irrespective of the circumstances of an insured, the amount of the sub limit or excess would be required to be listed in the KFS adjacent to the covered event contained in the “what is covered” section.

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<sup>2</sup> Natural Disaster Insurance Review “Inquiry into flood insurance and related matters” September 2011, page 34

## Discussion Questions

- Is it appropriate to include information on specific excesses in the KFS?  
Excesses payable by the insured are an important part of understanding the coverage. It will be a question of whether it will be practical or cost effective to do so given they can change according to the person and their circumstances.  
A clear warning that excesses apply and the impact and where to find them is at least warranted.  
The notification of excesses should not just be linked to the specified covered events.
- Is it appropriate to include a statement in the KFS acknowledging that sub-limits/ excesses apply in relation to a HBHC insurance policy?  
Yes. This is very important given the impact it has on the available cover for an insured.
- Is the wording of the statement regarding sub-limits and excesses appropriate?  
We do not believe it is. As an aside the KFS is given to a consumer where there is no “contract” or “policy” in place. A better term in any notice would be “this insurance”. The crucial thing is for consumers to know what they before they buy and to check the schedule and PDS.  
We suggest for discussion purposes instead:  
This insurance contains sub limits that restrict the cover for certain events and items. Excesses also apply which you are required to pay/bear as the first part of any claim. If no amount is specified in the PDS ask what they are before you buy the insurance and check the PDS and Schedule/Certificate after you buy the insurance [insurers will use different names for this document]
- What percentage of HBHC policies have excesses in respect of covered events?  
Most policies will have some form of excess e.g for earthquake.
- 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?  
This may be impractical to do. A notice regarding their existence is essential and linking the notice to the covered events will be important too. The notification of limits should not just be linked to the specified covered events though.
- What percentage of HBHC insurance policies contain sub-limits?  
Most policies will contain various sub limits. All of these can have a significant impact on insureds.
- Will the use of sub-limits increase if mandatory flood cover with opt-out is

introduced?

This does not appear likely based on the standard flood cover wording which would prevent multiple flood sub limits from being effective.

- Will the inclusion of information on sub-limits and excesses increase costs for industry? If so, please elaborate and provide the magnitude of costs where possible.

Only if specific limits need to be specified as updates would be required every time they are changed. If not, then the additional costs would be unlikely given the KFS needs to be provided in any case. The costs arise from having to provide the KFS. Content such as this is unlikely to have a major impact.

### 2.1.6 Cooling off period

39. To provide consumers with protection after an insurance contract is entered into, insurers are required to provide a sufficient time period for consumers to consider the policy, and have an adequate cooling off period in respect to the policy.
40. The cooling off period provides consumers with the time to fully consider the suitability and appropriateness of the product free from any pressure or impulse. This allows consumers to evaluate all of the key information in relation to the particular policy and provides consumers with the ability to think over the advantages and disadvantages of a policy to ensure they have obtained the appropriate policy for their requirements.
41. The cooling off period is particularly important for insurance contracts entered into over the telephone. This is due to the application of section 69 of the ICA, which allows insurers, where it is not practical to provide relevant disclosure documentation at the time a contract is entered into, to provide it after an insurance contract is entered into.
42. When looking at consumer understanding of the cooling off period, it has been suggested that a significant number of consumers are unaware that a cooling off period exists in relation to insurance policies and that during this period they are able to cancel their policy at no cost during that period.
43. Insurers currently provide a number of different cooling off periods in relation to their products. A sample of HBHC insurance policies showed that cooling off periods ranged from 20 to 30 days.
44. It is vital that consumers understand the purpose of the cooling off period and it is proposed that the length of cooling off period be outlined in the KFS and be contained in a short statement outlining the purpose of the cooling off period.
45. The Corporations Act provides a cooling off period for the return of a financial product (which includes the taking out insurance) of 14 days.

#### 46. PROPOSED WORDING OF THE STATEMENT ON THE COOLING OFF PERIOD

*A cooling off period of \*\* days applies in relation to this policy. The cooling off period allows you to cancel this policy.*

## Discussion Questions

- Should the time period for the cooling off period be in the KFS?  
NIBA has no issue with this provided it is accurately represented. See comments below
- Is the wording of the cooling off period statement appropriate?  
NIBA does not believe it is appropriate for the following reasons:
  - it does not indicate when the cooling off period (**COP**) starts from and may mislead customers. This is crucial as a COP will start from different times depending on when the date of confirmation of the transaction will be e.g date of issue of written confirmation document or date confirmation facility is made available.
  - the statement that “the COP allows you to cancel this policy” may mislead insureds into thinking this is the only time they can cancel the policy when this is not the case. The COP is different to normal cancellation rights of the insured because it requires the insurer to refund the premium subject to certain limited permitted deductions. For normal cancellation by the insured, the insurer will usually be able to deduct more.  
  
If there are no cancellation rights post COP (which would be unusual) this is something the insured would want to know.  
  
The above issues are significant to insureds from a practical perspective.
- Are there any practical concerns regarding the inclusion of a section providing consumers with a time period of the cooling off period on the front of the KFS with an explanation on the reverse side?  
NIBA would have no concerns with this approach.
- Will the inclusion of the cooling off period (including a statement) increase costs for industry? If so, please elaborate and provide the magnitude of costs where possible.
- Unlikely given the KFS needs to be provided in any case. The costs arise from having to provide the KFS. Content such as this is unlikely to have a major impact.

## 2.1.7 Warnings/ statements

### How to use the KFS

47. The objective of the KFS is to provide consumers with the key information on their HBHC insurance policies. This will enable consumers to compare and access different policies in order to make appropriate insurance decisions.

NIBA is extremely concerned with such statements. The reality is that the KFS as proposed will never enable consumers to adequately “compare and access different policies in order to make appropriate insurance decisions”. This is because the information provided is limited and in short form and many of the other benefits provided in such policies that may be of real relevance to

consumers will not be included in the KFS. NIBA is concerned that the KFS will in fact mislead consumers into thinking that policies which are vastly different in overall coverage e.g due to additional benefits available etc are similar because of the limited basis for comparison provided in the KFS. The risk is that the KFS as proposed will work in favour of insurers providing limited benefits and possibly lead other insurers to reduce their additional benefits where choices made by consumers won't (because of the KFS), be based on any consideration of all of the benefits contained in the PDS.

48. To maximise the effectiveness of the KFS it is considered essential that a short statement outlining how it is to be used and its legal effect should be contained in the KFS. The importance of the inclusion of a statement on how to use the KFS was also recognised in a significant number of the submissions received in respect of the RFI consultation paper.
49. The KFS is not intended to be a document to be used in isolation or as an alternative to the current disclosure documentation required under the ICA and the Corporations Act. The KFS does not have the same legal effect as the current disclosure documents required under these Acts.
50. On the basis that the KFS is in essence merely a guide containing key information pertaining to a HBHC, KFSs should contain a statement indicating its purpose and its legal effect.
51. In addition, the statement could include wording to encourage consumers to read the full PDS.

#### **THE PROPOSED WORDING FOR THE "HOW TO USE THE KFS" STATEMENT**

##### **OPTION 1**

*This Key Facts Sheet provides an outline of some of the key facts and information you should take into consideration prior to entering into this policy. This Key Facts Sheet may also be used to compare this policy with other similar policies to ensure your insurance needs are met. This Key Facts Sheet is **NOT** a comprehensive disclosure document and you should read this policy's product disclosure statement before taking out the policy.*

##### **OPTION 2**

*This KFS is to be used as an informative guide and does not contain all relevant information about this policy. The KFS is not a substitute for this policy's product disclosure statement and should not be used as such.*

## Discussion Questions

- Is a “How to use a KFS” statement required?

Yes for the reasons set out above. If the reality of the limited value of the KFS is not made clear the effect will be that consumers will in practice seek to rely on this document and not the PDS which sets out the actual terms of the cover. The risk is that the KFS as proposed will mislead consumers and work in favour of insurers providing limited benefits and possibly lead other insurers to reduce their additional benefits where choices made by consumers won't (because of the KFS), be based on any consideration of all of the benefits contained in the PDS.

- Is the wording of the proposed “How to use a KFS statement” appropriate?

No. Option 1 is misleading. The representation that “This Key Facts Sheet may also be used to compare this policy with other similar policies to ensure your insurance needs are met.” is in our view likely to lead customers into the belief that this is all they need to read. The qualifying paragraph after it is unclear and insufficient to warn them this would be dangerous.

Option 2 is less of a concern but needs to be clearer.

We suggest Option 3 [to be reviewed subject to decisions regarding the content. The qualification may need to be more robust]

“This KFS sets out information that the Government believes consumers should generally consider before deciding to buy this insurance. They are not all of the relevant matters you should or need to consider and what is right for you depends on your circumstances. It doesn't list all available benefits nor all terms and conditions (including exclusions and limits) that can significantly affect the cover. **To properly understand this policy and compare it with others you must always read the PDS and other policy documentation.**

**You should also consider whether you should obtain personal advice from a licensed insurance broker to assist you in your decision. Contact details of licensed insurance brokers can be obtained from [www.niba.com.au](http://www.niba.com.au)**

- Should additional information be included in the statement? If so, please elaborate.

See above. The importance of a consumer seeking personal advice in making a decision about an insurance policy cannot be underestimated. This is especially the case where most government discussions with stakeholders acknowledge the reality that consumers are not inclined to read or even where they do, are not well equipped to understand, the relevant policy documentation. The KFS will not solve the above problem. A recommendation that a consumer considers seeking personal advice from a licensed insurance broker is a valuable recommendation. It is no different to contracts recommending consumers seek legal advice before entering into the contract.

- Will the inclusion of a “How to use a KFS statement” increase costs for industry? If so, please elaborate and provide the magnitude of costs where

possible.

Unlikely given the KFS needs to be provided in any case. The costs arise from having to provide the KFS. Content such as this is unlikely to have a major impact.

### **General consumer warning/Risk statement**

52. The nature of insurance is such that consumers are usually unaware of the financial risks they face when entering into an insurance contract. Financial risks and adverse consumer outcomes are only fully recognised after a particular insurance event occurs, such as a flood or an earthquake.
53. In this regard, despite the standard cover regime applying to HBHC insurance contracts, significant differences in the level of insurance cover can arise when an insurance event occurs.
54. To make this clearer to consumers, it is proposed that a statement providing a general consumer warning/ risk statement be included in the KFS.

#### **PROPOSED WORDING OF THE “GENERAL CONSUMER WARNING/ RISK STATEMENT”**

*Due to the nature of insurance contracts and their potential financial impacts, consideration should be given to the “what is covered” and “what is not covered” sections of this KFS to ensure that this policy covers your particular risks and needs.*

## Discussion Questions

- Is a “General consumer warning/ Risk statement” required?  
NIBA believes some form of warning is appropriate. It may be better placed in a useful information section on the back of the KFS.
- Is the wording of the proposed “General consumer warning/ Risk statement” appropriate?  
NIBA does not believe it is appropriate.  
The representation as drafted suggests that the KFS will by itself will be sufficient, which is not the case. It also does not appear to address the point being made in paragraphs 52-53 above.
- Should additional information be included in the statement? If so, please elaborate.  
NIBA recommends the following for further discussion purposes [Much will depend on the end content regarding what is and is not covered in the KFS]:  
“You need to consider what financial risks you face and need protection for. To help identify your risks consider asking a licensed insurance broker for personal advice.  
As a starting point you should read the “what is covered” and” what is not covered” sections. However this only covers [insert explanation of end result with appropriate qualifier as to what the limited information does not cover e.g covers beyond prescribed covers and additional benefits etc].
- Will the inclusion of a “General consumer warning/ Risk statement” increase costs for industry? If so, please elaborate and provide the magnitude of costs where possible.  
Unlikely given the KFS needs to be provided in any case. The costs arise from having to provide the KFS. Content such as this is unlikely to have a major impact.

## Health warning

55. In NDIR’s report into the insurance industry, the review panel recommended that the KFS should contain a health warning. This health warning would provide consumers with information on the potential risks that may arise in relation to insurance and the potential adverse outcomes that may arise as a result of them taking or failing to take particular actions in respect to their insurance decisions. It was considered that the health warning would further enhance the consumer understanding that will be provided in the KFS prescribed content.
56. A simple health warning for HBHC insurance policies could be as simple as those provided for other products and could also be provided verbally if the KFS could not be provided at the time an inquiry regarding the HBHC insurance policy is made.
57. NDIR’s final report indicated that it would be appropriate for the insurer to provide the purchasers of home and contents policies with a health warning if their policies did not include full flood or full replacement cover.

NIBA notes that the following does not appear to address the point in paragraph 57 above.

#### PROPOSED WORDING OF THE HEALTH WARNING

*The importance of making informed decisions regarding you insurance requirements should not overlooked, the incidence of natural disasters and their potential financial impact can place you in significant financial hardship. It is strongly recommend that you read this KFS and the PDS and consider whether the cover is appropriate for you, and seek further information if required.*

#### Discussion Questions

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

NIBA queries whether the general health warning will already be addressed when the consumer reads the “what is covered” and “what is not covered” sections which should cover whether flood is covered and full replacement cover.

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

Yes but see comment 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?

Whilst not ideal, this should at least be included on the back of the KFS in useful information.

- Will the inclusion of a health warning increase costs for industry? If so, please elaborate and provide the magnitude of costs where possible.

Unlikely given the KFS needs to be provided in any case. The costs arise from having to provide the KFS. Content such as this is unlikely to have a major impact.

#### The Wayne Tank Principle

58. The Wayne Tank principle, as set down in *Wayne Tank & Pump Co Limited - v - Employers Liability Assurance Co*<sup>3</sup>, provides that:

- If there are two or more concurrent causes of damage in respect of a loss or damage to an insured’s property and one of those concurrent events are excluded events in the insured’s insurance policy, then the exclusion will still apply such that the insurer will not have to indemnify the insured in respect of the loss or damage.

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<sup>3</sup> Wayne Tank and Pump Co Ltd v. Employers Liability Assurance Corporation Ltd [1974] QB 57

59. The potential adverse financial outcomes consumers may face as a result of the Wayne Tank principle have been raised as a potential area of concern. In order to address this concern it is proposed that the KFS will contain a short statement raising the potential application of the Wayne Tank principle and its potential effect.

**PROPOSED STATEMENT REGARDING THE WAYNE TANK PRINCIPLE**

*In situations where there are two or more concurrent causes for damage to your property and one of the causes is excluded under this policy any claim made in respect of that damage may be excluded.*

**Discussion Questions**

- Will consumers benefit from the inclusion of a statement outlining the application of the Wayne Tank principle? If not, why not?  
Consumers would benefit from understanding the principle as it will help them in identifying what cover is provided or not provided. NIBA suggests this be included on the back of the KFS in useful information. Of course NIBA notes it is merely one of many such concepts consumers should be made aware of but in the space constraints of the KFS it would not be practical to cover them.
- Is the wording of the statement regarding the Wayne Tank principle appropriate? If not, why not?  
NIBA believes that it is not clear enough for consumers to understand it and its impact. it could read:  
"If damage occurs and it cannot be isolated to any one cause (e.g storm or flood) and one of the causes is covered (e.g storm) by the policy and one is not (e.g flood), the insurer may be able to exclude the whole claim as flood is excluded. Because of this it is important to carefully read all exclusions".
- If space is limited should the Wayne Tank principle be included?  
Yes but on the back.
- Will the inclusion of a statement outlining the Wayne Tank principle increase costs for industry? If so, please elaborate and provide the magnitude of costs where possible.  
Unlikely given the KFS needs to be provided in any case. The costs arise from having to provide the KFS. Content such as this is unlikely to have a major impact.

**Additional informational statements suggested in submissions in the Reforming flood insurance: Clearing the waters consultation paper**

60. The RFI consultation paper sought input from stakeholders on what other matters should/ could also be contained in the KFS. In response, submissions outlined a number of other matters for consideration for inclusion in the KFS. Most of the matters raised may be included in other areas of the KFS such as in the "How to use the KFS", however a number of the other matters raised may warrant consideration and be included in the KFS. The matters raised in the submissions included:

- a warning that the KFS is for information only and is not a binding contract on either the insured or the insurer;  
This should be on the front. Consumers should not be led into believing they should rely on this document for a proper comparison/understanding of the policy and its cover. It is essentially a document containing information that the Government has determined is likely to be “key” and is by its very nature limited.
- a list of the key terms and concepts referred to in the KFS;  
Not sure this will be necessary if everything is clearly explained in the relevant place.
- information on claims processes;  
The KFS is about making a decision to buy, not claim. At most this could be on the back at the end of the KFS.
- a statement covering the role of both internal and external dispute resolution processes and the role of the Financial Services Ombudsman;  
The KFS is about making a decision to buy. At most this could be on the back at the end of the KFS.
- a statement that encourages consumers to fully consider all potential risks that may apply in relation to their insurance decisions;  
Dealt with above in general health warning and General consumer warning/Risk statement
- a statement warning that other exclusions and limitations may apply in relation to the relevant policy and that consumers should read the policy’s product disclosure statement in order to become fully aware of all of the exclusions and limitations that may apply;  
This is crucial and could be dealt with above in general health warning and General consumer warning/Risk statement
- a statement encouraging consumers to actively review their insurance decisions on an annual basis to ensure their insurance needs are still being met.  
NIBA supports this being on the front page of the KFS.

Other matters raised in the RFI consultation paper

61. Other matters were also raised in the consultation paper, including:

- a brief explanation of policy types (sum-insured/sum-insured plus margin/total replacement);  
Covered in 2.1.2 above already
- a statement encouraging consumers to consider carefully whether the policy adequately covers the risks that are faced by their property;  
This is dealt with above in general health warning and General consumer warning/Risk statement
- a statement encouraging consumers to consider other policies; and  
This is worth including.

- sources of additional relevant information (for example, relevant consumer websites).

NIBA has no issue with this. NIBA would be happy to have its web site included which allows customers to seek to access an insurance broker when needed.

62. While most of the submissions supported the inclusion of generic consumer information statements, the common theme across all submissions was that the KFS should be kept uncluttered and that these generic statements should only be included if they do not jeopardise the integrity of the KFS.

#### Discussion Questions

- Should any of the suggested statements be included on the reverse side of the KFS? If so, which statements do you consider to be most important?

See comments above under each

- Are there any other matters to which a statement in the KFS would benefit consumers? If so, please elaborate?

NIBA believes it is crucial for consumers to be made aware of the following:

- the ability if needed to obtain personal advice from a licensed insurance broker.

Most consumers will not be equipped to understand the policy documents and would also not be aware that they can access such personal advice from a licensed insurance broker and acquire a product that better suits their needs at little or no additional cost from having undertaken the process directly with the insurer or the insurer's agent.

This is because the broker's remuneration is paid by the insurer as a commission which is a percentage of the premium. Typically the percentage will not increase the premium payable were the consumer to buy the product directly from the insurer or through its own agent (without the benefit of personal advice) as the broker's involvement saves the insurer such direct /agency distribution costs.

- the fact that the KFS only provides limited information determined by Government to be "key". This means that any comparison based on the KFS information is limited as additional benefits may be available under the policy or other policies not covered by the KFS that may mean the policy is better suited to the consumer. To determine if this is the case the consumer needs to read the PDS.

See earlier for example notices covering the above.

- Will the inclusion of additional statements on the reverse side of the KFS increase costs for industry? If so, please elaborate and provide the magnitude of costs where possible.

Unlikely given the KFS needs to be provided in any case. The costs arise from having to provide the KFS. Content such as this is unlikely to have a major impact.

## 2.2 STRUCTURE

63. As noted in paragraph 9, the RFI consultation paper contained a prototype of a KFS. For the purposes of developing the KFS, the KFS prototype will be taken as the starting point for discussion.
64. In relation to the structure of the KFS, the only restriction is keeping its length to a one A4 page sheet. It is intended that the KFS will contain the key information regarding the particular policy to which it applies and any other key consumer information, on the front, with some generic information contained on the reverse.

### Discussion Questions

- While the final structure of the KFS will not be able to be finalised until the content has been settled, is the prototype contained in the “Reforming flood insurance: Clearing the waters” consultation an appropriate starting point?  
NIBA believes the structure can only be properly discussed and once the content is finalised.
- Are there any other feasible ways to structure the KFS outside those provided in the Reforming flood insurance: Clearing the waters” consultation paper? If so, please provide an example of alternative prototypes?  
Given consumers receive a PDS which is ultimately the key document for them to read, the option of including the KFS at the front of the PDS should be considered.

## 2.3 GENERAL FORMATTING

### 2.3.1 Font

65. To provide consistency across all KFS for HBHC insurance policies the font, to be used for headings, normal text and tables will be prescribed. It is considered that providing consistency in relation to the font used in the KFS is essential for reducing consumer confusion when viewing its contents.

### 2.3.2 Length

66. The length of the KFS will be kept to one page (A4), both front and back. The length of the KFS is in keeping with the fact that it is intended to be an informative guide to provide consumers with easy access to key information relating to HBHC insurance policies.

### 2.3.3 Positioning

67. The positioning of the information is essential to the effectiveness of the KFS. Key statements outlining the way in which the KFS should be used and the legal nature and effect of the KFS (in keeping with the prototype) should be placed at the top of the front page, just below factual information regarding who the insurance provider is, the name of the contract/ policy to which the KFS applies.

68. Logically, the type of cover the policy provides (sum-insured, replacement cover, etc.) as it relates directly to the level of financial cover should also be placed towards the top of the front page.
69. In relation to the other content of the KFS, the two key sections that are essential to the effectiveness of the KFS, “what is covered” and “what is NOT covered”, should also be in a prominent position.

#### 2.3.4 Wording

70. In relation to the wording of the KFS, it is recognised that to reduce confusion and to ensure that the length requirement (as stated above) is able to be achieved, words and statements should be kept clear, concise and effective.
71. Consumer testing will assist in assessing the level of prescription of the wording of the KFS and to ensure that it is clear, concise and effective consumer testing will be required, however this will only be able to be undertaken after the actual content of the KFS is established.
72. It is expected that the “what is covered” and “what is NOT covered” sections and the wording of specific statements and other generic information concerning HBHC insurance policies will be prescribed in regulation.

#### Discussion Questions

- Are there any concerns with the proposed approach of prescribing the font requirements on the content (headings, tables, normal text etc.) of the KFS?  
**NIBA has no significant concerns.**
- What size should the font for the content of the KFS be? Should it be consistent with other disclosure documents?  
**This may depend on ultimate content but the basic font will need to be easily read by consumers.**
- Are there any practical concerns with restricting the KFS to a one A4 page format (both front and reverse sides)?  
**The main concern is whether the necessary information can be included in the space so that customers are not ultimately misled to their detriment. See NIBA’s comments through the discussion paper on its issues of concern.**
- Is it appropriate for all of the content of the KFS to be prescribed or should the regulation only provide guidance regarding the wording of some sections of the KFS?  
**NIBA believes that it should be prescribed to avoid confusion.**

## 2.4 PROVISION

### 2.4.1 When the KFS is required to be provided

73. To ensure consumers are able to benefit from the KFS, the KFS should be available when they are making decisions about their insurance cover. To achieve this insurers are required to provide consumers with a KFS when a consumer inquires about a particular policy.

74. While the KFS is required to be provided when a consumer makes an inquiry, it is recognised that there may be a number of situations where it is inappropriate or ineffective to do so. In the Explanatory Memorandum to the 2011 Bill, the following situations were raised as situations where the provision of a KFS would not be required:

- where the insurer has already provided the consumer with a KFS for a particular HBHC insurance contract and the new KFS would be the same (except for its date);
- where the insurer reasonably believes that another person has already provided the consumer with a KFS, and the new KFS would be the same (except for its date); and
- where the consumer has indicated that they do not wish to have a KFS provided in relation the HBHC insurance contract that they are seeking information on.

75. It is proposed to provide an exemption in the regulations for the requirement to provide a KFS on inquiry in the situations as set out above.

#### Discussion Questions

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

NIBA believes the situations in which a PDS need not be provided should be mirrored for the KFS.

- Are there any other situations where a KFS should not be required to be provided be included? If so, please elaborate.

See above.

- 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?

See above

- If no exemptions for the provision of a KFS are provided in the regulation, what will be the cost implications for insurers?

It is obvious that significant costs would be incurred for insurers where KFS documents need to be provided in situations where it is unnecessary to do so. e,g where consumer already has one or will not be proceeding to consider the product.

#### Delays in the provision of a KFS

76. Section 69 of the ICA currently allows insurers to provide information within 14 days after the day a contract is entered into when it is not practicable for the information to be provided at the time. In situations where it is not possible to provide a consumer with a KFS at the time of inquiry, insurers will not be able to rely on section 69 of the ICA. However, as discussed in the Explanatory Memorandum to the 2011 Bill, it is proposed that regulations will be introduced to provide insurers with the ability to defer the provision of a KFS in circumstances where it is not possible to provide it at the time of inquiry.

77. While it was considered appropriate to allow the regulations to provide some flexibility in this area, the timing of the provision of a KFS is vital when considering the consumer's ability to use the KFS as a way of comparing policies.
78. In this regard, delays in the provision of the KFS could deter or prevent consumers from making informed decisions about their insurance cover and result in consumers purchasing insurance policies that do not meet their needs.

#### Discussion Questions

- Does the timing of the provision of the KFS raise any practical concerns for insurers?

See comment above about mirroring PDS provisions.

- 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?

Typically in telephone sale/time critical situations provided the information is provided orally. NIBA is concerned that in certain cases consumers may be left unprotected if there is no such flexibility.

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

Yes and the same position adopted by ASIC for PDSs should be taken.

- Are there any cost impacts for insurers if the provision of a KFS is not able to be delayed? If so please elaborate and provide the magnitude of costs where possible.

In time critical situations insurers would be forced to put in place systems to provide the KFS which are unlikely to be practical or cost effective.

#### 2.4.2 Method

79. Under the ICA, insurers are not currently able to satisfy its notification requirements using methods of electronic communication. The ICA only allows written notifications to be provided to insureds personally or to their last known postal address. The KFS will continue to be able to be provided as currently allowed under the ICA. However, to reduce compliance costs for industry and allow for greater access for consumers when making their insurance decisions, the provision of a KFS will also be able to be made electronically.
80. The ability for insurers to engage in electronic communication will allow insurers to provide a printable copy of the KFS on their websites and send the KFS (in electronic form) via email.

## Discussion Questions

- Are there any practical or logistical issues regarding the proposed methods for which the KFS will be provided?

NIBA supports electronic delivery.

NIBA queries the view expressed above regarding the inability to electronically communicate notices having regard to the wording of section 77 of the ICA. NIBA notes that the last ICA draft legislation in 2010 seeking to amend section 77 is inconsistent with the position noted above. The previous proposed changes to the section merely clarified that other forms of notice can be given. NIBA does not believe statements to this effect should be made. At most a statement that the position is unclear and needs to be clarified would be better.

- Are there any cost implications in relation to the allowed methods for the provision of the KFS? If so, please elaborate and provide the magnitude of costs where possible.

If electronic and oral delivery are permitted NIBA has no concerns.

## 2.5 FAILING TO COMPLY WITH THE REGULATIONS REGARDING KEY FACTS SHEET

81. To ensure the KFS achieves its policy intent, the 2011 Bill makes it an offence for an insurer to fail to comply with or engage in conduct that contravenes any requirement contained in the regulations in respect to the content, format, structure and provision of a KFS. An insurer will be subject to a criminal penalty of 150 penalty units if it commits the offence of failing to comply with the KFS regulations.
82. The offence and criminal penalty created in respect to KFSs was introduced to ensure that the disclosure to individual consumers receives the appropriate level of attention by insurers.

## 2.6 THE MONITORING AND ADMINISTRATION OF THE KFS

83. The Australian Securities and Investments Commission (ASIC) is responsible for the monitoring and administration of the ICA and will monitor compliance in relation to the content, formatting and provision of KFSs.

## 2.7 IMPACTS /COSTS

84. It is recognised that the introduction of the KFS will increase compliance costs for industry. The increased compliance costs will be incurred in the establishment (statement development and legal costs), implementation (systems changes, website updates and front line staff training costs) and ongoing annual costs (printing and distribution costs) of the KFS.
85. The potential areas, where proposals outlined in this discussion paper may have a cost impact are those relating to the initial establishment and implementation costs of the KFS.
86. In this regard, the potential costs relating to the format, structure and, in particular, the content of the KFS should also be considered. However, it is important to note that the introduction of an effective and informative KFS will have benefits for the whole community and any cost will need to be assessed against these benefits.

### Discussion Questions

- To what extent would different prototypes of the KFS impact on costs? Please provide the magnitude of costs if possible.

A single page is the preferred option as it will be significantly cheaper.

- Are there any aspects of the KFS where costs will be significantly increased as a result of proposals outlined in this discussion paper? If so, please elaborate and provide magnitude of costs where possible.

Only if it is of more than a page and equivalent PDS delivery exceptions do not apply.

- Are there any areas of this discussion paper where industry cost should be considered/ recognised?

3 APPENDIX A

# Proposed KFS in the “Reforming flood insurance: clearing the waters” consultation paper

**CONSULTATION DRAFT**

## KEY FACTS ABOUT YOUR HOME INSURANCE POLICY

[Insurance provider logo]

Description of your home insurance policy			
Policy name	XYZ Home Building Classic		
Policy type	<input checked="" type="checkbox"/> Sum insured	<input type="checkbox"/> Sum insured plus margin	<input type="checkbox"/> Total replacement cost

**How to use this statement**

You can use this statement to help you to find out quickly whether this insurance policy may suit you, and you can use it for comparing the features of this policy with other policies. It is a only short summary of key benefits and exclusions and before making a decision it is important that you read the full terms and conditions in the XYZ Home Building Classic Product Disclosure Statement which can be obtained from [www.insurance.xyz](http://www.insurance.xyz) or by telephoning us on XXXX.

What is covered	What is NOT covered
<b>Fire:</b> eg damage from bushfire or fire caused by electrical fault	Damage from ash or soot if there is no fire in your home
<b>Explosion</b>	
<b>Theft or attempted theft</b>	
<b>Stormwater/rainfall runoff</b>	
<b>Flood</b>	Tsunami/actions of the sea
<b>Impact</b>	
<b>Riot</b>	
<b>Occupier's liability</b>	
	<b>Other:</b> <ul style="list-style-type: none"> <li>landscaping, plants</li> <li>cars, boats</li> </ul>

**Covered amount:** This policy is a 'sum insured' policy. The policy will only cover you up to fixed limits, agreed by you. You should ensure that the limits are adequate to compensate you for the losses you may have. For further information see [reference to tools to estimate the value to insure].

**Need to consider risks:** There may be risks such as flood, bushfire, land slippage in the area where the insured property is located. You should consider carefully whether this policy provides you with the cover you require for those risks.

**Cooling Off:** If you are not happy with your insurance cover, and have not made a claim, we will cancel and refund your premium in full within [XX] days of purchase.

**Excess:** An excess may be payable if a claim is made. The standard excess is \$XX [but this may be varied]. Please see the XYZ Home Building Classic Product Disclosure Statement [at page/paragraph XX].

**Optional Cover:** For an additional premium amount, we may insure items that are not standard. To find out about a range of our Optional benefits, please refer to the XYZ Home Building Classic Product Disclosure Statement which can be obtained from our website [www.insurance.xyz](http://www.insurance.xyz) or by telephoning us on XXXX.

**CONSULTATION DRAFT**

### Possible alternative what is and what is not covered section

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