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INSURANCE COUNCIL OF AUSTRALIA

Queensland Floods Commission of Inquiry

Submission

Terms of Reference 2(a), (b), (c), (e), (f) and (g)

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Background

About the Insurance Council

1 The Insurance Council of Australia (**Insurance Council**) is the representative body of the general insurance industry in Australia.

2 Its members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the Australian financial services system.

3 The private sector insurance industry generates gross premium revenue of $33.4 billion per annum and has assets of $101.7 billion[1]. The general insurance industry on average pays out about $87 million in claims to policyholders each working day[2].

4 Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, commercial property, and directors and officers insurance).

10 Point Plan

5 On 27 January 2011, the Insurance Council released its 10 Point Plan to tackle disasters[3], though this plan originated from policy development work over some years prior.

6 The 10 Point Plan advocates government policy and industry initiatives aimed at developing a more effective and sustainable response to disasters in Australia. The ten point plan is as follows:

Standard definition for flood: Reform of the Insurance Contracts Act to include a common definition of flood for reference by insurers that offer flood insurance (to maintain competition and consumer choice, retain the right to derogate and amend the definition under the 'unusual terms' section of the Act).

Improved disclosure: Industry commitment to simplify and improve insurance product disclosure statement summary arrangements to enhance consumer understanding of insurance cover.

Provision of adequate flood data: Agreement from Government to establish an open source nationally consistent and contemporary digital terrain model, to allow the accurate mapping of flood risks nationwide and communication of those risks by government to property owners.

Removal of insurance taxes: Commitment across all Governments to encourage greater personal responsibility in the community through implementation of recommendation number 79 of the Henry Tax Review to abolish all insurance taxes, including fire services levies.

Improved land-use planning: Commitment by Government to develop national land-use planning criteria that prohibits inappropriate land-use in Australia.

Improve building standards: Commitment by Government to improve the community's disaster resilience by modernising the Building Code of Australia to include minimum standards for the durability of property to natural hazards.

Improve community infrastructure: Recovery funds dedicated to preventative infrastructure projects including levees, barrages, flood gates and improved drainage.

Education and financial literacy campaign: Government and industry commit to a community education campaign to increase awareness of insurers' obligations to consumers and dispute resolution arrangements. This includes promoting the insurance industry Code of Practice.

Measure effectiveness of disaster relief payments: Introduce annual reporting by the Productivity Commission on the effectiveness of State and Federal disaster relief payments.

Better advice to consumers: Commitment by Government to ensure the advice provisions in the Corporations Act do not impede discussion between consumers and insurers on appropriate insurance cover needs.

Submission outline

7 This submission sets out the following in support of the reforms proposed by the Insurance Council:

7.1 A summary of the prudential and consumer regulatory regime that applies to general insurers in Australia. This includes legislative and industry consumer protection regimes. This summary is set out in paragraphs 13 to 112.

7.2 Information about the general insurance market in Australia, including the extent of flood insurance available in the market, the impediments to achieving cover for flood, the role of the National Flood Information Database (**NFID**) and issues for premium calculation. This summary is set out in paragraphs 113 to 143.

7.3 Details relating to the response of insurers and others to losses arising out of the 2010/2011 Queensland floods. These details are set out in paragraphs 144 to 168.

7.4 Information to support each area of proposed reform, and the overall package of reforms, proposed by the Insurance Council in this submission. This information is set out in paragraphs 169 to 258.

Summary of submissions

8 Flood has the potential to devastate communities, putting lives and property at risk. The starting point for any policy response to flood is an assessment of the community's risk tolerance by reference to the moral imperative to protect life and property. Consideration should then be given to the efficient use of public and private funds to ensure appropriate distribution of the financial impact of flood risk.

9 The private insurance market provides the most efficient mechanism for the distribution of the financial impact of flood risk. There is no general market failure in the private insurance market relating to flood risk. No home and contents consumer in Australia is presently in a position where a product is not available to them to cover flood risk[4] should they determine that they have a need to take out such cover.

10 Consistent with its 10 Point Plan, the Council proposes in response to Terms of Reference (**ToR**) 2(a), (b), (c), (e), (f) and (g), a package of inter-related reforms designed to address those factors which currently act as impediments to achieving comprehensive levels of flood insurance coverage in Queensland. Such impediments operate to restrict the supply of, or demand for, flood insurance and, ultimately, result in imperfections in the insurance market which distort the efficient distribution of the financial cost of flood on the community[5].

11 This package of reforms is crucial to enabling the insurance industry to deliver affordable[6] flood insurance to the community on terms, and in a manner, that will convey effectively to consumers, the scope of the insurance offered.

12 The table below sets out the submissions for each area reform and their relevance to the ToRs.

	Submission	ToR
Cover for flood	• Private insurance is available for flooding in all locations in Australia for home and contents from a number of insurers. Government policy should encourage other insurers to offer flood cover. • The availability and cost of flood cover will be a reflection of the insurance market response to flood risks demonstrated through government flood mapping. • Any home and contents flood cover should be based on a standard definition for the risk. • Where flood cover is not offered 'as standard' in a policy, the basis of derogation should be clear and attainable, either through enhanced disclosure or access to advice, or both.	2(b) and related to 2(a), 2(c), 2(e) and 2(g)
Reforms to ensure appropriate education, disclosure and advice about the scope of cover for flood	• Government and industry should cooperate to increase community awareness of insurers' obligations and dispute resolution arrangements. • For retail clients, disclosure will be improved by development of a one page summary dealing with key issues under the policy, including flood cover. • Regulatory barriers should be removed to encourage direct insurers to provide advice to consumers about their own products.	2(a) and related to ToRs 2(c) and 2(e)
Access to flood data	• A single body, with appropriate powers and responsibilities should assume a national responsibility for the collection, maintenance and publication of flood information.	2(a) and 2(e) and related to ToR 2(g)

<table>
<tr><th></th><th>Submission</th><th>ToR</th></tr>
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The Bureau of Meteorology (BoM) should be delegated with responsibility for, and appropriate powers in connection with, the collection, maintenance and publication of national, open source, flood information.
This should be achieved by an amendment to part 7 of the Water Act 2007 (Cth) to:

allow or confirm that the BoM has the power to collect existing flood data and other flood information. This will include the power to collect this information from state and local governments;
require the BoM to:

maintain and update this flood information to ensure it remains accurate and up to date; and
publish this flood information to the public at no cost.

Parallel to this legislative change, a flood information taskforce should be established to assist the BoM, in an initial implementation period, to examine what improvements can be made in Australia regarding flood information.

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<tr><td>Reduction of risk and impact of flood events</td><td>

State and local governments should ensure current flood mitigation strategies such as the operation of the Wivenhoe and Somerset Dam release strategies are operated to provide reliable flood mitigation capability.
State and local governments should enhance flood mitigation strategies and improve infrastructure management to minimise flood risk and resultant property losses.
State and local governments should change planning and building laws to reduce the risk of property loss in flood prone areas.
State and local governments should review and, where appropriate, enhance emergency prevention and response arrangements to minimise losses in flood events
Local governments should include a statement of flood risk, based on a transparent categorisation of

</td><td>2(f), 2(g) and related to ToRs 2(a) and 2(e)</td></tr>
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	Submission	ToR
	that risk, in each rates notice for flood prone properties. • The *Residential Tenancies and Rooming Accommodation Act 2008 (Qld)* should be amended to require 'point of contract' disclosure of flood risk for the rental property, based on a transparent appropriate categorisation of that risk. • Community relief funds should be utilised in a way that encourages personal responsibility for risk management of disaster events.	
Removal of insurance taxes	• Insurance taxes, including stamp duty on insurance contracts, should be abolished in order to encourage community members to access insurance cover at more affordable rates.	2(a) and 2(c)

Regulation of general insurers

13 Australian general insurers are highly regulated institutions, subject to the regulation of, among other agencies, Australian Prudential Regulatory Authority (**APRA**), Australian Securities and Investment Commission (**ASIC**) and the Australian Consumer and Competition Commission (**ACCC**).

14 APRA is responsible for prudential supervision of individual financial institutions and for promoting financial system stability in Australia.

15 ASIC is responsible for financial market integrity, business conduct and disclosure, and consumer protection in the financial system.

16 The ACCC is responsible for competition policy.

17 APRA, ASIC (and the Reserve Bank of Australia) work together to ensure a coordinated approach to the resolution of issues relating to the stability of the financial system.

18 Together with the Commonwealth Treasury, these agencies form the Council of Financial Regulators, which provides advice to the Australian Government on the adequacy of Australia's financial regulatory arrangements.

Prudential regulation

General

19 General insurers operating in Australia must be authorised to carry on insurance business under the *Insurance Act 1973 (Cth)* (**Insurance Act**)[7].

20 APRA is a Commonwealth statutory authority established under the *Australian Prudential Regulation Authority Act 1998 (Cth)*.

21 APRA's high-level powers for the prudential supervision of institutions derive from this legislation and from specific industry legislation, including for general insurers, the Insurance Act[8].

22 The prudential regulation by APRA of general insurers in Australia is recognised by many insurers as being among the most stringent regulation in the world.

23 Under section 35 of the *Insurance Act*, APRA may determine (in writing) standards **(prudential standards**) relating to prudential matters that must be complied with by general insurers.

24 The prudential standards that apply to general insurers regulated by APRA[9] include:

24.1 Capital Adequacy (GPS[10] 110 to 116).

24.2 Risk Management (GPS 220).

24.3 Business Continuity Management (GPS 222).

24.4 Reinsurance Management (GPS 230)

24.5 Outsourcing (GPS 231).

24.6 Audit and Actuarial Reporting and Valuation (GPS 310).

24.7 Governance (GPS 510).

25 The prudential standards have the force of law.

Capital adequacy

26 The capital adequacy standards[11] are designed to ensure that general insurers maintain adequate capital to act as a 'buffer' against the risks associated with their activities.

27 Given the inherent uncertainty and variability of insurance liabilities, the prudential standards recognise the need for general insurers to maintain a margin of safety to meet their future debts, over and above actuarial estimates of their liability for claims. This is because measurement errors, catastrophes and other unexpected events could lead to situations where the actual liabilities of an insurer are higher than might have been expected on average[12].

28 In recognition of this potential, the capital adequacy standards impose a more conservative test of solvency than the commercial solvency test, requiring that insurers specify capital requirements over and above commercial solvency requirements[13].

29 The protection that these capital requirements provide to policyholders is that a general insurer in financial difficulty would in most instances fail the capital adequacy standards, well before becoming insolvent based on the commercial solvency test. This provides an opportunity for steps to be taken by the insurer and APRA to prevent the insurer from becoming commercially insolvent[14].

30 The key requirements of the capital adequacy prudential standards[15] are that a general insurer must:

30.1 maintain minimum levels of capital determined according to the certain prescribed methods;

30.2 determine its minimum capital requirement (**MCR**) having regard to a range of risk factors that may threaten its ability to meet policyholder obligations. These include, as a minimum, insurance risk, investment risk and concentration risk, but other risks may also need to be considered in any MCR calculation;

30.3 make certain public disclosures about its capital adequacy position; and

30.4 seek APRA's consent for reductions in capital.

31 An insurer must, for capital adequacy purposes, hold the minimum levels of capital required by GPS 110.

32 Capital, for these purposes is considered in two tiers. Tier 1, or core capital, comprises the highest quality components of capital that fully meet all the essential characteristics of capital. Tier 2, or supplementary capital, includes other instruments that, to varying degrees, fall short of the quality of Tier 1 capital but still contribute to the overall financial strength of an insurer.

33 An insurer must hold tier 1 capital as defined in, and to the extent required by, the capital adequacy standards. In addition, an insurer may include Tier 2 capital, as defined, as part of its required capital holdings up to the limits specified. For capital adequacy purposes, a locally incorporated insurer's capital base is the sum of Tier 1 and Tier 2 capital, net of all specified deductions and amortisation, subject to the various limits that apply under the prudential standard.

34 An insurer must ensure that any component of capital included in the insurer's capital base satisfies, in both form and substance, all applicable requirements of the prudential standard for the particular category of capital in which it is included. Otherwise, that component of capital cannot be incorporated in its capital base for the purposes of compliance with the prudential standard.

35 APRA may, in writing, require an insurer to:

35.1 exclude from its capital base any component of capital that APRA has reasonable grounds to believe does not represent a genuine contribution to the financial strength of the insurer; or

35.2 reallocate to a lower category of capital a component of capital where APRA has reasonable grounds to believe that it does not fully satisfy the requirements of the prudential standard for the category to which it was allocated by the insurer.

36 APRA regularly reviews and, where it considers necessary, updates the prudential standards for capital adequacy[16].

37 The current capital adequacy standard is a result of a number changes introduced to strengthen the capital requirements of general insurers following the collapse of HIH Insurance and recommendations made in the HIH Royal Commission[17].

38 On 13 May 2010, APRA released its discussion paper 'Review of capital standards for general insurers and life insurers'[18]. As set out in that paper, APRA proposes to update its capital standards for general insurers and life insurers. APRA's intention is to make its capital requirements more risk-sensitive and to improve the alignment of its capital standards across the industries it regulates.

39 The consultation and implementation process for these recommendations is underway[19]. Once implemented, the enhanced capital standard will result in the required capital for general insurers to consist of a prescribed capital amount and a supervisory adjustment.

40 The prescribed capital amount for an insurer would be determined by quantitative rules set out in the respective capital standards. It would comprise capital charges to cover asset risk, asset concentration risk, insurance risk, insurance concentration risk and operational risk[20].

Reinsurance management

41 Reinsurance is insurance taken out by general insurers that covers the general insurer in the event of claims payments under its insurance policies.

42 There are two basic methods of reinsurance:

42.1 Facultative reinsurance: In facultative reinsurance, the general insurer cedes to the reinsurer all or part of the risk assumed by a particular specified insurance policy. Because facultative reinsurance is negotiated separately for each insurance contract that is reinsured, this type of reinsurance is normally purchased by ceding companies for individual risks not covered by their reinsurance treaties, for amounts in excess of the limits of their reinsurance treaties and for unusual risks.

42.2 Treaty reinsurance: This method of reinsurance covers all the insurance policies issued by the general insurer that come within the scope of the reinsurance contract. There are two basic methods of treaty reinsurance:

42.2.1 Proportional reinsurance, where the insurer and the reinsurer share an agreed proportion of all reinsured risks, and

42.2.2 Non-proportional reinsurance, where the reinsurer meets 100% of all reinsured risks over a set amount retained by the insurer.

43 For catastrophe risks such as storm and flood, most insurers will hold excess of loss (non-proportional) treaty reinsurance.

44 Reinsurance arrangements and recoveries are a key aspect of the calculation of a general insurer's MCR and compliance with the capital adequacy prudential standards.

45 For this reason, the reinsurance management prudential standard aims to ensure that a general insurer as part of its overall risk management framework, has a specific reinsurance management framework to manage the selection, implementation, monitoring, review, control and documentation of reinsurance arrangements used by a general insurer[21].

46 To meet the key requirements of this prudential standard[22], a general insurer must:

46.1 have in its reinsurance management framework a documented Reinsurance Management Strategy, sound reinsurance management policies and procedures and clearly defined managerial responsibilities and controls;

46.2 submit its Reinsurance Management Strategy to APRA when any material changes are made;

46.3 submit a Reinsurance Arrangements Statement detailing its reinsurance arrangements to APRA at least annually; and

46.4 make an annual reinsurance declaration based on the 'two-month rule' and 'six-month rule' specified in the standard and submit the declaration to APRA[23].

Audit and actuarial reporting and valuation

47 This prudential standard[24] recognises the important role that accurately valued insurance liabilities have on the financial strength of a general insurer.

48 For this reason, the standard sets out to ensure that the board and senior management of a general insurer are provided with impartial advice in relation to its operations, financial condition and insurance liabilities.

49 Among other requirements, the prudential standard establishes a set of principles and practices for the consistent measurement and reporting of insurance liabilities for all general insurers.

50 The key features of the prudential standard[25] in relation to audit and actuarial reporting and valuation are:

50.1 that, unless exempted by the standard, an insurer must make arrangements to enable its appointed auditor and appointed actuary to undertake their roles and responsibilities;

50.2 to set the role of the appointed auditor, among other things, in relation to the audit and certification of the yearly statutory accounts of the general insurer;

50.3 to set the role of the appointed actuary in relation to the assessment and reporting of the overall financial condition of the general insurer and advice on the valuation of its insurance liabilities; and

50.4 to require the valuation and independent review of a general insurer's insurance liabilities.

51 In terms of valuation of insurance liabilities, an insurer must determine a value for both its outstanding claims liabilities and its premium liabilities for each class of business underwritten by the insurer.

52 As recorded in the prudential standard, the Institute of Actuaries of Australia issues professional standards and guidance on financial condition reports for general insurance, valuations of general insurance claims and external peer review for general insurance that are complementary to the prudential standard[26].

Consumer regulation

General

53 General insurers operating in Australia must hold an Australian Financial Services (**AFS**) licence under the *Corporations Act 2001 (Cth)* (**Corporations Act**)[27].

54 As AFS licensees, general insurers are also subject to the unfair trade practices regime, which prohibits conduct such as misleading and deceptive conduct and

unconscionable conduct, in the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**)[28].

55 In addition, there is specific legislation that governs general insurance contracts. This legislation is the *Insurance Contracts Act 1984 (Cth)* (**IC Act**).

56 ASIC administers the IC Act, the Corporations Act and the ASIC Act.

AFS licensing - Corporations Act Requirements

Requirement to hold an AFS licence

57 Any person that carries on a financial services business in Australia must hold an AFS licence, unless exempt from that requirement[29].

58 A person carries on a financial services business if they, among other things, advise or deal in a financial product[30]. General insurance is a financial product[31].

59 All APRA authorised general insurers (other than those that operate solely as reinsurers or provides services only to wholesale clients) hold AFS licenses.

Obligations of AFS licensees

60 AFS licensees have obligations relating to[32]:

60.1 conduct and disclosure (for retail clients)[33];

60.2 the provision of their financial services[34];

60.3 the competence, knowledge and skills of responsible managers, as well as their good fame and character[35];

60.4 the training and competence of their representatives and authorised representatives[36];

60.5 ensuring their representatives (including authorised representatives) comply with the financial services laws[37];

60.6 compliance, managing conflicts of interest and risk management[38];

60.7 the adequacy of their financial, technological and human resources[39]; and

60.8 dispute resolution and compensation arrangements (for retail clients)[40].

Conduct and disclosure

61 AFS licensees must:

61.1 prepare and provide a Financial Services Guide (**FSG**)[41];

61.2 where general advice is provided, ensure that a general advice warning is given to the client[42];

61.3 where personal advice is given:

61.3.1 ensure the personal advice is suitable[43];

61.3.2 prepare and provide a Statement of Advice (**SOA**)[44]; and

61.3.3 where the personal advice is based on incomplete or inaccurate information, warn the client that this is so[45].

62 In addition, there are disclosure obligations that apply to any person who issues a financial product to a retail client[46]. These obligations include the obligation to give a

Product Disclosure Statement (**PDS**) when a recommendation is made to acquire a financial product[47] or an offer to issue a financial product is made[48].

63 While the AFS licensing regime operates in relation to services provided to wholesale and retail clients, the disclosure and conduct regime is limited in its application to retail clients.

64 For general insurance, whether a client is a retail client is tested by a two tier test, as follows:

64.1 Whether the client is natural person or a small business[49]. A small business is a business with 20 or less employees, or 100 or less if a manufacturing business.

64.2 The financial product is a prescribed retail product[50]. Translating the prescribed products to usual insurance lines, prescribed products are, home and contents, motor, travel, general property, personal accident and consumer credit policies.

65 The operation of this test in practice will mean that a policyholder may be a retail client for some general insurance policies but not others.

66 There are a number of content requirements for FSGs, SOAs and PDSs[51].

67 For PDSs, the key requirements are that the PDS:

67.1 is clear, concise and effective[52]; and

67.2 contains the terms and conditions of the insurance policy[53].

68 However, other contents requirements also apply[54] to new PDSs such as a requirement that information about cost and benefits are expressed in dollars and a requirement for details of internal and external dispute resolution regimes.

Training and competence of representatives

69 As a general rule, all natural persons who provide financial product advice to retail clients must meet the training standards, unless they fall within certain limited exemption categories[55].

70 This includes individuals who do not provide personal advice, but provide general advice.

71 Personal advice[56] is financial product advice that is directed to a person where the provider of the advice has considered one or more of the person's objectives, financial situation and needs or a reasonable person might expect the provider to have considered one or more of those matters[57].

72 General advice is advice that is not personal advice[58.]

73 There is no exemption for a general insurer advising about its own products from the obligations in relation to training of representatives.

74 This lack of exemption or modification to the training requirements for advice provided by a representative of a product issuer means that a general insurer must train all customer service representatives in accordance with the specified training requirements in RG 146 in order to be able to give any advice about its own products.

75 This and the other rules that apply to the provision of personal advice and the uncertainty of scalable advice, have resulted in many general insurers adopting 'no advice' or 'general advice only' customer service models for retail clients. As a result, advice may not be provided by insurers where that advice would assist the customer to make a decision about whether to acquire the product. This situation may be exacerbated by the introduction of a 'best interests test' currently being developed by Treasury, which could further restrict direct insurers from providing any form of personal advice.

Dispute resolution processes

76 All AFS licensees must have a dispute resolution system available for retail clients that meet certain requirements[59].

77 This dispute resolution system must consist of[60]:

77.1 internal dispute resolution (**IDR**) procedures that:

77.1.1 comply with the standards and requirements made or approved by ASIC; and

77.1.2 cover complaints made by retail clients in relation to the financial services provided by the licensee; and

77.2 membership of one or more ASIC-approved external dispute resolution (**EDR**) schemes that cover complaints made by retail clients in connection with the financial services provided by the licensee.

78 The IDR procedures adopted by AFS licensees must take into account Australian Standard AS ISO 10002-2006[61] and any other matter that ASIC considers relevant[62].

79 In terms of approved EDR schemes, the Financial Ombudsman's Service (**FOS**) is the EDR scheme is approved for general insurance products and services.[63]

80 FOS may only consider a dispute in relation to certain defined general insurance policies[64]. However, most insurance policies taken out by individuals and SMEs are within the jurisdiction of FOS. Access to FOS is free of charge to policyholders.

81 FOS has recently published two Natural Disaster publications, Financial Difficulty and Flood and Storm Claims[65] for the benefit of consumers facing flood losses.

IC Act

Scope of operation

82 The IC Act regulates the operation of (most) contracts of insurance[66] so that a fair balance is struck between the interests of insurers, policyholders and other members of the public and so that the provisions included in such contracts, and the practices of insurers in relation to such contracts, operate fairly[67].

83 The IC Act is not limited in its operation to wholesale or retail clients, or similar test. This means that the IC Act regulates the terms of commercial policies acquired by highly sophisticated buyers, through insurance brokers, as well as policies covering domestic risks acquired directly by the policyholder from the insurer.

84 Among the areas in which the IC Act regulates a general insurance policy are the following areas.

84.1 Pre-contractual failures: Sections 21A, 22, 28 and 29 of the IC Act regulates the level of pre-contractual disclosure required by intending insureds as well as the remedies available to the insurer for a failure to comply with the duty of disclosure. The remedies available to the insurer, other than in the case of fraud, are limited by section 28 of the IC Act by reference to the position the insurer would have been in had the non-disclosure not occurred.

84.2 Post-contractual failures: Section 54 of the IC Act regulates the remedies of insurers for a breach by the insured of a term of an insurance policy. Section 54 provides relief to insureds in respect of the consequences of acts or omissions by an insured (or others) after the policy has been entered into. The effect of section 54 is that, other than for fraudulent acts or omissions, or for acts or omissions that are causative of the loss the subject of the claim, the contractual remedies available to the insurer are limited to the prejudice suffered by the insurer arising from the act or omission.

84.3 Notice requirements: The IC Act contains a number of provisions that require insurers to notify intending insured of legal duties or policy terms that may be prejudicial to the insured[68].

Standard cover provisions

85 Section 35 of the IC Act sets minimum standards of insurance cover and limits on cover (**standard cover**) for certain prescribed events[69] under certain prescribed contracts[70].

86 An insurer is prohibited from relying on a term of the contract that provides less cover (scope or monetary limit) than standard cover unless, before the contract was entered into, the insurer 'clearly informed' the insured in writing that the effect of the contract was to provide less than standard cover.

87 An insurer can 'clearly inform' the insured in writing by providing the insured with a document containing the relevant provisions[71].

88 Standard cover includes, for home and contents insurance, cover for flood. This means that if a home and contents policy does not provide cover for flood, the insurer will be required to pay claims for flood losses (if the policy otherwise responds) unless the insurer has 'derogated' effectively from standard cover[72].

IC Act amendments

89 On 10 September 2003, the (then) Minister for Revenue and Assistant Treasurer (Senator Helen Coonan) and the Parliamentary Secretary to the Treasurer (Senator Ian Campbell) announced jointly that the Australian government would undertake a comprehensive review of the IC Act.

90 The object of the review was to invite recommendations aimed at improving the overall operation of the IC Act by correcting any identified deficiencies and clarifying ambiguities in its operation.

91 Generally, all stakeholders consulted by the constituted review panel considered that the IC Act had been operating satisfactorily to the benefit of both insurers and insureds[73]. Nevertheless, the review was conducted in two stages, with two separate reports being provided to the government in October 2003 and June 2004.

92 Almost six years later, on 17 March 2010, the *Insurance Contracts Amendment Bill 2010 (Cth)*[74] was introduced into the House of Representatives. It was then introduced in the Senate on 24 June 2010, where it reached Second Reading Stage before it lapsed, on 19 July 2010, when the Australian parliament was prorogued. The Bill awaits reintroduction. It is not currently on the parliamentary agenda.

93 Not all of the initial recommendations of the reviews made their way to the final Bill. Among those recommendations not included, was that the phrase 'clearly inform' in section 35 of the IC Act be replaced with a requirement that the material information be presented in a 'clear, concise and effective manner'.

Impact of unfair terms laws

94 The *Trade Practices Amendment (Australian Consumer Law) Act 2009 (Cth)* introduced, as part of the Australian Consumer Law, a national unfair contract terms regime for standard form consumer contracts commencing on 1 July 2011[75].

95 This legislation also amends the ASIC Act to include unfair terms provisions in respect of financial services which mirror the unfair terms provisions in the Australian Consumer Law[76].

96 However, the unfair terms laws do not apply to contracts of insurance. This is because section 15 of the IC Act operates to prevent some or all of the unfair terms provisions proposed to be inserted in the ASIC Act applying to terms in insurance contracts.

97 On 17 March 2010, the federal government released a consultative paper on options for dealing with unfair terms in insurance contracts[77].

98 The purpose of the paper was to seek consultation in order to investigate the feasibility, costs and benefits of a number of options posed by the paper to deal with the possibility of consumers of standard form insurance contracts suffering detriment due to terms in the contract that are unfair or harsh[78].

99 The options paper identified five options to deal with the introduction (or otherwise) of unfair terms laws for insurance contracts:

99.1 maintain the status quo, on the basis that the issue is adequately addressed by section 14 of the IC Act. Section 14 of the IC Act prevents a party from relying on a provision of an insurance contract if to do so would be to fail to act with the 'utmost good faith'.

99.2 amend section 15 of the IC Act to allow it to operate 'in addition to and alongside' the unfair contract terms laws;

99.3 amend the IC Act to include protections against unfair contract terms, which are similar to those in the ASIC Act, but tailored for insurance contracts. Under this option, section 15 of the IC Act would continue to exclude the operation of the ASIC Act;

99.4 enhance the existing remedies under the IC Act by, for example, reversing the onus of proof where a breach of section 14 is alleged against an insurer. Under this option, section 15 of the IC Act would continue to exclude the operation of the ASIC Act; or

99.5 encourage industry self-regulation of unfair insurance contract terms, for example, through the General Insurance Code of Practice. This option would involve no legislative change.

100 The Insurance Council's position on the application of the unfair terms laws to insurance contracts, was, and remains, that the existing legislative protections that apply to insurance terms, are sufficient[79].

101 The Insurance Council participated with other stakeholders in a roundtable hosted by Parliamentary Secretary Bradbury on 7 March 2011 on whether insurance contracts should be subject to review for unfair contract terms under the Australian Consumer Law.

102 While it is strongly considered in some quarters that insurance contracts should not be exempt from ACL review, there is also serious concern at the uncertainty that this will create for insurers.

103 Treasury has been asked to produce a Regulatory Impact Statement for public consultation on compromise options.

ASIC Act

104 The ASIC Act[80] sets out a consumer protection regime for financial services providers that mirrors the regime that applies to providers of goods under the Australian Consumer Law.

105 This regime allows insureds to seek relief for certain conduct prohibited by provisions of the ASIC Act including, for example:

105.1 unconscionable conduct[81]; and

105.2 misleading and deceptive conduct[82].

General Insurance Code of Practice

106 The General Insurance Code of Practice (**Code**) is a voluntary code that has been adopted by all members of the Insurance Council and some insurers who are not members[83].

107 The Code sets out the minimum standards the insurers will uphold in the services they provide.

108 The Code was recently revised, with the new version taking effect on 1 May 2010[84].

109 The Code covers all general insurance products except workers compensation, marine insurance, medical indemnity insurance, and compulsory third party insurance including where there is linked driver protection cover. It does not cover reinsurance or life and health insurance products issued by:

109.1 life insurers; or

109.2 registered health insurers.

110 The Code sets standards for, among other things:

110.1 Buying insurance. The Code includes minimum standards that apply to the buying of insurance, including that the sales process will be conducted in a fair, honest and transparent manner[85].

110.2 Insurance claims. The Code sets out minimum response times, management of claims in circumstances of financial hardship and standards that must be followed in the claims process. The following standards apply to all claims[86]:

110.2.1 That the insurer will conduct claims handling in a fair, transparent and timely manner.

110.2.2 That the insurer will only ask for and take into account relevant information when deciding on a claim.

110.2.3 That the insurer will have access to information about the policyholder that the insurer has relied on in assessing a claim and an opportunity to correct any mistakes or inaccuracies.

110.2.4 Where an error or mistake in dealing with a claim is identified, the insurer will immediately initiate action to correct it.

110.2.5 If an insurer denies a claim, the insurer will provide:

(a) written reasons for our decision to deny the claim; and

(b) information about the insurer's complaints handling procedures; and

(c) on request, other than in the special circumstances, copies of reports from service providers that the insurer has relied on in assessing the claim. Many insurers have provided copies of hydrology reports to policyholders in relation to the 2010/2011 Queensland flood claim decisions and the ICA has also made available hydrology reports on its website[87].

110.3 Responding to catastrophes and disasters. The Code establishes rules that apply to the management of claims arising from catastrophes and disasters[88]. For example, any property claim resulting from a catastrophe or disaster, where the insurer has finalised the claim within one month of the catastrophe or disaster, the policyholder can request a review of the claim if they think the assessment of the loss was not complete or accurate, even though a release may have been signed. The insurer must give the policyholder six months from the finalisation of the claim to ask for a review of the claim. The policyholder will be informed of:

110.3.1 this entitlement when the claim is finalised; and

110.3.2 the insurer's complaints handling procedures.

110.4 Information and education. The Code records that insurers will support industry initiatives aimed at explaining general insurance to consumers and the community[89].

110.5 Complaints handling procedures. The Code has minimum requirements for internal and external complaints handling[90].

110.6 Code monitoring and enforcement. The Code includes a process for review of compliance with the Code[91]. The Financial Ombudsman's Services (**FOS**) will monitor and report on Code compliance. FOS will:

110.6.1 prepare annual public reports containing aggregate industry data and consolidated analysis on Code compliance[92];

110.6.2 regularly supply, subject to privacy law, the Code Compliance Committee aggregated breach data on a quarterly basis to enable the Code Compliance Committee to better monitor compliance with the Code and to identify serious or systemic issues with regard to the Code or its application; and

110.6.3 at its own discretion, determine how or if it proceeds with any action based on any report it receives from the Code Compliance Committee.

111 The 2008/2009 Code review[93] records that in the relevant period:

111.1 the general insurance industry was significantly impacted by the:

111.1.1 Global Financial Crisis;

111.1.2 bushfires; and

111.1.3 several severe weather events.

112 Recent statistics in the 2008/2009 Code review relating to the operation of the code for general insurance are:

112.1 consumers lodged 3,583,006 claims and participating companies accepted liability for 98% of these claims;

112.2 consumers raised 21,334 internal disputes with participating companies, across commercial and personal lines of insurance business; and

112.3 Participating companies resolved 21,220 internal disputes, with 7,373 internal disputes, or 34.7%, resolved in favour of consumers.

The general insurance market

Market statistics

113 APRA's quarterly general insurance performance report[94] issued on 3 March 2011, records that:

113.1 there were 128 insurers licensed to conduct general insurance business at 31 December 2010. Of these 117 were direct insurers and 11 were reinsurers;

113.2 the industry underwriting result for the December 2010 quarter was $1.0 billion, up from $0.5 billion in the previous quarter;

113.3 investment income in the December quarter was $0.7 billion, down from $1.2 billion in the previous quarter. Investment income was impacted by reductions in the value of the interest rate investments due to yield changes over the quarter, as well as lower dividend income;

113.4 net profit after tax for the industry in the December 2010 quarter was $1.1 billion, representing an annualised return on net assets of 15.3%;

113.5 the total assets for the industry were $101.7 billion as at 31 December 2010, with direct insurers accounting for $93.0 billion of total assets and reinsurers the remaining $8.7 billion;

113.6 Industry total liabilities were $71.8 billion as at 31 December 2010, resulting in net assets of $29.9 billion;

113.7 the eligible capital base of the industry was $27.3 billion as at 31 December 2010, a solvency coverage of 1.94 times the MCR. Solvency coverage of reinsurers dropped from 2.06 to 1.94 times the MCR over the quarter. This was due to adjustments to estimates of the impact of the earthquake in Christchurch in September, and the impact of the inclusion of flood estimates on regulatory capital;

113.8 insurers wrote $8.6 billion of gross earned premium during the December 2010 quarter. Of this, direct insurers wrote $8.1 billion (94.2 %). The remaining $0.5 billion (5.8 per cent) was written by reinsurers; and

113.9 net earned premium for the industry in the December 2010 quarter was $6.6 billion, up from $6.4 billion in the September quarter.

Under and non-insurance

114 The level of insurance within a community and the incidence of non-insurance and underinsurance are key matters for communities in their recovery from flood events or other catastrophes. The rate of non-insurance and under-insurance will have an impact on the financial ability of communities affected by flood events or other catastrophes to be resilient and re-build[95].

115 The level of non-insurance is of significant concern to the insurance industry. To help address the concern, in 2007 the Insurance Council commissioned this analysis of non-insurance from Dr Richard Tooth and Dr George Barker Centre of Law and Economics[96].

116 The significant findings of this report were that:

116.1 Affordability is a significant constraint on insurance and State taxes impact on insurance affordability and in turn, non insurance;

116.2 Home type and tenure are critical drivers of non insurance for both buildings and contents cover although demand for contents insurance appears to be more price sensitive than building insurance;

116.3 Non insurance is lower for those with a mortgage than those without, although non insurance escalates the longer the age of the homeowner’s mortgage;

116.4 Disconcertingly, those individuals with fewer savings (and hence those more vulnerable to loss) are also more likely to be non insured;

116.5 Non insurance is more prevalent at the early stages of life (that is for singles and the young); and

116.6 Non insurance is more prevalent in urban centres and in particular, specific urban localities in our major capitals.

117 In October 2008, the Insurance Council published a study called 'Non Insurance in the Small to Medium Size Enterprise Sector'.

118 The key findings from that report were:

118.1 26% of all small to medium enterprises (**SMEs**) do not have any form of general insurance.

118.2 Sole traders have the highest rate of non-insurance with 40% operating their business with no general insurance.

118.3 Of the SMEs that purchase general insurance, 94% indicated they considered that they were adequately insured. Taken together with the rate of non-insurance, this means that under two thirds of all SMEs have adequate insurance.

118.4 Over 80% of SMEs who indicated that they were inadequately insured sighted the cost of insurance as a barrier to purchasing. Reform of taxation on general insurance products would therefore reduce the cost burden to SMEs and contribute to a reduction in the incidence of non-insurance amongst SMEs.

118.5 For the majority of small businesses, profit expectations do not appear to impact on planned insurance coverage, at least in the short term. 50% of respondents indicated they would leave their insurance coverage unchanged despite the expected change in profits over the coming year.

119 In its report no 54, 'Getting home insurance right: A report on home building underinsurance[97]', published in September 2005, the ASIC noted that:

119.1 A 2000 survey of 1,000 randomly selected homeowners by a company specialising in estimating rebuilding costs found that:

119.1.1 87% of homes were insured for less than their replacement value (the average level of underinsurance was 34%);

119.1.2 81% of homes were underinsured by 10% or more; and

119.1.3 59% of homes were underinsured by 30% or more.

119.2 A 2002 survey by the Insurance Council of Australia of seven companies making up 80% of the home building insurance market found that:

119.2.1 Approximately 27.5% of homes were underinsured by 10% or more; and

119.2.2 7.5% of homes were underinsured by 30% or more.

119.3 Mass disasters can cause massive increases in the cost of rebuilding. For example, rebuilding costs reportedly increased by 75% following Cyclone Tracy in Darwin in 1974 and by 35% in Newcastle after the 1989 earthquake; and

119.4 Approximately 200,000 (or one in six) small business and 1.8 million (or one in five) home owners had not insured their properties, while 70% of tenants had no contents insurance.

Impediments to Cover for flood

120 In 2006 only 3 from a total of 58 insurers providing policies offered cover for flood, despite it being estimated as 31% of annual natural disaster damage.

121 Whilst the risks from other natural inundation disasters, for example storm, are part of standard cover under the IC Act, and were readily available in the private insurance market, the 'riverine' flooding risk was considered beyond the appetite of many insurers.

122 Three important issues needed to be resolved before flood could be underwritten in Australia with confidence by all insurers and accepted by consumers:

122.1 **Data**. Flood data from existing government flood maps needed to be obtained and incorporated into a property database so that insurers could price the risk accordingly at property level.

122.2 **Reinsurance.** Reinsurance capacity for this risk needed to be obtained from the global reinsurance market at an affordable rate.

122.3 **Standard Definition**. A common definition for the risk, is desirable to assist insurers and reinsurers price the aggregated exposure and to help consumers understand the nature of the risk being covered or excluded.

123 With the assistance of State governments, a great deal of progress has been made in the development of the National Flood Information Database (**NFID**), which accumulates existing government flood maps and combines them into a property level dataset.

124 Input of data from all States has been completed except from Queensland where up to date local government flood maps have been withheld by a large majority of local governments[98].

125 Further, with the assistance of global reinsurers, reinsurance capacity was obtained from the international market at an appropriate premium and was made available on the basis that flood data could be obtained from government and that a common definition for the risk was possible.

126 Unfortunately, the ACCC did not approve a common definition for flood[99] when such an application was made to it by the Insurance Council in 2008.

127 Regardless of this setback and in the interests of consumers, some parts of the industry elected to proceed with the development of flood cover using definitions acceptable to themselves and their reinsurers. Other insurance companies elected to remain out of this challenging part of the market.

128 By way of measuring the progress the industry has made on this issue, despite the lack of a common definition, it is useful to compare the number of residential polices available in 2011[100], compared with what was available in 2006:

Year	Number of policies covering flood
2006	3 of 58 policies cover flood
2011	29 of 58 policies cover flood

129 In general terms, flood cover is available for SMEs in their commercial insurance policies, as a policy option.

National Flood Information Database

130 In partnership with each of the State Governments, the general insurance industry has developed and licensed the NFID.

131 NFID is an address database containing 11.3 million property addresses, overlayed with the known flood risk according to government flood mapping.

132 Approximately 2.8% of properties have a high risk of flooding. The vast majority of properties in Australia have little or no flood risk.

133 NFID is used by insurers to determine the flood risk to individual properties.

134 100% of available government flood mapping has been incorporated for New South Wales, Victoria, South Australia and Western Australia. Flood mapping has not been made available consistently in Queensland by local government and as a consequence there is little underwriting data available for the State. The exceptions are the Murweh Shire, Brisbane City and Gold Coast City Councils, each of which has proactively delivered relevant flood data for incorporation into the NFID.

135 The end result is that whilst there are some insurers who will offer a flood insurance product in the State, there are many others who will not, despite offering cover in other States.

136 For properties where flood information is not available, it is likely that flood insurance choices will be limited, only being offered by a limited number of insurers and at a premium that reflects the lack of risk information available.

137 This will leave property owners in those local government areas with reduced options to protect themselves and this may force them into a choice of not taking flood cover.

138 The availability of complete flood mapping information for all properties will allow the NFID to generate data for all properties. This will give insurers access to the information required to properly assess the insurance risk which is crucial to the availability of flood cover insurance for all properties.

Premium calculation

139 Sharing the burden of uncertain risks has been heralded as the essential brilliant idea of insurance[101]. However, given this uncertainty, calculation of the cost to insure against risks is complex and actuarially difficult for many insurers.

140 Regardless of the calculation method actually adopted, insurance premiums are generally set by factoring in the cost of estimating, collecting and managing the premiums, the cost of paying the claims, taxes, reinsurance costs, the profit margin, the cost of the insurer in administering the insurance cover, and the cost of insuring the particular item(s).

141 As outlined in the booklet 'Understanding Insurance'[102] when setting premiums for home and contents insurance, insurers take into account a number of factors, such as:

141.1 The address of the property to be insured (such as whether it is in a bushfire, flood, or storm prone area). The flood risk data in the NFID assists insurers to assess the location risk price for an insured property.

141.2 The policyholder's previous claims history.

141.3 The sum(s) insured.

141.4 The nature of the item(s) insured.

141.5 The size and style of the house.

141.6 Whether the house is rented, or is occupied by the owner.

141.7 If the house has security features (such as deadlocks, security bars on windows or a monitored security alarm).

142 Based upon (usually) preset algorithms designed by actuaries qualified in undertaking detailed risk analysis, input of the above data and responses enables the insurer to calculate the resultant premium that it would charge a prospective insured in order to accept the subject risk and, if so, on what terms.

143 Tax and charges are added to the cost of the insurance risk premium to produce the premium payable by a policyholder.

Response to 2010/2011 Queensland floods

Flood claim information

144 Following the 2010/2011 Queensland floods, the Insurance Council established a 'hydrology panel' comprising three experienced flood hydrologists to assess and report on the nature and causes of flooding in various localities across Queensland.

145 The purpose of these reports was to present a simple, clear and factual description of flooding behaviour that can be used by the general public and individual insurers to better understand 'what happened' and why.

146 The foundation of these reports is rainfall and water level data recorded by federal and state government agencies (the Commonwealth Bureau of Meteorology; the Queensland Department of Environment and Resource Management and SEQWater) and by local councils.

147 Discussions were held with representatives of local councils to hear first-hand of local flooding behaviour during these events.

148 These reports offer no comment or analysis of the management of 'flood risk' during the flood events, that is, flood forecasting and warning, together with flood preparation, response, relief and recovery activities, or the roles played by various agencies in these flood risk management activities. The reports are confined to rainfall and water level behaviour leading up to and during the flood events.

149 To foster understanding, various technical terms relevant to floods and flooding are defined in the reports and a general description is given of the different types of floods and their causes.

150 High level hydrology reports (not property specific) have been released in relation to the Brisbane local government area, the Brisbane valley, Ipswich, and Toowoomba[103].

151 Work is being completed on the final report for the Lockyer Valley.

Claims statistics and status

152 The Insurance Council Collects claims data from insurers to assist with government regulation and recovery activities. Data is collected at frequent intervals following an event through to a point where greater than 99% of claims lodged have been determined. The most recent insurance claims statistics relating to the 2010/2011 Queensland flood events[104] and cyclone Yasi are set out below. For these events the insurance industry has now received 109,390 claims for an estimated reserved value of $3.18 billion.

	Claims	Cost
Floods	49,400	$2.31 billion
Yasi	59,990	$0.87 billion
TOTAL	109,390	$3.18 billion

153 Approximately $625 million has been paid to flood and cyclone victims who were insured in Queensland. Payments to the community have exceeded $15 million each working day since the last report on 24 February 2011.

154 With regard to denied claims, lodged in Queensland for the flood event and cyclone Yasi combined, only 3% of residential property claims lodged in Queensland following both events have been denied to date and claimants in these cases have been advised of the appeals process. This denial rate is expected to adjust over time as further claims are investigated and the appeal process runs its course.

155 Approximately 92% of all claims have had an initial assessment carried out, with many insurers reporting up to 99% completion in some areas.

156 Rebuilding and repair work has commenced in many areas, with no trades shortages reported.

Access to dispute resolution and advice

157 There are no details currently available in relation to the extent to which disputes relating to flood claims have been referred to FOS.

158 However, this will be a no-cost avenue for independent review of these claims in the event of dispute.

159 In addition, the Insurance Council has provided $250,000 to Queensland legal aid to ensure that it is able to provide appropriate assistance to policyholders affected by the flooding in Queensland.

Community response

160 On 29 December 2010, the Premier launched a disaster relief appeal to help those affected by wide spread flooding in Queensland.

161 The Premier's Disaster Relief Appeal is a trust fund established to assist those who have suffered a loss due to natural disaster. All money raised by the fund will be directed to address the greatest need.

162 Those affected by the Queensland flood events can apply for[105]:

162.1 emergency relief payments; or

162.2 structural damage assistance payments.

163 A person is eligible for structural damage assistance payments if[106]:

163.1 their principal place of residence was totally destroyed, or must be demolished as a result of the Queensland floods;

163.2 they were the owner-occupier of the principal place of residence at the time of the Queensland floods; and

163.3 their household income is less than $150,000 per annum.

164 If eligible, the person is entitled to receive an initial payment of $10,000 towards rehousing and recovery needs. Additional assistance of up to $90,000 may be provided depending on family income and other circumstances.

165 The initial payment of $10,000 is available regardless of whether an affected property was insured. However, any further entitlements may be limited if insurance is in place for property losses.

166 In addition, the Australian Government Disaster Recovery Payment (**AGDRP**) has been established to give short-term financial assistance to those adversely affected by a major or widespread disaster, including the Queensland floods[107].

167 Recent Treasury forecasts estimate the total cost of the Federal government's recovery effort will be in the billions. So far, more than 997,000 payments of the AGDRP through Centrelink have been made, totalling $792.6 million (as at midnight 25 March 2011)[108].

168 There is potential for moral hazard through the provision of assistance only to those in the community who are uninsured. Whilst it may serve as an incentive for those who have no cover to remain in the same position, it may also act as a disincentive for those who acquired private cover at their own expense and are now being asked to contribute through taxes to help those who took no prudential risk management themselves. This approach is in sharp contrast to Victoria (2009 Bushfires) where relief payments were not means tested (insurance tested) in the first instance.

Cover for flood

Submission

169 In response to ToR 2(b) and related to ToRs 2(a), 2(c), 2(e) and 2(g), the Insurance Council submits that:

169.1 Private insurance is available for flooding in all locations in Australia from a number of insurers and government policy should encourage other insurers to offer flood cover.

169.2 The availability and cost of flood cover will be a reflection of the insurance market response to flood risk is demonstrated through government flood mapping.

169.3 Any home and contents flood cover should be based on a standard definition for the risk.

169.4 Where flood cover is not offered 'as standard' in a policy, the basis of derogation should be clear and attainable, either through enhanced disclosure or access to advice, or both.

Support for submission

Current market for flood cover

170 As previously identified, flood insurance is readily available in the general insurance market.

171 The strong market for flood cover is vital for access to insurance by private individuals and businesses.

172 For a strong market to exist, insurers must have the information necessary to assess the cost of flood risk, together with access to reinsurance to manage their financial position and prudential obligations.

Need for a standard definition for 'flood'

173 The problem of a standard definition for flood damage that arises from rivers and creeks is long standing.

174 Globally insurers use different terms to define 'riverine' flood risk both as an inclusion or exclusion. Internationally, many private markets do not cover the risk, giving rise to government funded solutions and hybrid schemes[109].

175 In Australia, the private market has moved to provide cover for 'riverine' flood risk to individuals. Many insurers now offer the cover, employing definitions of the risk that suit their consumers (based upon market analysis) and the insurers/reinsurers appetite for providing cover.

176 Many insurers have set aside reserve capital to cover the flood risk and for the suite of products they have available in the market.

177 No consumer in Australia is presently in a position where a home and contents product is not available for 'riverine' flood risk from several different providers servicing their area.

178 However, confusion can potentially arise when a consumer makes the assumption that they are covered for 'riverine' flood risk under all home and contents policies. Some insurers use terms such as 'flash flooding', 'accidental flooding' and 'tidal flooding', to describe other types of damage that may be covered.

179 The problem as it relates to a standard definition for 'flood' is therefore twofold. In the first instance a form of words is required that adequately describes the 'riverine' flood risk for both consumers and insurers. Secondly, the definition for 'flood' must be quarantined to a specific usage and not be permitted to be mixed with terms for other risks which can cause confusion and risks to reserved capital.

180 Globally, the general approach to flood insurance has been to define the risk of 'riverine' flooding and to develop underwriting solutions focusing on that issue.

181 Other general inundation risks arising from storm and tempest are well addressed by policies and are generally not a source of confusion for consumers.

182 It is critical to note that some insurers will not cover the risk of 'riverine' flooding, now or ever. In this context, it is particularly critical that this risk be defined properly in order for it to be excluded with the full comprehension of the consumer buying such a product.

183 It is acknowledged that a multi-faceted use of the term 'flood' and 'flooding' could contribute to some consumers, in the absence of reading the PDS for a product, making an incorrect assumption regarding the cover they have purchased.

184 For example, a consumer may see the term 'this policy covers accidental flood', and presume that they are covered for risks arising from rivers breaching their banks. Or a consumer may read that the policy covers them 'for the risk of flash flooding', and make a broader assumption about all types of flood.

185 A contemporary standard definition for flood risk must therefore:

185.1 remove the potential for some consumers to misconstrue what the term 'flood' means in light of other more routine sources of natural hazard damage;

185.2 provide the capacity for consumers to picture the precise sources of the 'riverine' flood risk as it relates to their location;

185.3 be narrow enough to allow extraction of data from flood mapping so that the risk can be priced by insurers;

185.4 be narrow enough for some insurers to use as a term for inclusion and others for a term of exclusion, without causing existing flood insurance cover to be removed or downgraded; and

185.5 be meaningful for the global reinsurance market, without which there can be no flood insurance in either a private or public market.

Introduction of a standard definition for 'flood'

186 Insurers propose that to achieve the objectives set out above:

186.1 a standard definition for 'flood' in home and contents insurance policies should be employed in such a way that the terms 'flood' and 'flooding' become isolated in their use, carrying one meaning only as it relates to home and contents insurance; and

186.2 all other compound terminology currently using these terms should be extinguished from policies and banned from further use.

187 This will provide certainty to both consumers and insurers alike. It will also assist to generate certainty in other insurance products such as those available for SME and commercial property risks.

188 However, in order to ensure that the definition enhances the understanding of flood insurance cover (or exclusions to cover) and the insurance market response to flood

risk for home and contents cover, it will be important that the terms of the standard 'flood' definition:

188.1 empower consumers to orientate themselves in terms of the presence of this risk in their local environment; and

188.2 enable insurers to examine the risk;

based on publicly available flood mapping information.

189 The adoption of a standard 'flood' definition will require amendment to the IC Act and in the implementation, will result in the majority of insurers being required to:

189.1 rewrite the current terms used for flood cover or exclusion in PDS and marketing material;

189.2 adjust capital reserves where the change causes a material change to the risks being catered to under the policy, a complex process involving prudential considerations between APRA, the insurers and the level of reinsurance to be obtained; and

189.3 adjust reinsurance treaties where the change causes a material change to the risks being catered to under the policy.

190 Government and industry expect to announce a standard definition of 'flood' for home and contents insurance for public consultation in April 2011.

191 Following public consultation and any necessary adjustments, it is anticipated that a standard definition for 'flood' will be introduced into the IC Act in the Spring session of Federal Parliament in 2011.

Derogation through disclosure

192 Importantly, the existence of a standard definition for 'flood' would not change the fact that some insurers will continue to exclude the risk, albeit referencing a standard terminology. It also will not change the fact that sometimes expert evidence will be needed to verify whether a 'flood' or some other form of inundation has occurred, particularly when one or the other kind of cover has not been taken out by the policyholder.

193 However, if flood is excluded pursuant to the proposed change to the IC Act, in order for the insurer to rely on the exclusion, it will need to effectively derogate from the standard cover provisions in the IC Act.

194 As part of the process to change to a standard definition for flood, the Insurance Council has agreed with Assistant Treasurer Shorten that Treasury's Financial Services Disclosure Advisory panel will develop a one page key fact sheet. This additional layer of communication will provide another opportunity for consumers to read and understand the key aspects of cover offered by home and contents policies, including cover for flood. This additional layer is above and beyond what is already required for disclosure under the Act.

195 The Advisory Panel, which is made up of consumer, industry and regulator representatives, will consider a draft of the document on 31 March 2011. The Insurance Council is keen for the new disclosure document to be subject to wide consultation and consumer testing.

Reforms to ensure appropriate education, disclosure and advice about the scope of cover for flood

Submission

196 In response to ToR 2(a) and related to ToRs 2(a), 2(c) and 2(e), the Insurance Council submits that:

196.1 Government and industry should cooperate to increase community awareness of insurers' obligations and dispute resolution arrangements.

196.2 For retail clients, product disclosure statements should include a one page summary dealing with key issues under the policy, including flood cover.

196.3 Regulatory barriers should be removed to encourage direct insurers to provide advice to consumers about their own products.

Support for submission

Benefits of enhanced community awareness

197 Consumers who are well informed regarding the operation and obligations of insurance are more likely to choose the correct product, provide accurate information to their insurer during the claims process and most importantly understand the limitations of the product they have selected as being appropriate for their circumstances.

198 With regard to the flood event (separate from cyclone Yasi), there is claims evidence emerging[110] that 85% of claims in flood impacted areas have been accepted by insurers, indicating that 85% of consumers have selected a product appropriate to the natural disaster circumstances they face at their location.

199 Enhanced community awareness regarding insurance products will assist in reducing the residual 15% who for a variety of reasons do not select the right cover in relation to flood risks.

Enhanced retail disclosure

200 As identified, work is being conducted in consultation at federal level to mandate the production of a one page key facts document for retail policies.

201 Whilst such a document cannot detail all terms and conditions relating to a financial product such as insurance, it may provide an additional opportunity for some consumers to review the key components of cover offered and more importantly the key limits on cover.

Removal of advice barriers

202 There are obligations placed on AFS licensees that mean that general insurers do not provide any, or any tailored, advice to customers about their own products.

203 This limits the information available to customers upon which to base a decision to acquire a general insurance policy.

204 The restricting obligations include:

204.1 The training requirements that apply to advisory representatives;

204.2 The obligations to have a reasonable basis for advice; and

204.3 The SOA requirements[111].

205 The protections provided to consumers by these obligations are not justified where the representative acts for the product issuer and can only offer the products offered by the issuer.

206 A reduction in the level of protection to a more appropriate level will allow insurers to provide advice to consumers to assist with product selection.

207 To achieve this, the Corporations Act should be amended to introduce a new class of representative for AFS licensees who can provide advice about the licensees own products without the application of the current training and disclosure obligations.

Access to flood data

Submission

208 In response to ToR 2(a)and as it relates to ToR 2(c), the Insurance Council submits that:

208.1 A single body, with appropriate powers and responsibilities should assume a national responsibility for the collection, maintenance and publication of flood information.

208.2 The Bureau of Meteorology (**BoM**) should be delegated with responsibility for, and appropriate powers in connection with, the collection, maintenance and publication of national, open source, flood information.

208.3 This should be achieved by an amendment to part 7 of the *Water Act 2007 (Cth)* to:

208.3.1 allow or confirm that the BoM has the power to collect existing flood data and other flood information. This will include the power to collect this information from state and local governments.

208.3.2 require the BoM to:

(a) maintain and update this flood information to ensure it remains accurate and up to date; and

(b) publish this flood information to the public at no cost.

208.4 Parallel to this legislative change, a flood information taskforce should be established to assist the BoM, in an initial implementation period, to examine what improvements can be made in Australia regarding flood information.

Support for submission

Need for open source flood mapping

209 The 2010/2011 floods in Queensland (and the later flood events in Victoria) devastated many families, individuals and businesses.

210 A critical part of being prepared for the next flood is the capacity to:

210.1 understand clearly the land zones (in particular, population zones) that are most likely to be impacted by flood events;

210.2 predict the occurrence and magnitude of flood events; and

210.3 deliver appropriate warnings to communities that will be impacted.

211 Similarly, critical factors for the insurance industry in offering affordable flood insurance are:

211.1 the ability to predict the likely impact (occurrence and severity) of flood events on particular properties and infrastructure; and

211.2 the minimisation of the impact of flood events on properties and infrastructure.

212 From the above, it can be seen that government, the community and the insurance industry have a shared interest in ensuring that everything that can be known about flooding, is known by all of those involved in its risk management.

213 Publically available flood mapping and other flood impact information is crucial to community understanding and risk management of flood risks and the contribution of the insurance industry to the risk management of flood events.

National Resilience Strategy

214 On 13 February 2011, the Council of Australian Governments (**COAG**) adopted the National Strategy for Disaster Resilience[112].

215 Better risk management for the community is central within this strategy. The strategy recognises that the collection and access to relevant information and data is a crucial plank in successful community risk management of disaster events.

216 On page 7, the strategy paper states that:

> Underpinning a disaster resilient community is knowledge and understanding of local disaster risks. We all share responsibility to understand these risks, and how they might affect us. By understanding the nature and extent of risks, we can seek to control their impacts, and inform the way we prepare for and recover from them.

217 One of the priority outcomes of the strategy is identified[113] as:

> Organisations, individuals and governments routinely share information and maps on risks, for the benefit of the community.

218 In order to achieve the requisite understanding of disaster risks, in particular the risks posed by flood, a single national body should coordinate the collection and publication of information and maps on risk. This will:

218.1 avoid overlapping roles and responsibilities at local, state and national level, while not detracting from the ability of a local or state government to collect this information;

218.2 enhance accountability of the collection agency; and

218.3 streamline access to information for the community.

Role of the BoM

219 The BoM is Australia's national weather, climate and water agency.

220 Its expertise and services include the provisions of regular weather, climate and water forecasts, warnings and monitoring for the Australian region and Antarctic territory. As many know, much of this information is publically available on the BoM website[114].

221 The BoM operates under the *Meteorology Act 1955 (Cth)* (**Meteorology Act**) and the *Water Act 2007 (Cth)* (**Water Act**).

222 On 1 July 2002, the BoM became an Executive Agency under the *Public Service Act 1999 (Cth)*, and, on 12 September 2002, it became a prescribed agency under the *Financial Management and Accountability Act 1997 (Cth)*.

223 Under the *Public Service Act*, the Director of Meteorology has the powers and responsibilities of an agency head, and under current administrative arrangements reports to the Minister for Sustainability, Environment, Water, Population and Communities[115].

224 The BoM is responsible for, among other things:

224.1 under the *Meteorology Act*, issue of warnings of gales, storms and other weather conditions likely to endanger life or property, including weather conditions likely to give rise to floods or bush fires, the supply of meteorological information, the publication of meteorological reports and bulletins and the promotion of the use of meteorological information[116]; and

224.2 under the *Water Act*, collecting, holding, managing, interpreting and disseminating Australia's water information and providing regular reports on the status of Australia's water[117].

225 In accordance with these responsibilities, the BoM currently provides the following services:

225.1 forecasting and issuing weather warnings, including flood warnings; and

225.2 monitoring, assessing and forecasting the availability, condition and use of water. This includes seasonal stream flow, water storage and flood forecasting[118].

226 Part 7 of the *Water Act* provides the BoM with the power to collect[119] and report[120] on certain 'water information'[121].

227 Given the scope of the current roles and responsibilities of the BoM, and its status as a Commonwealth executive agency, the BoM is the entity most appropriate to assume the overall responsibility for flood information.

228 To extend the BoM's current roles and responsibilities to include overall responsibility for flood information, part 7 of the *Water Act* will need to be amended to:

228.1 allow or confirm that the BoM has the power to collect existing flood data and other flood information. This will include the power to collect this information from state and local governments.

228.2 require the BoM to:

228.2.1 maintain and update this flood information to ensure it remains accurate and up to date; and

228.2.2 publish this flood information to the public at no cost.

229 To assist in expanding the BoM's flood information responsibilities and capabilities further funding of the BoM by the Australian Government will be required.

230 This funding should be used, during the first year of operation, to establish enhanced flood information capability, gather all of the required flood information and, at the end of the first year of operation, make further recommendations on improvements to information relevant to flood.

231 Once the required legislative changes have been enacted, it is submitted that the BoM should be assisted by a flood information taskforce that will examine what improvements can be made in Australia regarding flood information.

Reduction of risk and impact of flood events

Submission

232 In response to ToR 2(g) and ToR 2(f) and related to ToRs 2(a) and 2(e), the Insurance Council submits that:

232.1 State and local governments should ensure current flood mitigation strategies such as the operation of the Wivenhoe and Somerset Dam release strategies are operated to provide reliable flood mitigation capability.

232.2 State and local governments should enhance flood mitigation strategies and improve infrastructure management to minimise flood risk and resultant property losses.

232.3 State and local governments should change planning and building laws to reduce the risk of property loss in flood prone areas.

232.4 State and local governments should review and, where appropriate, enhance emergency prevention and response arrangements to minimise losses in flood events

232.5 Local governments should include a statement of flood risk, based on a transparent categorisation of that risk, in each rates notice for flood prone properties.

232.6 The *Residential Tenancies and Rooming Accommodation Act 2008 (Qld)* should be amended to require 'point of contract' disclosure of flood risk for the rental property, based on a transparent appropriate categorisation of that risk.

Support for submission

Disaster statistics

233 The table below is derived from information provided to the Insurance Council in relation large events incurring cost to the community and insurers of recent significant disaster events[122].

CURRENT DISASTER STATISTICS

Event	Catastrophe Number if declared	Date	Location	State	Cost (Current Figures)($mil)	Number of Claims (Current Figures)
QLD Flooding	Cat 105, 111 & 112	21/12/2010 to 14/01/2011	QLD, Rural, Toowoomba, Lockyer Valley	QLD	2,310	49,400
VIC Flooding	Cat 113	13/01/2011 to 18/01/2011	VIC	VIC	86	6,609
QLD Cyclone YASI	Cat 114	02/02/2011 to 07/02/2011	QLD	QLD	868	59,990
VIC Severe Storms	Cat 115	04/02/2011 to 06/02/2011	Melbourne & Suburbs	VIC	299	38,984
WA Perth Bushfires	Cat 116	05/02/2011 to 07/02/2011	Perth & Surrounds	WA	35	410

234 These figures do not represent the entire cost of the event, they are only an approximation of the insured loss based upon reported data.

235 The final loss figure for an event can take many years to resolve. Further, events are only recorded where there is a potential for the insured loss to exceed $10 million in total for the event.

236 Additionally, many large single losses occur on a day to day basis in Australia that are not part of a larger catastrophe event.

National Disaster Insurance Review

237 As can be seen from the above statistic, Australia is a country prone to catastrophic weather events. Queensland, in particular, is prone to tropical storms and cyclones over summer months.

238 While insurance typically will cover most disaster events, not all of these events are covered by all policies and insurers. Flood and storm surge are examples of disaster events that are not covered 'as standard' in all retail or SME insurance policies. This is because of a combination of factors including access to risk information, reinsurance and capital management generally by private insurers.

239 On 4 March 2011, the Commonwealth government announced the National Disaster Insurance Review (**Review**), an independent review into disaster insurance in Australia[123].

240 The Review will consider the arrangements for the insurance of the assets of Australian individuals, small businesses and governments for damage and loss associated with flood and other natural disasters and in particular, the following[124]:

240.1 The extent of, and reasons for, non-insurance and underinsurance for flood and other natural disasters in Australia.

240.2 The ability of private insurance markets to offer adequate and affordable insurance cover for individuals, small businesses and governments for flood and other natural disasters.

240.3 Factors that may impede the private insurance market in offering such cover.

240.4 Measures that could improve the ability of the private insurance market to offer such cover and the take-up of such cover by individuals, small businesses and governments.

240.5 The need for any further measures to enhance:

240.5.1 consumer awareness and understanding of the scope and coverage of available insurance products.

240.5.2 claims management, dispute resolution and consumer assistance and advocacy services.

240.6 The effect or likely effect of the recent floods and other natural disasters on future insurance premiums in respect of such cover.

240.7 Whether there is a case for subsidising insurance premiums for individuals and small businesses in the areas of highest risk facing the highest premiums.

240.8 Whether there is a role for the Commonwealth government in providing disaster insurance or reinsurance to the private sector, through mechanisms such as a national disaster insurance program, and, if so, what are the best options.

240.9 The impact or likely impact of any Commonwealth government intervention in disaster insurance on the private insurance market.

240.10 The relationship between disaster mitigation measures taken by State and local governments against flood risks, and the impact of such measures, or the lack of them, on the availability and affordability of flood and other disaster insurance.

241 The Review will also consider whether the existing Commonwealth and State arrangements for dealing with natural disaster recovery and resilience should be supplemented by the establishment of a national disaster fund to support the rebuilding of public infrastructure in the aftermath of events such as the recent floods.

242 The Insurance Council has welcomed the introductions of the Review[125] and has, to date, played a significant role in the consultation process.

243 Consultation with the review is well advanced and is continuing.

Availability and affordability of flood insurance

244 As has been identified, flood insurance is widely available in Australia. However, for flood insurance to continue to be widely available and affordable, the right balance must be struck between:

244.1 community resilience through infrastructure and emergency response measures; and

244.2 personal responsibility through the appropriate allocation of discretionary household spend on insurance.

245 Where this balance is struck correctly, flood cover will continue to be available and affordable for all through robustly regulated general insurers.

246 Based on the current assessment of impacts from the 2010/2011 Queensland floods and other recent disaster events, there are advances that must be made in community resilience to address this balance. State and local governments must take steps to reduce flood risk and impact (including resultant property losses) through:

246.1 enhanced flood mitigation strategies and improved infrastructure management;

246.2 changes to planning and building laws to reduce the risk of property loss in flood prone areas; and

246.3 where appropriate, enhances to emergency prevention and response arrangements.

Encouraging personal responsibility

247 In addition to community measures to reduce flood risk and impact of flood events, there must be personal responsibility for management of individual risk through insurance and other measures.

248 This is achieved by individual awareness of exposure to flood risk and making informed choices for cover while placing less reliance on any government bail-out in the event of a loss.

249 General awareness of flood risk will reduce as time passes after significant flood events. In addition, a true appreciation of individual flood risk will require specific information.

250 To ensure that specific information about flood risk is available to home owners and tenants, changes should be made to:

250.1 local government rate notices to include a statement of flood risk, based on a transparent categorisation of that risk, in each rates notice for flood prone properties.

250.2 the *Residential Tenancies and Rooming Accommodation Act 2008 (Qld)* to require 'point of contract' disclosure of flood risk for the rental property, based on a transparent appropriate categorisation of that risk[126].

251 Provision of this information in a regular and effective manner, will ensure that an appreciation of individual flood risk is continually reinforced. This will encourage greater personal responsibility for this risk, including the management of that risk in the private insurance market.

Removal of insurance taxes

Submission

252 In response to ToR 2(c), the Insurance Council proposes that insurance taxes, including stamp duty on insurance contracts, should be abolished in order to encourage community members to access insurance cover at more affordable rates.

Support for submission

253 The inefficiency of insurance taxes and their drag on insurance take-up by community members is well documented and reported.

254 The Henry Tax Review, the Victorian Bushfires Royal Commission and independent reports from various State government bodices such as IPART in NSW, have variously recommended the removal of these taxes.

255 Recommendation Number 79 of the Review of Australia's Future Tax System states inter alia: All specific taxes on insurance products, including the fire services levy, should be abolished. Insurance products should be treated like most other services consumed within Australia and be subject to only one broad-based tax on consumption[127].

256 In 2007, the Insurance Council commissioned Dr Richard Tooth from the ANU Centre for Law & Economics to undertake an elasticity study into the demand for house and contents insurance in Australia.[128]

257 The key findings from that report were:

257.1 The number of households without contents insurance in Queensland was 441,000.

257.2 The number of households without buildings insurance in Queensland was 34,000.

257.3 The forecast reduction in the number of households without contents insurance in Queensland if State taxes were removed would be 24,300.

257.4 The forecast reduction in the number of households without buildings insurance in Queensland if State taxes were removed would be 4,800.

258 Insurance is a highly price sensitive market. Insurance products are often prioritised below other discretionary household expenditure, as detailed in the table below produced by the Insurance Council drawing from data from the Australian Bureau of Statistics Household Expenditure Survey which identifies various income groups in Queensland.

259 From this table, it can be seen that for all income groups in Queensland, expenditure on insurance is prioritized below spending on other household goods and services such as subscription television, spending on alcohol and tobacco and spending on food purchased outside the home.

Weekly expenditure as a % of total current weekly income, by Income quintile										
Total current weekly HH income from all sources (Binned)	Spending on Pay TV	Spending on fast-food and takeaway	Spending on fresh food	Spending on Tobacco and Alcohol	Spending on tobacco	Spending on alcohol products	Gambling	Housing and contents insurance combined	Contents insurance only	House Insurance Only
1st quintile	6.6%	4.1%	7.1%	12.2%	2.7%	9.5%	3.1%	7.4%	1.7%	2.1%
2nd quintile	2.3%	2.9%	4.0%	4.5%	2.1%	2.4%	2.5%	1.7%	1.0%	1.6%

3rd quintile	1.6%	2.8%	2.5%	3.7%	1.4%	2.4%	0.0%	1.2%	0.7%	0.6%
4th quintile	1.1%	2.6%	1.9%	3.2%	1.2%	2.1%	0.6%	0.8%	0.5%	0.5%
5th quintile	0.7%	1.9%	1.4%	2.1%	0.5%	1.6%	1.3%	0.6%	0.3%	0.3%
Total	2.1%	2.7%	3.3%	5.2%	1.6%	3.6%	1.4%	2.0%	0.9%	1.1%

129

END

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[1] APRA Quarterly GI Performance Report December 2010 at http://www.apra.gov.au/Statistics/upload/gi-quarterly-performance-201012-pdf-version.pdf.

[2] APRA Quarterly GI Performance Report December 2010 at http://www.apra.gov.au/Statistics/upload/gi-quarterly-performance-201012-pdf-version.pdf.

[3]See http://www.insurancecouncil.com.au/Portals/24/Media%20Centre/2011%20Media%20Releases/ICA%20Release%20-%20Ten%20Point%20Plan%2027th.pdf

[4] In most cases, this was available from several different providers.

[5] For example, where accurate flood data is not freely available, this will result in restricted supply, inefficient pricing of flood insurance and a lack of awareness amongst consumer of their own flood exposure which will tend to reduce the take up of flood insurance by those most at risk. Lack of consumer awareness of the degree of their own exposure to flood risk frequently operates to distort consumers' perception of value or affordability of flood cover.

[6] In an efficient insurance market the optimal price for any particular property is the lowest price which can be delivered by a competitive and knowledgeable market to accurately reflect, in monetary terms, the extent of flood risk posed by that property. The concept of affordability must be understood in this context.

[7] See sections 10 and 12 of the *Insurance Act 1973 (Cth)*

[8] For more information about APRA's roles and responsibilities see http://www.apra.gov.au/AboutAPRA/upload/APRA-Brochure-FINAL-08Jan2010.pdf

[9] See http://www.apra.gov.au/General/General-Insurance-Prudential-Standards-and-Guidance-Notes.cfm

[10] General Insurance Prudential Standard (**GPS**)

[11] See GPS 110 to 116 at http://www.apra.gov.au/General/General-Insurance-Prudential-Standards-and-Guidance-Notes.cfm

[12] See section 8.7.2 of the HIH Royal Commission Report at http://www.hihroyalcom.gov.au/finalreport/Chapter%208.HTML

[13] ie being able to pay debts as and when they fall due. See section 95A of the *Corporations Act 2001 (Cth)*

[14] See section 8.7.2 of the HIH Royal Commission Report at http://www.hihroyalcom.gov.au/finalreport/Chapter%208.HTML

[15] As set out in Prudential Standard GPS 110

[16] For example, Prudential Standard GPS 110 was updated in July 2002, January 2005, January 2006, September 2006, July 2008 and July 2010. Likewise, Prudential Standard GPS 112 was updated in July 2008 and July 2010; GPS 113 was updated in March 2009 and July 2010; GPS 114 was updated in July 2008, May 2009 and July 2010; GPS 115 was updated in July 2008 and July 2010; and GPS 116 was updated in July 2008, May 2010 and July 2010

[17] HIH Royal Commission. See http://www.hihroyalcom.gov.au/finalreport/chapter%208.html

[18] See http://www.apra.gov.au/Policy/upload/GLI_DP_RCSGILI_032010_v7.pdf

[19] See 'APRA Discussion Paper, Review of capital standards for general insurers and life insurers' at http://www.apra.gov.au/Policy/upload/GLI_DP_RCSGILI_032010_v7.pdf

[20] See 'Executive Summary' at http://www.apra.gov.au/Policy/upload/GLI_DP_RCSGILI_032010_v7.pdf

[21] See GPS 230 at http://www.apra.gov.au/General/upload/Final-GPS-230-July-2008.pdf

[22] As per the key requirements recorded in the standard

[23] These rules require certain levels of documentation of reinsurance contracts, with a formal signed and stamped contract within 6 months of inception

[24] See GPS 310 at http://www.apra.gov.au/Policy/upload/GPS-310-final-June-2010.pdf.

[25] As per the key requirements recorded in the standard

[26] See PS 300 at http://www.actuaries.asn.au/library/standards/ps300finalfeb2010.pdf

[27] Section 911A(1) of the *Corporations Act 2001 (Cth)*

[28] In Part 2 of the ASIC Act

[29] Section 911A(2) of the *Corporations Act 2001 (Cth)* sets out the relevant legislative exemptions. Ad hoc exemptions may also exist for particular providers or circumstances through class orders and individual relief applications.

[30] Sections 761A, 761C, 766A and 766C of the *Corporations Act 2001 (Cth)*

[31] Section 764A of the *Corporations Act 2001 (Cth)*

[32] See http://www.asic.gov.au/asic/asic.nsf/byheadline/Compliance?openDocument

[33] See RG 175 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg175.pdf/$file/rg175.pdf and RG 168 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg168-September-2010.pdf/$file/rg168-September-2010.pdf

[34] See RG 104 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg104.pdf/$file/rg104.pdf

[35] See RG 105 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg105.pdf/$file/rg105.pdf and RG 146 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg146.pdf/$file/rg146.pdf

[36] See RG 146 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg146.pdf/$file/rg146.pdf

[37] See RG 104 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg104.pdf/$file/rg104.pdf

[38] See RG 181 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps181.pdf/$file/ps181.pdf and

[39] For financial requirements see RG 166 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/RG166a.pdf/$file/RG166a.pdf

[40] See RG 126 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg126-1.pdf/$file/rg126-1.pdf and http://www.asic.gov.au/asic/pdflib.nsf/LookUpByFileName/rg165-feb2011.pdf/$file/RG165-Feb2011.pdf

[41] Section 941A, 941B and 941D(1) of the *Corporations Act 2001 (Cth)*subject to exceptions under the Act eg section 941C

[42] Section 949A of the *Corporations Act 2001 (Cth)*

[43] Section 945A of the *Corporations Act 2001 (Cth)*

[44] Section 946A of the *Corporations Act 2001 (Cth*), including the SOA modification for general insurance and subject to exceptions under the Act eg sections 946AA (particularly section 946AA(1)(b)(ii)) and 946B

[45] Section 945B of the *Corporations Act 2001 (Cth)*

[46] Part 7.9 of the *Corporations Act 2001 (Cth)*

[47] Section 1012A of the *Corporations Act 2001 (Cth)*

[48] Section 1012B of the *Corporations Act 2001 (Cth)*

[49] Sections 761G(5) and (12) of the Corporations Act *2001 (Cth)*

[50] Section 761G(5)(b) (including regulations made for the purposes of that paragraph) of the Corporations Act

[51] See RG 175 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg175.pdf/$file/rg175.pdf and RG 168 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg168-September-2010.pdf/$file/rg168-September-2010.pdf

[52] Section 1013C(3) of the Corporations Act *2001 (Cth)*

[53] Section 1013D(1)(f) of the Corporations Act *2001 (Cth)*

[54] Section 1013D of the Corporations Act *2001 (Cth)*

[55] See RG 146 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/RG146.pdf/$file/rg146.pdf

[56] See section 766B(1) of the Corporations Act *2001 (Cth)* for the meaning of 'financial product advice'

[57] See section 766B(3) of the Corporations Act *2001 (Cth)* for the meaning of 'financial product advice'

[58] See section 766B(4) of the Corporations Act *2001 (Cth)* for the meaning of 'financial product advice'

[59] Sections 912A(1)(g) and 912A(2) of the Corporations Act *2001 (Cth)*

[60] For full details of requirements see RG 165 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/RG165-Feb2011.pdf/$file/RG165-Feb2011.pdf

[61] Guidelines for complaints handling in organisations (ISO 10002:2004 MOD), published by SAI Global Limited on 5 April 2006 (AS ISO 10002-2006)

[62] Regulations 7.6.02(1) and 7.9.77(1) of the *Corporations Regulations 2001 (Cth)*. Matters ASIC considers relevant are found at ASIC RG 165.

[63] FOS is regulated by ASIC under RG139

[64] See section 4.2(b)(iv) in the FOS Terms of Reference at http://www.fos.org.au/centric/home_page/about_us/terms_of_reference_b.jsp

[65] See at http://www.fos.org.au/centric/home_page.jsp

[66] There are certain exemptions to the operation of the *Insurance Contracts Act 1984 (Cth)* in section 9

[67] Preamble to the IC Act

[68] These include sections 37, 40, 58 and 59 of the IC Act.

[69] Section 34 of the IC Act and regulations 6, 10 and 14 of the *Insurance Contracts Regulations 1985 (Cth).* Prescribed events include destruction or damage to, or theft of, a motor vehicle, or destruction or damage to a home or its contents, by flood.

[70] Section 34 of the IC Act and regulations 5, 9 and 13 of the *Insurance Contracts Regulations 1985 (Cth).* Prescribed contracts include home building, home content and motor vehicle insurance policies.

[71] Section 35(2) of the IC Act

[72] *Hams v CGU Insurance Ltd* (2002) 12 ANZ Insurance Cases 61-525 and *Marsh v CGU Insurance Limited t/as Commercial Union Insurance* [2004] NTCA 1

[73] Cameron, Alan and Milne, Nancy, 'Review of the Insurance Contracts Act 1984 Final Report on second stage: Provisions other than section 54', June 2004 at (iv)

[74] See http://www.comlaw.gov.au/Details/C2010B00065/Download

[75] Chapter 3 in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*

[76] Sub-division BA of the ASIC Act

[77] http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1756

[78] Clause 18 of the options paper at http://www.treasury.gov.au/documents/1756/PDF/Options_Paper_Unfair_terms_in_insurance_contracts.pdf

[79] See http://www.treasury.gov.au/documents/1501/PDF/Insurance_Council_of_Australia.pdf

[80] Part 2 of the ASIC Act

[81] Section 12CB of the ASIC Act

[82] Section 12DA of the ASIC Act

[83] Limited to those offering insurance in the classes covered by the Code. See Insurance Council of Australia 2010, General Insurance Cod of Practice

[84] See http://www.codeofpractice.com.au

[85] Clause 2.1(4) of the Code

[86] Clause 3.4 of the Code

[87] See http://www.insurancecouncil.com.au/Default.aspx?tabid=1881

[88] Clause 4 of the Code

[89] Clause 5 of the Code

[90] Clause 9 of the Code

[91] Clause 7 of the Code

[92] See the latest annual reports at http://fos.org.au/centric/home_page/about_us/codes_of_practice/general_insurance_code_of_practice.jsp

[93] www.fos.org.au/publicdownload.jsp?id=6698

[94] See http://www.apra.gov.au/Statistics/upload/GI-Quarterly-Performance-201012-PDF-Version.pdf

[95] See section 8.11 Victorian Bushfires Royal Commission, Report Volume 2 at

http://www.royalcommission.vic.gov.au/finaldocuments/volume-2/PF/VBRC_Vol2_Chapter08_PF.pdf

[96] See http://www.insurancecouncil.com.au/IssuesSubmissions/Issues/NonInsurance/tabid/1299/Default.aspx

[97] See http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/underinsurance_report.pdf/$file/underinsurance_report.pdf

[98] Insurers require government flood maps from Logan City Council, Gold Coast City Council, Brisbane City Council, Townsville City Council, Burdekin Shire, Whitsunday Regional Council, Hinchinbrook Shire, Murweh Shire, Paroo Shire, Moreton Bay Regional Council, Southern Downs Regional Council, Central Highlands Regional Council, Ipswich City, Rockhampton Regional Council, Mackay Regional Council, Western Downs Regional Council, Cairns Regional Council. To date, only Brisbane City, Gold Coast City and Murweh Shire have provided up to date flood mapping.

[99] See http://www.accc.gov.au/content/index.phtml/itemId/841725

[100] According to Choice Magazine study (14 January 2011). See http://www.choice.com.au/reviews-and-tests/money/insurance/house-and-car/home-and-contents-insurance-review-and-compare.aspx

[101] See further, Kirby, Michael, 'Annual Review of Insurance and Reinsurance Law: Launch of the 2004 Volume', Sydney, 23 February 2005

[102] published by Insurance Australia Group Limited, see http://www.cgu.com.au/cgu/CGU%20Documents/cgu-understanding-insurance-brochure.pdf

[103] See these reports at http://www.insurancecouncil.com.au/Default.aspx?tabid=1881

[104] Current as at 25 March 2011

[105] See http://www.qld.gov.au/floods/form.html#section-round-2

[106] Details taken from 'Apply for Premier's Disaster Relief Funds' at http://www.qld.gov.au/floods/form.html

[107] See details at http://www.centrelink.gov.au/internet/internet.nsf/payments/disaster_relief.htm

[108] See http://www.disasterassist.gov.au/www/disasterassist/disasterassist.nsf/

[109] For example, the UK Flood Partnership & the US National Flood Insurance Program. See OECD,(2008) Policy Issues in Insurance: Financial Management of Large-Scale Catastrophes

[110] Clams data collected for APRA 24 March 2011

[111] Including the modification to the SOA requirement for some general insurance products in section 946A of the Corporations Act *2001 (Cth)* and exemptions referred to in endnote 44.

[112] See http://www.coag.gov.au/coag_meeting_outcomes/2011-02-13/index.cfm?CFID=395347&CFTOKEN=20654049

[113] On page 8 of the National Strategy for Disaster Resilience

[114] See http://www.bom.gov.au

[115] See http://www.bom.gov.au/inside/index.shtml

[116] Section 6 of the *Meteorology Act 1955 (Cth)*

[117] Section 120(a) of the *Water Act 2007 (Cth)*

[118] See http://www.bom.gov.au/water

[119] Section 126 of the *Water Act 2007 (Cth)*

[120] Section 123 of the *Water Act 2007 (Cth)*

[121] Section 125 of the *Water Act 2007 (Cth)*

[122] Further data relating to less recent events is also set out at http://www.insurancecouncil.com.au/IndustryStatisticsData/CatastropheDisasterStatistics/tabid/1572/Default.aspx

[123] See http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/039.htm&pageID=003&min=brs&Year=&DocType=

[124] See Review terms of reference at http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/039.htm&pageID=003&min=brs&Year=&DocType=

[125] See http://www.insurancecouncil.com.au/Portals/24/Media%20Centre/2011%20Media%20Releases/Disaster%20Review.pdf

[126] Changes of like effect should be made to legislation governing relocatable and temporary home rentals, the *Manufactured Homes (Residential Parks) Act 2003 (Qld)*

[127] See Australia's Future Tax System: Part One: Overview

[128] See Tooth, Richard (2007) "An Analysis of the Demand for House & Contents Insurance in Australia: A report for the Insurance Council of Australia" (Centre for Law & Economics)

[129] The following legislation and calculations are relevant:

Section 349 of the *Queensland Duties Act 2001* imposes stamp duty on general insurance premiums. Section 362 of the *Queensland Duties Act 2001* stipulates the stamp duty on insurance for buildings and contents (Class 1) to be 7.5% on premium payable. An average premium absent of taxes for building & contents in Queensland is $407 (Source: Insurance Statistics Australia) giving a duty payable on the average building and contents policy of $30.53 leaving a total cost to the consumer of $437.53.

END