

Review of Product Disclosure Regime in Australia and lessons learned

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- Strategic inquiry by Australia government to see how our financial system (including insurance) could be best positioned meet Australia's evolving needs and support Australia's economic growth.
- [Interim report](#) 15 July 2014 noted concerns about current disclosure regime and puts forward suggestions for consideration.
- Key concerns re transparency and product disclosure effectiveness are universal.
- See <http://fsi.gov.au> for full information.

Overview of current product disclosure regime

- Most insurance covered by federal legislation ie Australia wide
- **Corporations Act**
 - Applies to all financial services including insurance with special rules for different product types.
 - Licensing of insurers and intermediaries and consumer protection rules, including product disclosure.
- **Insurance Contracts Act**
 - Insurance specific legislation.
 - Overrides common law rules and seeks to create fair balance between rights of insurer and insured.
- **Reinsurance** - not covered by any specific product disclosure legislation

Corporations Act regime

- One size fits all legislation applying to all financial products with special rules for different product types.
- Product disclosure protection is focused on protecting those considered less able to protect themselves.
- Aim to ensure they get minimum information in clearly, concisely and effectively.
- Tool to achieve this was the Product disclosure statement (PDS)
- Obligation only applies for retail clients - individual or small business but only when buying personal lines type products e.g motor, home insurance, travel etc
- Minimum content requirements.
- They must get PDS before buying and special rules apply for telephone sales and other unusual scenarios
- Wholesale clients no misleading or deceptive conduct and Insurance Contracts Act

PDS minimum content (examples)

- Issuer
- Fees payable by the client (i.e. premium, excesses)
- Cooling-off period
- Significant benefits
- Dispute resolution system
- Terms and conditions of the policy
- Any information that the issuer would have to provide to the person under s35 (2) or 37 of the Insurance Contracts Act
- Extra information if CCI or the issuer is unauthorised foreign insurer (see next slides)

PDS must be:

- *clear, concise and effective; and*
- *not misleading*

Has it worked?

- Not well. One size fits all makes for an unattractive outfit.
- Insurer in effect delivers a document that is no different to a normal policy wording but better drafted because of the clear concise and effective obligation and minimum content requirements.
- In some cases the documents have become longer because of principles based approach e.g obligation to include information on the "significant benefits" of a product.
- Has focused insurers on drafting things more clearly which is a good thing.
- Gives courts and external dispute resolution scheme that insurers are members of and bound by (FOS), more opportunity to help retail clients.
- Consumers in reality don't read the document or are not capable of understanding what are complex concepts in such documents.

Insurance Contracts Act transparency provisions

Imposes significant protection for all insureds not just retail clients.

Pre-contactual - Duty of disclosure and misrepresentation protections – special extra rules for specific consumer types of insurance e.g specific questions obligation on insurer

Post-contractual

- Duty of utmost good faith e.g cannot rely on provision if to do so would breach duty.
- Obligations to notify unusual terms or less than minimum cover for certain personal lines products. Must be clearly drafted or cannot rely on term.
- Inability to rely on provision unless certain notices contained in policy that clearly explain effect e.g automatic cancellation of instalment policy without notice.
- Provisions applying set definition of flood in certain policies despite policy definition.
- Information must be given before entry with some exceptions to take account of telephone sales.

New key facts sheet initiative

- Aim to be a simple 2 page document for consumers to compare the policy with other policies
- Required for home building insurance or home contents insurance from November.
- Contents and format (fonts, colours, etc) strictly set out in the Insurance Contracts Regulations made under the ICA
- The insurer needs to provide a KFS if the consumer:
 - requests information about the insurance;
 - enters into the contract with the insurer
- No need to provide if the customer has broker acting for them
- KFS may be provided electronically
- If the insurer has a public website, the KFS must be uploaded to the website in a format that may be downloaded (e.g. pdf)

KFS – example

The content of this Key Facts Sheet is prescribed by the Australian Government and is a requirement under the Insurance Contracts Act 1984

KEY FACTS ABOUT THIS HOME BUILDING POLICY

[insert policy name]

Prepared on: [insert date of this key facts sheet's preparation]

[insert insurance provider's/
distributor's logo or brand]

THIS IS NOT AN INSURANCE CONTRACT

STEP 1 Understanding the Facts Sheet

This Key Facts Sheet sets out some of the events covered and not covered by this policy and other information you should consider. This sheet does not provide a complete statement of the cover offered, exclusions, conditions and limits that apply under the policy. You should carefully read the Product Disclosure Statement (PDS) and all policy documentation for more details.

STEP 2 Check the maximum level of cover and the events covered

Under this policy [insert details of the maximum cover provided in accordance with step 3]

Event/Cover	Yes/No Optional	Some examples of specific conditions, exclusions or limits that apply to events/covers (see PDS and other policy documentation for details of others)*
Fire and Explosion	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Flood	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Storm	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Accidental breakage	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Earthquake	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Lightning	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Theft and Burglary	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Actions of the sea	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Malicious Damage	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Impacts	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Escape of liquid	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Removal of debris	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.
Alternative accommodation	[Yes/No Optional]	[insert policy specific condition, exclusion or limits] If the wording of event/cover in column one is not consistent with the wording used in the PDS, insert an explanation on how the event cover applies in respect to the policy.

* This Key Facts Sheet is a guide only. The examples provided are only some of the conditions, exclusions and limits in this policy. You must read the PDS and policy documentation for all information about this policy.



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STEP 3 Other things to consider

Limits

This policy has restrictions that limit your cover for certain events and items, for example [insert policy specific example]. To find out these limits you need to read the PDS and other relevant policy documentation.

Excesses

If you make a claim, the excess is the amount you may have to pay for each incident. A number of different excesses may apply in respect to this policy, for example [insert policy specific example]. You may be able to increase these excesses to lower your premium. For more detail, please read the PDS and other policy documentation. [if no excesses apply to the policy the words from "A number of different" to "other policy documentation" can be removed and the following wording can be inserted: However under this policy no excesses apply.]

Legal liability

This policy covers your legal liability when you are found to be legally responsible for damage or personal injury to a third party or their property. It is limited to [insert policy specific information]. You should read the PDS carefully to determine the extent of this cover. [if no cover is provided for limited liability under the policy the wording in this section can be deleted and the following wording can be inserted: This policy doesn't provide cover for legal liability.]

Cooling off period

If you decide you don't want this policy within [insert policy specific information] days of it being issued and you haven't made a claim, you can cancel it and receive a refund.

Maximum level of cover offered by insurers

Insurers offer different maximum levels of cover in the event of the loss or destruction your home including where:

- you set the maximum level of cover and your payout is limited to that amount* (*Sum insured*).
- you set the maximum level of cover and the insurer may provide you with some agreed extra cover above that amount (*Sum insured plus safety net*).
- the insurer will cover all the reasonable costs to rebuild your home (*Total replacement*).

* the insurer may provide some cover above this amount.

You should consider which type of cover is best for you.

Failure to adequately insure your home may result in underinsurance.

Warning: this Key Facts Sheet sets out some of the conditions, exclusions and limits in respect to this policy. You should read the PDS and all policy documentation for all the conditions, exclusions and limitations of this policy that limit or exclude cover

STEP 4 Seek more information

If you want more information on this policy contact us on [insert insurer/distributor specific details].

For more information on choosing insurance and to better understand insurance visit the Australian Government website: www.moneySMART.gov.au

The policy this KFS relates to is:

- Provided/Distributed by [insert policy specific details including the AFSL number].
- Underwritten by [insert policy specific details including the AFSL number].

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Has ICA worked?

- Generally yes. Recent review has suggested improvements but overall this legislation has been very successful and flexible given what it sought to achieve.
- Specific proposed unfair contracts regime did not proceed.
- Key facts sheet initiative a failure. Question whether will progress.
 - Policies and cover differ and rules not flexible enough to take differences into account
 - Insurers can choose which terms to include so no consistency or comparability which was the intent.
 - Consumers get limited information and may be misled as what is important for one insured may not be for another. Not enough thought put into it. Politically pushed through after floods by past Government.

Non legislative fixes

- General Insurance Code of Practice created by Insurance Council of Australia
- Voluntary.
- Imposes standards on insurers and breach enforceable by Council against insurers. Consumers have right to complain about breach of Code.
- Doesn't really take transparency further than the law but in other areas goes further than the law.

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- Current disclosure regime
 - is too lengthy and complex
 - does not enhance consumer's understanding
 - imposes significant costs on industry
- Policy options
 - No change to current arrangements.
 - Improve the current disclosure requirements, including layered disclosure, risk profile disclosure and online comparators.
 - Remove disclosure requirements that have proven ineffective and facilitate new ways of providing information to consumers, including using technology and electronic delivery.

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- Policy options (continued)
 - Subject product issuers to a range of product design requirements, such as targeted regulation of product features and distribution requirements to promote provision of suitable products to consumers.
 - Provide the Australian Securities and Investments Commission (ASIC) with additional product intervention powers and product banning powers.
 - Consider a move towards more default products with simple features and fee structures.

Challenges of transparency

- Existing regime doesn't fix (and can't in many cases) what are the real challenges of transparency in insurance:
 - Length of insurance policies – reality is they must by their nature contain all relevant contractual provisions for protection of insurers.
 - Any attempt to summarise will necessarily mislead consumer as what is important to one will not be to another. Insurers can't be left to guess.
 - Even if drafted clearly consumers will not usually read them.
 - Even if they read them, will they be able to understand them where clearly drafted? Consumer literacy issues.

Real fear – imposition of suitability for purpose obligations on insurers when designing products.