Insurance Council of Australia

Building a more resilient Australia

Policy proposals for the next Australian Government

This report was produced on the lands of the Gadigal people of the Eora Nation.

February 2022

Headline recommendations

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KEY:

$ To be costed

✓ Within existing resources

Introduction

General insurers provide Australian businesses and households with 43 million policies each year and pay more than $166 million in claims every working day.

Insurance is a key component of the economy and underpins every facet of our lives, from running a business to running a car, from keeping a roof overhead to getting ahead. Insurance is vital everywhere, but especially in a country like Australia where natural disasters and extreme weather are a regular reminder of the challenges we face to protect property, lives, and livelihoods.

While over the past two years the Australian community has been focused on battling the Covid-19 pandemic, since 2019 we have also faced and overcome the devastating Black Summer bushfires, major flooding events across the eastern states, a category 3 cyclone, destructive and costly hailstorms, an earthquake, and numerous other extreme weather events.

Insurers are at the frontline when it comes to climate change and extreme weather, that's why as an industry we're so focused on improving community resilience.

In an election year our simple message is this: in the face of worsening extreme weather the next Australian Government must boost investment in stronger homes and the local infrastructure that make communities more resilient. This means subsidies to improve the resilience of the nation's homes and businesses to cyclone, flood and bushfire, as well as projects that protect the community, like levees, floodways, and prescribed burning.

The Productivity Commission has recommended Commonwealth investment in this area should be in the order of $200 million a year[1], which is around double what is currently allocated. Insurers support this goal, which has only become more urgent as we see growing impacts on coastal homes, northern Australian businesses and households, and riverine communities, just to name a few. As the Productivity Commission has articulated, if we are to meet this challenge states and territories must also step in and play their part and match Commonwealth investment.

As a result of Hayne Royal Commission recommendations, over the past two years insurers have also had to respond to the most significant regulatory reforms since the financial services reforms of the early 2000s. Insurers supported the reform process, advocating for a regulatory regime that allows the sector to deliver services that meet customer expectations without unintended consequences. Insurers, their customers, and regulators need time to assess the impact of these far-reaching changes before any further regulatory changes are considered.

1 Productivity Commission, 2014, 'Natural Disaster Funding Arrangements'

Australian insurers are part of a global insurance market and are impacted by global trends which influence underlying costs. Insurance globally is currently in a 'hard' market, which means capital is scarce, reinsurance is more difficult to obtain, and risk appetites are low, all of which can impact the cost of premiums locally. Insurers recognise that this is having an impact on particular sectors in Australia and are working with the business community on solutions for those sectors where insurance affordability and availability remains a threat.

External and artificial barriers to insurance availability need to be removed. State taxes and charges continue to discourage adequate levels of insurance, leaving businesses and consumers vulnerable in their time of need. Given the public policy benefits of adequate insurance cover there is a clear role for the Commonwealth to lead by providing incentives for states and territories to undertake reform in this area, as it has done with economic reforms in the past.

These are just some of the challenges currently facing the insurance sector and its customers. There is no single silver bullet for resolving these issues, but the sector is facing them head on and with renewed vigour. We will continue to work collaboratively with governments to strengthen the role of insurance in underpinning a strong economy and meeting the challenges of climate change and extreme weather.

This document sets out 12 policy areas that insurers have identified as requiring reform, modernisation, or investment, and is the result of collaboration and consultation not just across the membership of the Insurance Council, but with stakeholders and policymakers across the country. While the focus of this document is on the work of the Australian Government, it is not possible to neatly separate Federal policy responsibilities from those of the states and territories and this document includes some reforms that must also be undertaken at a sub-national level.

Together, this suite of policy proposals will support all Australians wherever they live to recover more quickly from unexpected events and be better prepared for the future, and we strongly recommend its adoption by the next Government of Australia.

Andrew Hall
CEO and Executive Director

Resilience investment

Increase Commonwealth investment in extreme weather resilience measures from $100 million to at least $200 million a year, or $1 billion over the next five years, matched by the states and territories

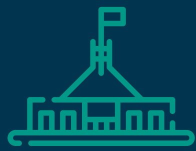
Without increased funding to make Australian homes, businesses and communities more resilient to natural perils, coupled with a change in approach to what we build and where we build it (see pages 10 to 13), the risk profile of communities exposed to extreme weather will not change.

The Australian Government has made recent welcome investments to protect vulnerable communities, including $600 million over six years for new disaster preparation and mitigation programs and $40 million to make strata buildings in northern Australia more resilient to extreme weather. However, the Productivity Commission has recommended Federal funding in preventative resilience measures should sit at around $200 million a year, matched by the states and territories, lifting national investment to at least $400 million a year.[2]

The Victorian and New South Wales governments have recently increased resilience funding, however Queensland, which faces the most significant threat from cyclone and cyclone-related flood, needs to significantly lift its investment in this crucial area.

Analysis conducted by actuarial consultancy Finity for the Insurance Council has identified a range of resilience measures that would provide significant returns on investment by better protecting communities from and lowering our risk exposure to extreme weather.[3]

In line with the Productivity Commission's recommendation for annual investment of $200 million from the Australian Government matched by funding from states and territories, Finity has outlined a five-year program of resilience measures requiring an investment of approximately $2 billion that is expected to reduce financial costs to Australian governments and households by more than $19 billion by 2050.



$1B

$1B

$19B

Reduced costs

2 Productivity Commission, 2014, 'Natural Disaster Funding Arrangements'

3 Finity has considered benefits as avoided costs from: damage to residential buildings (insured and uninsured), health costs (deaths and injuries to individuals), and social costs (psychological injury, alcohol abuse, and family violence). Finity has used a real discount rate of 2 per cent per annum to derive the ROI of 10. This ROI decreases to 6 at a real discount rate of 6 per cent per annum. Finity has not included the impact of increasing population and development to 2050, thereby understating the potential returns on investment.

“Australian Government mitigation funding to states should increase to $200 million a year and be matched by the states.”

Productivity Commission 2014

Jurisdiction	Investment $m	Return $m	ROI
Queensland	726	6,290	9
Northern Territory	16	313	20
ACT	4	17	4
New South Wales	232	5,651	24
Tasmania	46	938	21
Western Australia	192	979	5
Victoria	223	3,185	14
South Australia	30	1,361	46
Not Allocated	532	522	1
	2,000	**19,256**	**10**

The recommended measures in the program are:

- Local Infrastructure Fund (eg levees, floodways and other local mitigation infrastructure)
- Cyclone Proofing Homes program
- Wet Flood Proofing Existing Homes program (raising utilities above the floodline)
- Fuel management program
- Flood Early Warning System
- National Coastal Hazard Information Database

These measures have been chosen because they provide the best ROI and / or will provide significant other benefits to those communities most exposed to risk from extreme weather.

The Local Infrastructure Fund ($522 million) should be largely targeted at flood mitigation projects such as levees and floodways. Insurers have identified the locations of greatest need, however further work is required with state and local governments, insurers, and other stakeholders to identify projects that provide the best ROI.

Based on an extensive review of current research, the proposed resilience program is expected to provide a return on investment of 10 nationally.

"An immediate shift to climate adaptation (proactive investment to pursue climate resilience) combined with mitigation (proactively reducing greenhouse gas emissions), can save $380 billion in GDP over the next 30 years. We call this the resilience dividend"

Deloitte Access Economics and Mindaroo Foundation, 2022

Queensland Household Resilience Program

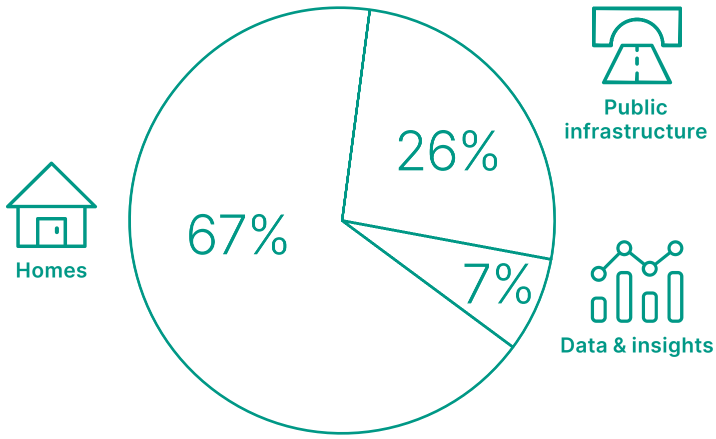
Launched in 2017, the Queensland Household Resilience Program showed that public investment to improve homes and provide greater resilience to extreme weather can protect homeowners as well as put downward pressure on premium costs. In total, just over $20 million was contributed by the Queensland and Australian Governments to facilitate targeted building work, retrofitting existing properties to better withstand the natural peril risks faced in different parts of the State.

The program saw government contribute 75 per cent of the cost of approved building works up to a maximum grant of $11,250 per house and was targeted to homes north of Bundaberg. During its operation 3,100 grants were provided, with the vast majority going to works related to roof replacement (76.5% of grants approved), along with window protection and door and garage door replacement.

Participants in the program subsequently saw an average saving of 7.5 per cent on their insurance premiums, with some savings as high as 25 per cent.

Northern Australia Reinsurance Pool

While premiums reflect the high level of cyclone, storm and flood risk, as well as expected average annual costs, the cyclone component of reinsurance forms a relatively small part of the premium cost for consumers. Therefore, risk mitigation both by customers and through public infrastructure is ultimately the most effective and sustainable way to reduce premiums.



Infrastructure Partnerships Australia calculates that $248.1 billion has been budgeted for infrastructure investment by all Australian governments across the forward estimates from 2021-22.[4] An investment by Federal, state and territory governments of $400 million a year over the same period is just 0.64 per cent of what is currently allocated, with significant community returns.

Programs proposed by Finity fall across four peril types:

Peril	Investment $m	Return $m	ROI
Flood	1,016	14,265	14
Cyclone	231	1,964	9
Bushfire	743	3,027	4
Coastal	10	0	0
	2,000	**19,103**	**10**

4 https://infrastructure.org.au/bud-ranking/

“The anticipated collective cost to governments of recovery is forecast to increase to an average of $3.8 billion per year by 2050... Funding provided for recovery significantly exceeds funding provided for mitigation.”

Royal Commission into National Natural Disaster Arrangements 2020

Around 67 per cent of the proposed program is targeted at making homes more resilient, 26 per cent on public infrastructure, and the remainder on data and insights to support the program (eg, undertaking detailed cost-benefit analyses).

In addition to better protecting property and providing premium relief there are wider benefits that come from greater investment in resilience measures, with significant evidence demonstrating the economic benefits of more resilient communities.[5] As an additional benefit, insurance premiums can decrease with appropriate mitigation infrastructure or household-level programs, but this can only be achieved if governments act with urgency.

Roma flood levee

Floods impacted Roma, Queensland in 2010 and 2011, but an event in 2012 impacted more than 1,000 properties, more than 50 per cent of which experienced above-floor flooding, at a cost to insurers of more than $130 million.

The local government, in collaboration with the Queensland Government and supported by funding from the Federal Government, constructed flood levies designed to provide for a one in 1,000-year event. The levee system was opened in 2019 at a total cost of $28 million.

The return on this investment is estimated to be 4.9, and insurance capacity, which had all but disappeared because of the significant flooding risk, has returned with more than 500 properties seeing premium reductions of up to 75 per cent.

The next Australian Government must:

- **Lift investment in extreme weather resilience measures from $100 million per annum to at least $200 million per annum, or at least $1 billion over the next five years.**
- **Direct the National Resilience and Recovery Agency to partner with state, territory and local governments, the insurance industry and other stakeholders to establish a fully funded, five-year program of resilience programs and projects across Australia based on need, developed through a fully transparent, non-partisan process, and evaluated through a robust post-implementation review process.**

All state and territory governments must:

- **Match Australian Government investment in resilience measures (stronger homes and public infrastructure), commencing with the 2022-23 budget cycle, lifting national investment to at least $400 million per annum.**

5 Deloitte Access Economics, 2021, ‘Special Report: Update to the economic costs of natural disasters in Australia’

Land use planning

Review land use planning arrangements and establish a national natural peril data centre to enable better planning by governments and developers

Too many homes are in the direct line of flood, fire, and cyclone, or at risk from actions of the sea, because at the time of planning and approval not enough account was given to the natural peril risk.

Unfortunately, many of these properties are now cheaper to buy or rent because of this risk, and some are home to those who are least able to afford adequate insurance, compounding the impact of a natural disaster or extreme weather event. The increased risk posed by a lack of mitigation at the planning stage and a lack of effective resilience in construction, means a higher risk rating which results in higher insurance costs for these owners and tenants.

As state and local governments are forced to deal with increasing populations, the pressure for increased housing stock is growing and the temptation to encroach on areas prone to natural peril risks is also increasing.

The policy objectives of land use planning must change to focus on mitigation and the impacts of a disaster at the time of planning approval. Future financial losses to homeowners, businesses and the community can be avoided with better government planning and investment.

Administration of land use planning is made more difficult given its divided responsibilities through all levels of government and the crucial role of often under-resourced local governments. Understanding the risk framework posed by extreme weather at a regional and local level will significantly enhance the ability of planning instruments and the decisions made within them to be undertaken fully cognisant of current and emerging risk.

99% <500m

2019-20 Black Summer

During the 2019-20 Black Summer fire season, 99 per cent of buildings destroyed were within 500 metres of bushland, and 74 per cent of buildings lost were constructed prior to the introduction of the bushfire building standard (AS 3959). This highlights the extent of legacy risk within Australia's built environment, brought about by too little consideration being given to the risks posed by the construction of property in areas facing a high natural peril risk.

2021 Hawkesbury floods

Flooding in the Hawkesbury-Nepean region is not an uncommon occurrence but there are 70,000 residents already living on the floodplain and the New South Wales Government has plans to increase that to 130,000 by 2050.

While the March 2021 flood was described as a 1-in-100-year event, the occurrence of flooding in the region with peaks above 10 metres are far more common than that.

In the wake of the 2001 flood it was clear some residents had chosen not to take out flood cover or not to insure at all because of the cost, which could be as much as $30,000 a year for home and contents cover including flood. This cost is solely attributable to the risk profile of those flood exposed properties. The cost of protection from these events is beyond the capacity of occupants and the resulting impact of the event is therefore catastrophic.

In partnership with state and territory governments and the Australian Local Government Association, the next Australian Government must:

- **Establish a review of land planning arrangements and natural peril risk in the first year of its term.**
- **Establish a national natural peril data centre to enable better planning by governments and developers.**
- **Co-fund a program to identify and mitigate legacy issues withing existing building stock with a regional risk factor focus.**
- **Undertake an audit to measure the effectiveness of its Smart Cities Plan, particularly its objectives of improving safety, resilience, and sustainability.**

All state and territory governments must:

- **Amend planning legislation to include a mandatory requirement for planning arrangements to consider property and community resilience to extreme weather and natural disasters.**

National Construction Code and Building Standards

Amend national building codes to include a resilience and future risk standard

Instilling resilience through our building codes and standards is a critical component of mitigating the risks arising from extreme weather events for households and small businesses.

The National Construction Code (NCC) is based on three mandatory core objectives established under the Intergovernmental Agreement for the operation of the Australian Building Codes Board (ABCB), which are to efficiently achieve:

- Health and safety
- Amenity and accessibility
- Sustainability

Significantly, these objectives do not include any consideration of property durability or resilience.

The NCC relies on Australian Standards establishing significant technical building design and construction requirements for industry. Like the NCC, there is no requirement in the development of Australian Standards to consider building durability or resilience.

This is exacerbated by the quality performance of construction in Australia. Numerous reports have highlighted the prevalence of defective building work across Australia, compounded by a lack of robust compliance activity.[6]

There is insufficient clarity under the NCC for defect responsibility, leading to too many disputes. In addition to the legal cost of the actual dispute driving significant claims leakage, these disputes increase the cost of professional indemnity cover for building professionals which is ultimately passed on to consumers. Greater clarity on responsibility for performance and compliance is required to reduce disputes on large 'at-fault' claims.

The Assistant Minister for Industry Development has tasked the ABCB with reviewing these considerations. The outcomes proposed by the ABCB, currently at consultation stage, should be incorporated into the NCC at the earliest opportunity.

The insurance sector has significant experience supporting the development of Australia's built environment, including the provision of expertise on the remediation of poorly constructed buildings, but this expertise is currently not harnessed at the strategic policy formulation level.

6 NSW Department of Customer Service and Strata Communities Association NSW, 2021, 'Research Report on Serious Defects in Recently Completed Strata Buildings Across New South Wales'

Scope of defects in existing housing stock

The ABCB-commissioned report from the Centre for International Economics, published in July 2021, highlighted that up to 72 per cent of residential properties in Australia have defects with an estimated cost of $2.5 billion. The report also highlighted that the full economic impact can be much worse, citing the example of the Opal Towers building in Western Sydney where the cost of defects was assessed at $1 million however the full remediation cost exceeded $27 million.[7]

In partnership with state and territory governments, the next Australian Government must:

- **Amend the Intergovernmental Agreement for the operation of the Australian Building Codes Board to require the National Construction Code to include from 2025 a fourth objective of building resilience and future risk.**
- **Direct the Australian Building Codes Board to improve compliance regimes and clarify liability at all stages of construction.**
- **Direct the Australian Building Codes Board to improve building documentation by establishing a national building register database.**
- **Facilitate permanent insurance industry representation on the Australian Building Codes Board.**
- **Direct the Australian Building Codes Board to improve research into building vulnerability through materials testing, standards development, and engineering guidance.**
- **Harmonise defect liability regimes by increasing the defect liability period for new buildings to 10 years in all jurisdictions.**

7 Centre for International Economics, 2021, 'Building Confidence Report - A Case for Intervention'

Improved coordination and data collection

Improve data sharing to support the assessment of claims and the provision of services by governments and NGOs following a disaster

The insurance industry has taken the steps to ensure the accuracy and integrity of the data that we share, including by aligning definitions across all insurers providing regular submissions. The Insurance Council is currently collaborating with the National Resilience and Recovery Agency to develop policy that will enable the sharing of hazard-related data for improved planning, analysis, investment, and disaster response. We strongly support the ongoing commitment to develop policy that allows prudent data sharing to build a richer view of the natural and built environment.

When natural disasters strike, emergency responders, recovery agencies and insurers activate their operational plans to ensure community safety and recovery. Through these activities much data is collected, however in practice these data sets cannot be shared between agencies and insurers because of limits imposed by the National Privacy Principles.

The Insurance Council strongly supports robust policy and frameworks designed to protect individual privacy, however prudent data sharing can ultimately benefit individuals and communities. The Insurance Council supports proposals to introduce greater flexibility to the National Privacy Principles and welcomes the recent opportunity from the Attorney-General's Department to comment on the Discussion Paper, Review of the Privacy Act 1988.

Within the current framework there are two mechanisms that allow for increased levels of data sharing to aid in disaster response: Section VIA (Emergency Declaration) and Section 16A (Permitted General Situations). In both cases the provisions are insufficient to consistently allow prudent operational data sharing to support efficient delivery of services to communities recovering from disasters.

In the case of Section VIA, prime ministerial or ministerial approval is required, and in practice has only been approved in three cases. In the case of Section 16A, the scope of purpose is by design limited only to cases preventing serious harm, for public safety, or related to unlawful activity or legal claims.

Need for greater collaboration on data collection

The inability of government agencies and insurers to share data has resulted in poor outcomes for community members:

- Government agencies were unable to establish in a timely manner whether a family was uninsured, resulting in elderly and disabled family members living in a severely damaged home.
- The insurance status and claim settlement status of an abandoned pub could not be shared, resulting in the derelict building remaining the ongoing responsibility of the local government.
- Government agencies were unable to identify and target potential candidates for resilience grants.

The next Australian Government must:

- **Amend the Privacy Act to allow prudent sharing of data between insurers and government agencies to support community recovery by improving the practicality of an Emergency Declaration by expanding the criteria and consequences of an approval, introducing a new intermediate category of data sharing, or expanding the scope of Section 16A.**

Disaster clean-up arrangements

Standardise the safe and timely clean-up of waste and debris following a natural disaster, which is critical to physical and psychological recovery for communities

The insurance sector supports in-principle State and Federal leadership of disaster clean-up to ensure consistency in hazard removal and equitable use of public funds. However, insurers and impacted communities know that clean-up is often delayed due to level of planning and approval activity necessary in the absence of pre-existing clean-up protocols and arrangements.

The next Australian Government must:

- **In consultation with the states and territories, work with the insurance sector to implement standardised arrangements for disaster clean-up that best serve natural disaster-impacted communities.**

Regulatory framework for financial services

Establish policy settings and regulatory approaches that support innovation and new entrants to the market for the benefit of all Australians

In recent years the insurance industry has navigated a significant period of regulatory change stemming principally from recommendations of the Hayne Royal Commission. Insurers, their customers, and regulators need time to assess the impact of these far-reaching changes before any further regulatory changes are considered.

Given the pace and complexity of these reforms, it is crucial that post-implementation reviews are undertaken by government and regulators in a timely way, and that they are guided by clearly articulated principles for financial services regulation. This would provide an opportunity for policymakers to repeal outdated regulation or de-prioritise any policy that may have been superseded by recent reforms based on an agreed framework.

Clearly articulated expectations and a transparent policy framework for financial services regulation, similar to the approach taken in the UK, would result in greater efficiency, consistency and clarity for policymakers, regulators and insurers.[8] Ultimately, this would benefit consumers by targeting policy and regulatory resources towards clearly defined areas of consumer and economic benefit.

Regulatory principles should foster competition in financial services recognising that competitive markets and well-informed consumers offer the best prospect for meeting community needs without government intervention.

Insurers welcome the Australian Law Reform Commission's examination of potential simplification of laws that regulate financial services in Australia and suggest the adoption of a similar policy prioritisation process and development of a data strategy to that undertaken in the UK, the Regulatory Initiatives Grid.

UK policy framework for financial services regulation

The Financial Services Regulatory Initiatives Forum (FSRIF) is comprised of the UK's financial regulators. The FSRIF sets the regulatory pipeline over a 24-month horizon so financial services sectors and stakeholders can understand and plan for initiatives that could have a significant operational impact. This is published as the Regulatory Initiatives Grid.

While a similar approach would benefit all financial services stakeholders, industry and community alike, it would particularly assist insurers who have to factor in an increasingly volatile business environment due to frequent extreme weather events.

8 www.fca.org.uk/publications/corporate-documents/regulatory-initiatives-grid

The next Australian Government must:

- **Undertake a broad-based, post-implementation review of the cumulative impact of the Hayne regulatory reforms commencing in October 2024.**
- **In consultation with financial services sectors and under the auspices of the Council of Financial Regulators, establish a clear vision and principles for financial services regulation and abide by these principles for current and future regulations and for the post-implementation review of the Hayne regulatory reforms.**
- **In consultation with financial services sectors, establish clearly articulated data strategies for regulators and policymakers, guided by the Government's regulatory framework for financial services.**
- **Include the Australian Competition and Consumer Commission in the Council of Financial Regulators, bringing a competition focus to this body and meeting one of the recommendations of the 2018 Productivity Commission review into *Competition in the Australian Financial System.***
- **Adopt a minimum two months of consultation in line with the standard used in the UK to provide sufficient time to analyse and understand the impacts of legislative changes related to financial services.**
- **Ensure the Australian Financial Complaints Authority publicly reports on its implementation of Treasury's 2021 Review recommendations.**
- **Legislate for a uniform definition of family violence as recommended by the Standing Committee on Social Policy and Legal Affairs[9], and require that policymakers and regulators consider any implications for survivors of family violence when making new regulation.**

9 Standing Committee on Social Policy and Legal Affairs, 2021, 'Inquiry into Family, Domestic and Sexual Violence Report'

State taxes and charges

Incentivise states and territories to abolish duties, levies and charges on insurance products, which increase the cost of premiums and discourage adequate levels of cover

Maintaining adequate insurance cover enables individuals and businesses to recover faster and get on with the task of rebuilding, however this is hampered by state taxes and charges driving up the cost of premiums.

The tax system should encourage not hinder insurance coverage. Depending on the state or territory, government taxes and charges can add 20 to 40 percent on top of the cost of the premium, which leads to underinsurance or non-insurance.

Following Victoria's abolition of stamp duty on insurance in 2013, New South Wales is now the only mainland state still taxing insurance policyholders to fund fire and emergency services. The ABS Household Expenditure Survey 2015-16 showed that the Victorian rate of household non-insurance is seven per cent, compared to 13 per cent of households non-insured in New South Wales suggesting a correlation between state charges and insurance uptake.

According to a 2015 report, the abolition of all state taxes on insurance and replacement with broad-based land taxes would lead to a $5.52 billion net increase in household spending capacity each year, which would among other things be spent on additional insurance coverage and reduced reliance on government support in the event of claims.[10]

"Insurance taxes are inefficient: they drive up premiums and discourage consumers from adequately insuring."

Thodey Review of Federal Financial Relations, New South Wales Government, 2020

The next Australian Government must:

- **Incentivise states and territories to remove state taxes and charges on insurance products to improve rates of underinsurance and non-insurance, as the Howard Government did for the removal of various state taxes and charges with the introduction of the GST.**

"All specific taxes on insurance products, including the fire services levy, should be abolished."

Henry Tax Review, Commonwealth, 2008

$5.52B ↑

10 Deloitte Access Economics, 2015, 'Impact of Removing Stamp Duties on Insurance'

Cyber risk

Establish a robust policy framework for cyber security within Australia by bringing together government agencies, the tech industry, financial services sectors and business groups

Increasing digital interconnectivity creates new ways for businesses to interact with customers but also increases the potential for data breaches. These may be inadvertent or due to the deliberate malicious actions of disgruntled former employees, foreign state actors, or criminals.

In 2017 there was an estimated 4 billion individual data breaches globally.[11] In 2018 cyber crime was estimated to cost the world $600 billion, equivalent to 0.7 per cent of global GDP or 14 per cent of the worldwide internet economy.[12] Typically, only about one third of those losses were covered by insurance.[13] Ransomware attacks are now increasingly sophisticated and more invasive, with sensitive data targeted and operating systems disabled. Consequently, the cost to investigate, repair and recover has also increased.

Cyber insurance helps business meet the various first and third-party costs related to data breaches. These policies typically include costs related to forensic investigation, data restoration, customer notification and rectification, and indemnification of penalties imposed by regulators. Where the data breach is due to the malicious act of a foreign state actor or criminal gang coverage may include costs related to the services of a negotiator, legal advice to determine if any ransom payment is legal or reportable, and indemnification of the ransom if the business decides to pay the ransom.

Cyber insurance is a rapidly evolving product. There is a low awareness of the product amongst the business community and a small number of providers. This results in a relatively small pool size within which to transfer risk. Further, the nature of risk means it can rapidly multiply, or aggregate, as unlike other insurable risks it is not easily isolated to, and hence pooled against, a specific segment or geographic region, as is possible for something like cyclone risk.

These factors, together with the increasing sophistication and maliciousness of cyber-attacks, have put significant pressure on insurers and businesses alike. Increasingly insurers are reluctant to provide cyber insurance, or instead provide limited insurance cover, given the high cost and difficulty in pricing cyber risk due to its rapidly changing profile. Premiums are rising and at present there are no significant factors working to reduce loss costs or induce additional capacity into the market.

From a broader business perspective, the collaborative development of real time two-way threat data sharing between government and industry has the potential to reduce the incidence of cyber attacks and also help insurers more accurately quantify risk. This, in turn, will help bring more capacity into the cyber insurance market and generate downward pressure on cyber premiums, which increased significantly in 2021. Australia needs a vibrant and innovative insurance sector to provide relevant cyber insurance products and services to its small and large business sectors.

The next Australian Government must:

- **Establish a whole-of government forum for stakeholders across government, the insurance industry and technology to collaborate on the policy settings that manage system risk and support good cyber security health for business.**
- **Direct relevant government agencies, notably the Department of Industry, Science, Energy and Resources, to work with the technology sector to develop minimum security requirements and third-party certifications for software and hardware to reduce the vulnerability of business software and hardware to cyber-attacks, considering international best practice.**
- **Collaborate with the insurance industry to facilitate improved cyber risk reporting by businesses, to help insurers identify risk mitigation opportunities for their customers and provide the most effective way of reducing cyber premium costs over time.**

11 Lloyds of London, 2018, 'A world at risk: closing the insurance gap'
12 Oxera Economics, 2020, 'The value of cyber insurance to the UK Economy'
13 Lloyds of London, 2018, 'A world at risk: closing the insurance gap'

Supporting customers during pandemics

Establish nationally consistent borders policy to allow insurers to respond to customer claims effectively and efficiently, particularly following a natural disaster

Insurers always prioritise the use of local trades, however natural disasters usually result in a surge of claims beyond the capacity of local workforces to respond. Australian insurers mobilise specialist expertise and trades to locations of need from across the country and across the world. Depending on the location and nature of the disaster, this surge of support and expertise can number up to 500 people per event across all insurers.

Throughout 2021 insurers and the Insurance Council campaigned strongly on the need for a nationally consistent state borders policy that would allow staff and contractors to move between jurisdictions to meet the needs of customer making claims. The *Insurance Industry Covid-19 Action Plan* outlined the economic and social costs associated with constraints on insurers' ability to respond to surge events, in particular to natural disasters.

Analysis undertaken by Kearney for the Insurance Council found that if an event the size of Cyclone Debbie (2017) occurred now and insurers were delayed by border restrictions by seven days, a total economic shortfall of $687 million would result over the eight weeks following the event, a shortfall that could have been avoided had there been insurance staff on the ground from day one.

Although vaccination uptake has seen most Australian governments significantly easing local and border restrictions, planning and agreement needs to take place now for future scenarios that may include other Covid variants or indeed other pandemics. This planning must acknowledge the important role insurers play in supporting social and economic resilience, particularly after a natural disaster, and put policy settings in place accordingly.

The next Australian Government must:

- **In consultation with the states and territories, facilitate a national borders policy that provides exemptions from state and territory border restrictions for insurance personnel participating in the community recovery and repair process following natural disasters.**
- **Extend the definition of 'essential workers' as it relates to community recovery to include insurers.**
- **Amend international arrival protocols to allow those who meet professional, Covid-19 and vaccination status and are part of community repair and recovery from natural disasters entry into Australia under existing 482 visa arrangements.**

Tort law reform and risk management

Review tort law arrangements and their impact on the affordability and availability of insurance for small to medium enterprises, and fund programs to improve understanding amongst SMEs and not-for-profits of risk and business impacts

Australia is currently experiencing a very 'hard' market for public liability insurance for amusement parks and carnival ride operators, adventure tourism, caravan parks, and the hospitality, leisure and tourism sectors more generally including certain types of pubs and clubs. Some operators in these sectors are having trouble obtaining appropriate cover which is threatening their ongoing viability.

In response in part to this issue, in 2021 the Insurance Council released a report into the availability and affordability of commercial lines insurance, and subsequently established a Business Advisory Committee bringing together key business groups such as COSBOA and ACCI to find possible solutions.

Insurers have struggled to maintain profitability for public liability insurance over the past three years, often experiencing combined loss ratios (losses plus expenses divided by premium) above 100 per cent, peaking at 128 per cent in 2020.[14] The hard global insurance market, characterised by scarce capital, difficult to obtain reinsurance, and low risk appetites, means insurers are sometimes unwilling to take on these sectors where risks are higher either because of the inherent nature of the activity, poor risk management practices, or both.

Tort reform was previously undertaken in 2001-02 to address insurance availability problems experienced by small businesses at that time. Given it has been 20 years since these reforms, the development of case law over this time, emerging new industries and the current difficulties many businesses are experiencing obtaining public liability insurance, a further examination of tort reforms settings and whether they remain fit for purpose should be undertaken.

One of the options for further discussion could be the use of statutory defined benefits frameworks for personal injury claims (similar to those used in CTP and Workers Compensation insurance schemes) to reduce claims costs and durations, improve health outcomes for injured people, and increase affordability and availability of public liability insurance for businesses.

Insurance affordability and availability is also driven by appropriate risk management processes and risk mitigation activity. The implementation of appropriate national risk mitigation standards play an important role in helping businesses and organisations implement necessary risk reduction measures that will not only reduce risk of injury to people, but also put downward pressure on the cost of insurance for businesses.

The next Australian Government must:

- **Lead a national review of tort law which will examine the impact current legislation is having on small and medium businesses, in particular their ability to access appropriate insurance.**
- **Fund training and education programs to improve risk management and national standards across industry sectors experiencing a higher frequency of personal injury liability claims.**

14 Taylor Fry, 2021, Our class-by-class insights for insurers

Lenders Mortgage Insurance

Maintain the current framework for Lenders Mortgage Insurance to assist with home ownership goals

Home ownership is an aspiration for most Australians, however rising residential property prices and declining affordability make home ownership an ever more difficult goal for many to achieve. Younger and first home buyers, in particular, are finding it harder to assemble the necessary financial resources to get on to the bottom rung of the property ladder.

Lenders Mortgage Insurance (LMI) is an important component of Australia's housing market, enabling more Australians to achieve the dream of home ownership, or enabling them to achieve this goal earlier, by reducing the credit risk of the lender providing the home loan.

LMI provides creditworthy borrowers without a substantial deposit with a timely and cost-effective way to access home loans. Since the post-war period LMI has played a crucial role in supporting prudent high loan to value lending in Australia.[15]

However, LMI is under significant pressure from the introduction and expansion of programs like the New Home Guarantee (NHG), which is an important initiative that allows first home buyers to build or buy a new home with as little as five per cent deposit. However, the NHG negates the need for these borrowers to have LMI and so challenges the viability of the LMI sector. By displacing a proportion of the LMI market, the cost of providing LMI to borrowers who do not access the NHG is also potentially impacted.

The vital contribution of LMI

In countries without an LMI market, such as New Zealand since 2013, people have no option but to save the full deposit. Here in Australia, they can enter the market with the assistance of LMI. Since 1980 LMI has helped more than 8 million Australians purchase a home. Typically, around 21 per cent of all active mortgages are issued subject to LMI, benefiting 600,000 or more families at any one time. Sensible government policy settings which support the existence of an Australian LMI market will help many more Australians purchase homes into the future.

The next Australian Government must:

- **Ensure policy settings support the ongoing health of a thriving and competitive LMI market, continuing to enable homeowners with less than 20 per cent deposit to purchase a home.**

15 Productivity Commission, 2018, 'Competition in the Financial System'

Test cases

Amend to the law to allow test cases of importance to the financial services sector and its customers to be brought on hypothetical cases

The test case mechanism that was used in Australia to determine the applicability of insurance policies to business interruption (BI) experienced as a result of the Covid-19 pandemic required real cases that had been lodged with the Australian Financial Complaints Authority (AFCA).

AFCA's monetary jurisdiction is limited to just over $1 million, restricting the pool of cases available and potentially the issues to be considered. Finding suitable matters that were the subject of existing complaints before AFCA was a difficult process, and although cases were eventually identified insurers were not fully satisfied they covered all the issues requiring the courts' determination.

This process also meant the timeframe was drawn out over a period of more than a year and at time of writing was still unresolved, creating uncertainty for both policyholders and insurers.

The BI issue was able to be determined much more efficiently in the UK because the regulator, the Financial Conduct Authority (FCA), was able to bring proceedings under the Financial Markets Test Case Scheme.

This scheme allows a claim which raises issues of general importance to financial markets, and where authoritative legal guidance is needed, to be determined in a test case on an urgent basis without the need for a specific dispute between the parties.

The FCA brought the BI proceedings for the benefit of policyholders to achieve maximum clarity for the maximum number of policyholders and their insurers. In this way the scheme played an important role in providing speedy access to justice.

If implemented in Australia, such a scheme would benefit all those who participate in the financial services market including consumers of financial services and products.

The next Australian Government must:

- **Amend the *Federal Court Act* and Rules to enable issues of general importance to financial markets to be determined immediately through a process in the Australian Federal Court, akin to the UK Financial Markets Test Case Scheme.**

About the Insurance Council of Australia

The Insurance Council of Australia is the representative body for the general insurance industry of Australia. Our members represent approximately 95 percent of total premium income written by private sector general insurers, spanning both insurers and reinsurers.

Our work with our members, consumer groups and all levels of government serves to support consumers and communities when they need it most.

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