



Brotherhood
of St Laurence

Working for an Australia free of poverty

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By email: ICAReview@treasury.gov.au

Unfair terms in insurance contracts: Options Paper
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Options Paper: Unfair Terms in Insurance Contracts

The Brotherhood of St Laurence welcomes the opportunity to comment on the options available to address the issue of unfair terms in insurance contracts, and does so in order to ensure that the voices of lower-income earners and the financially disadvantaged are heard.

This document provides a background on the Brotherhood of St Laurence (**Brotherhood**) and the organisation's vision and objectives in the area of financial inclusion, as well as an overview of our clients' experiences in the insurance market. This is followed by Brotherhood's comments on each of the options listed in the options paper.

About us

The Brotherhood is an independent non-government organisation with strong community links that has been working to reduce poverty in Australia since the 1930s. Based in Melbourne, but with a national profile, the Brotherhood continues to fight for an Australia free of poverty, guided by principles of advocacy, innovation and sustainability. Our work includes direct service provision to people in need, the development of social enterprises to address inequality, research to better understand the causes and effects of poverty in Australia, and the development of policy solutions at both national and local levels.

Financial exclusion

Many disadvantaged Australians lack the access to fair and affordable credit, insurance and other financial services that others take for granted. Simple purchases like replacing a refrigerator, buying a computer for homework purposes, or repairing a car necessary for travel to work can lead to substantial hardship, force people to enter into contracts they can't fully understand, and even push them into the hands of unregulated, high interest-charging money lenders.

To counter this problem, the Brotherhood is campaigning for a national financial inclusion strategy, which would give people on low incomes: effective access to financial services, including affordable credit and insurance; the opportunity to save and acquire assets, such as cars and homes; and financial literacy – to enable them to manage their money, make better financial decisions, enforce their legal rights and obtain their full financial entitlements.

The Brotherhood believes that the financial services sector should be required to serve the needs of the whole community, including low-income earners, who in many cases miss out because they are regarded as 'less profitable' than other consumers.

The Brotherhood runs a number of programs designed to meet its objectives pertaining to financial inclusion. These programs include education and savings programs, as well as the Progress Loans program, which it runs in partnership with the ANZ.

Progress Loans was launched in 2006 and has since assisted over 1,000 low income earners and financially disadvantaged people in gaining access to mainstream financial services in the form of loans for assets. These loans can provide approved persons with an opportunity they may otherwise not have, for example, to purchase a vehicle (other uses for progress loans have included whitegoods and essential medical equipment).

Progress Loans has been a success in terms of its effectiveness in allowing access to mainstream financial services to those who may otherwise be without access, in providing those in the program with a positive experience, and in assisting people to improve their financial capability.

In delivering this and other services, however, the Brotherhood has become increasingly aware of inadequacies in the insurance market, both in terms of appropriate and affordable products as well as unfair terms in insurance policies. For borrowers of Progress Loans, the lack of appropriate products may leave them without the opportunity to protect the asset that they have purchased.

Experiences of Low Income Earners in the Insurance Market

The Brotherhood's 2006 study, *Risk and reality – Access to general insurance for people on low incomes*, found that many low income earners were often underinsured or not insured. This was problematic because not having adequate insurance often works out to be costly in the long run, as the costs incurred as a result of the lack of insurance are often felt by family members or friends of the under/non-insured person.

The high rate of under/non-insurance among low income earners has been associated with lack of affordability, as well as a general feeling of distrust of or dissatisfaction with the insurance industry. This general distrust of or dissatisfaction with the insurance industry appears to be caused by a number of

factors, including a lack of reciprocity in dealings with insurers, experiences leading to the belief that claims were very difficult to make, a lack of respect shown by insurers toward low income clients, as well as unfair contract terms.

A focus group participant reported that she felt she wasn't respected by her insurer, saying:

Our time is just as timeworthy as their time. So can we give them a bill for the times they keep us hanging on the phone for three hours, waiting to get though?

The Brotherhood's research report also found that respondents were disappointed with risk-based pricing which may result in insurance being unobtainable; with a participant saying:

Once I said I was in high-rise flats, they [the insurer] said, "You're wasting your time"

Also contributing to the high incidence of general distrust of and dissatisfaction with the insurance industry among low income earners are the specifics of payment of insurance premiums and excess. Many considered payment requirements difficult to meet, given that some insurance offerings require large quarterly or even annual payments. Most low income earners budget on a fortnightly basis, and the ability to pay insurance premiums fortnightly, through Centrepay, would mean that sustaining insurance would be much more realistic for people on low incomes. As noted by one participant:

A lot of people can't afford to pay yearly, then you have the options of, say, quarterly and half-yearly. About a hundred dollars quarterly is still a lot of money.

In many cases low income earners have not been able to gain the benefits of insurance because of inability to meet premium payment requirements. A missed payment, or a payment not made in full (part payment) may lead to non-insurance for some period until the payment is made. Indeed, in some cases policies may be cancelled due to non-payment of a premium instalment, which is a particularly harsh consequence, exacerbating levels of non-insurance.

The Brotherhood has also undertaken research about unfair terms in consumer contracts, the findings of which may be applicable to insurance contracts. The research, *Coming to grips with credit contracts*, involved discussions with low-income Victorians who had recently signed a credit contract with a bank, credit cooperative or fringe lender. The report found that contractual disclosure did not enable consumers to make an informed choice about the signing of contracts. The research found that many consumers signed contracts that included terms that were unfair, because either they did not understand the contract or they felt that they had limited options and were powerless in their relationship with the lender.

To illustrate, a consumer felt powerless in relation to a term that allowed a lender to change the terms of the loan contract without consent:

That would be a problem. During a loan in particular—like if you're actually paying it off at the time and all of a sudden it went bank, up a bit higher from what it was the previous week for example: it'd be a shock wouldn't it? ... I suppose you have less options, it's less options because your income is low ... I suppose I do know that with these kinds of loans, because they are easy, you are probably are going to have stuff like this in your contract.

Vulnerable consumers have a similar problem when it comes to insurance policies – they are provided on a ‘take it, or leave it’ basis. Unfair terms which impact the ability for a consumer to successfully claim on a policy when they have suffered a loss, can exacerbate the levels of distrust and dissatisfaction outline above, contributing to the problems associated with non-insurance.

Options to address unfair terms in insurance contracts

The Brotherhood strongly supports insurance contracts being subject to unfair contract term laws.

The Brotherhood submits that the review should adopt Option A outlined in the Options Paper, which would permit the unfair contract terms provisions of the ASIC Act to apply to insurance contracts. This would be the most simple and effective way to ensure that insurance contracts do not include unfair terms. It would also contribute to better consumer understanding about financial services, given that the same unfair contract term laws would then apply to all financial services. Improved consumer understanding about rights and responsibilities in relation to insurance may support other measures aimed at reducing under and non-insurance.

As a second best option, the Brotherhood would support Option B which should provide the consumers of insurance the same protections in relation to unfair terms, although through the Insurance Contracts Act.

The Brotherhood believes that maintaining the status quo would allow the problems with underutilisation of insurance services among low income earners to persist, due partly to the distrust of or dissatisfaction with insurance providers that regularly include unfair terms in policies.

Should you have any questions please contact Gerard Brody, Senior Manager, Financial Inclusion on (03) 9445 2425.

Yours sincerely



Tony Nicholson
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