



Committee Secretary
Senate Standing Committees on Legal and Constitutional Affairs
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Dear Committee Secretary

PRIVACY AMENDMENT (ENHANCING PRIVACY PROTECTION) BILL 2012

The Insurance Council of Australia¹ (***Insurance Council***) welcomes the opportunity to make a submission to the Senate Standing Committees on Legal and Constitutional Affairs inquiry into the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 (the Bill). The Insurance Council appreciates the additional time provided to make this submission.

The Insurance Council would like to express its appreciation for the consultative approach taken by the Government in developing the Bill. We are particularly grateful for the detailed discussions on specific provisions in the Bill which the Insurance Council and its members have had with both the Attorney General's Department and the Attorney General's office.

The Insurance Council's members are strongly committed to the protection of the personal information of both their customers and staff. They have invested significant resources in the development of systems, training of staff, implementation of policies and fostering cultures that respect and protect the privacy of individuals. The success of these efforts is reflected in the very low level of privacy complaints against general insurers (35 complaints recorded for both life and general insurers in the Office of Australian Information Commissioner's 2010-2011 Annual Report, page 31) as compared to the large volume and sensitivity of information dealt with by them (there were 31,937,791 retail general insurance policies in force in 2010-11).

The Insurance Council is therefore supportive of the Bill's intention to strengthen the protection of personal information in Australia through the establishment of a single set of

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our 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 financial services system. March 2012 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$36.6 billion per annum and has total assets of \$115.9 billion. The industry employs approx 60,000 people and on average pays out about \$111 million in claims each working day.

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, professional indemnity insurance, commercial property, and directors and officers insurance).

Australian Privacy Principles (APPs). The Insurance Council also endorses the Bill's provisions which will improve the quality of consumer credit provided in Australia, in particular by allowing credit repayment history information to be included in an individual's credit information file.

However, the Insurance Council has a number of concerns with the Bill that it would like to bring to the Committee's attention:

Credit Reporting: Access to data by Lenders Mortgage Insurance (LMI) Providers

The Insurance Council is extremely concerned that the provisions of the Bill unnecessarily restrict the ability of LMI providers to access credit repayment history data set directly from credit reporting bodies. LMI plays a significant role in ensuring the economic health of the Australian residential mortgage market. LMI providers promote market discipline and act as a second set of eyes scrutinising the quality of credit in the Australian mortgage market.

As LMI providers take on the same risk as the lender, impeding their ability to assess this risk by denying direct access to the full range of credit information is likely to significantly affect the LMI providers' ability to actually provide LMI. This will impact on the availability and accessibility of borrowers (particularly first home buyers). We wish to strongly convey to the Committee that direct access to all available credit information on a borrower is fundamental to the business model of a LMI provider. Detailed information on LMI providers' use of credit information and comments on Schedule 2 of the Bill can be found at Attachment A.

In order to appreciate the importance of LMI to the smooth functioning of the real estate market, the Insurance Council draws the Committee's attention to the background information at the end of Attachment A.

Transition Period

The Bill currently provides nine months from Royal Assent for organisations to be compliant with the new APPs. The Insurance Council submits this timeframe is inadequate having regard to the substantial volumes of personal information collected by the general insurance industry. Our members are highly focussed on ensuring their compliance with the new APPs. To achieve compliance however, industry will need adequate time to undertake a range of activities including systems changes, staff training, reviewing and revising contracts (such as those dealing with cross border data or cloud computing arrangements), updating proposal forms, reviewing telephone scripting and revising Product Disclosure Statements (PDSs).

Our members advise that the most common method of notifying insurance policyholders of privacy information is through the PDS that is required under the Corporations Act 2001 to be provided to those buying general insurance. Under current legislative arrangements whereby PDSs and insurance contracts are combined in the one document, general insurance PDSs must be provided in hard copy. Reflecting the wide variety of insurance products available, there are many different PDSs in existence; with some larger insurers

having hundreds of different PDSs. It is common for PDSs to be renewed in a 12-18 month cycle.

Therefore, a realistic period for compliance with the new regime by the general insurance industry should take into account the advantages of the requirements of the new privacy regime being incorporated as far as possible into the existing cycle of PDS revision. This would minimise the need for insurers to update their PDSs prematurely, thereby avoiding unnecessary cost and potential consumer confusion should changes to PDSs be made within close proximity.

In previous submissions on the new privacy regime, the Insurance Council has suggested that a minimum of 18 months would be a satisfactory transition period and allow general insurers to incorporate any required additional notifications in their PDSs in the normal course of them being re-issued. However, Insurance Council members now face having to make other changes to their PDSs in the near future. These include the inclusion of a standard definition of 'flood' (which has a 24 months transition period, to 19 June 2014); alterations to accommodate introduction of a key facts sheet for home and home contents policies (which is expected to have a 24 months transition period from the date of assent); and currently draft amendments to the Insurance Contracts Act 1984 (which are also expected to have a 24 months transition period from the date of assent).

It should be noted that one of the foreshadowed changes to the Insurance Contracts Act 1984 would enable the electronic provision of PDSs, resulting in greater convenience for policyholders and significant cost savings to industry.

In view of the above, a transition period of even 18 months may be inadequate for general insurers and the Insurance Council would like it noted that our members may have to apply for regulatory relief to give them additional time to make the required changes. Failing that, they will have to update and re-print existing disclosure documentation (with the pulping of superseded documents) or issue a number of supplementary PDSs in quick succession to make required changes. Each update to a PDS is not an inexpensive exercise, having regard to the millions of retail general insurance policies in force. It is also the industry's experience that supplementary disclosure documents only confuse a significant number of people.

Prospective Application of the APPs

The Insurance Council is concerned the Bill does not provide sufficient certainty that the new APPs will only operate prospectively (from commencement) and do not apply retrospectively.

A view could be taken that the wording of the APPs addresses this issue: with data collected after commencement to be subject to the APPs while data already held would not have to be revisited to ensure compliance with the APPs. However, the question is not clear cut for certain APPs for example in relation to Direct Marketing and Cross Border Disclosure.

In view of the vast amount of personal information held under the current privacy regime, it would be impractical to expect that existing data holdings will be reprocessed to a standard, for example in relation to consent, that did not exist at the time the information was initially collected. Apart from the high cost of compliance, there is likely to be considerable inconvenience and confusion for individuals.

Given the significance of the question, the Insurance Council submits that certainty is essential and is must be put beyond doubt by regulations spelling out how each APP would apply. Where any APP could potentially be thought to apply retrospectively, we submit an exemption must be provided in respect of existing customers and information (including for third parties) already held in compliance with the National Privacy Principles

If you require any further information, please contact the Insurance Council's General Manager Regulation,

Yours sincerely

Robert Whelan
Executive Director & CEO