Committee Secretary
Senate Finance and Public Administration Committee
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EXPOSURE DRAFTS OF AUSTRALIAN PRIVACY AMENDMENT LEGISLATION

The Insurance Council of Australia[1] (Insurance Council) appreciates the opportunity to contribute to the inquiry by the Senate Finance and Public Administration Committee into the Exposure Drafts of the Australian Privacy Amendment Legislation (Legislation). This submission concerns the draft Australian Privacy Principles (APPs).

The Insurance Council's members are strongly committed to the protection of their customers' personal information, and have over many years invested a great deal of time and money in developing systems, training staff, implementing policies and fostering a culture that respects and protects the privacy of individuals.

This is reflected in the very low level of privacy complaints against general insurers (27 complaints recorded for both life and general insurers in the Office of Privacy Commissioner (OPC) 2008-2009 Annual Report) as compared to the large volume and sensitivity of information dealt with by them (there were 30,972,178 retail general insurance policies in force in 2008-09).

As the draft APPs are based largely on the existing National Privacy Principles (NPPs) under which the general insurance industry currently operates, the Insurance Council does not have any significant policy concerns to raise.

The Insurance Council notes that there are practical issues of compliance to be addressed in the guidance on implementation to be issued by the (to be established) Office of the Information Commissioner and we will be taking these up in due course. These concern for example:

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[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. September 2009 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross premium revenue of $32.2 billion per annum and has total assets of $94.7 billion. The industry employs approx 60,000 people and on average pays out about $96.4 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).

- **APP 4(4) – Destruction of unsolicited personal information**. General insurers typically receive a large amount of personal information, often unsolicited, each day. Some of this information could validly be retained under the proposed "lawful and reasonable" test but time is required for orderly evaluation.

- **APP 7(4)(c) – providing source of information.** Insurance Council members advise that the providing an organisation's source of information to a consumer as per APP7(4)(c) may pose some practical difficulty as it may not be apparent where the information has originated from in some cases. Insurance Council members would appreciate recognition in the implementation guidance of practical difficulties in complying with a new obligation.

Transition

Apart from issues concerning drafting and guidance, we note that the current segment of the draft legislation being reviewed does not deal with the issue of transition. Given that this issue will presumably be dealt with at a later stage, the Insurance Council would take the opportunity to flag that adequate time must be allowed for compliance with the new APPs in terms of activities such as revising systems, updating corporate privacy policies, and additional training for staff.

For example, Insurance Council members will need a significant period to comply with the new notification requirements. The most common method of notifying insurance policyholders of information is through the Product Disclosure Statement (PDS) that is required under the Corporations Act 2001. A satisfactory timeline of 18 months for transition would allow general insurers to incorporate any required additional notifications in their PDSs in the normal course of them being re-issued.

We would note that the requested transition period would also take account of the likelihood that changes to PDS will be required pursuant to amendments expected to be made later this year to the Insurance Contracts Act. A realistic period for compliance with the new privacy principles would save insurers having to update their PDSs twice. This would avoid the unnecessary cost and consumer confusion if changes were made to PDSs within a few months of each other.

In the absence of adequate time to make the necessary changes, our members will have to apply for regulatory relief and failing that they will have to update and re-print existing disclosure documentation (with the pulping of superseded documents) or issuing a supplementary document. This process is not an inexpensive exercise. Considering the millions of retail general insurance policies in place, issuing a supplementary PDS or re-issuing a PDS to all new and existing customers would place a considerable cost impost on our members in the order of millions of dollars.

If you require any further information on any of the issues raised, please contact Mr John Anning, Insurance Council's General Manager, Policy Regulation Directorate, on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely

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