

The Secretary
Senate Economics Legislation Committee
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Parliament House
CANBERRA ACT 2600

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Dear Secretary

INSURANCE CONTRACTS AMENDMENT BILL 2013

The Insurance Council of Australia¹ (Insurance Council) welcomes the opportunity to provide input to the inquiry by the Senate Economics Legislation Committee into the Insurance Contracts Amendment Bill 2013 (the Bill).

As you are aware, the Bill re-introduces the 2010 Bill with some refinements, and is the result of extensive consultation over many years following the Cameron/Milne review in 2004. Notably, there were constructive discussions in 2011 between industry, consumer advocates and Commonwealth Treasury to ensure the positions adopted in the then draft Bill worked in the overall public interest. Most recently a further round of consultation took place in November 2012 to confirm that the Bill's text reflected accurately the outcomes agreed by stakeholders.

Given the stakeholder consensus that the Bill represents, the Insurance Council will not address its provisions in detail. However, the Insurance Council wanted to use this submission to put on the public record its strong support for the Bill and its appreciation for the collaborative approach taken by the consumer advocates to the Bill's development and the diligence of Treasury officials in working through stakeholder issues.

The Insurance Council urges that the Bill be passed as soon as possible so that consumers and industry can have the advantage of reforms such as:

- Duty of Utmost Good Faith (Schedule 1): the Insurance Contracts Act 1984 (IC Act) will be amended to provide that a breach of the duty of utmost good faith is a breach of the IC Act, with remedies available in relation to claims handling, settlement and

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. December 2012 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$38.7 billion per annum and has total assets of \$115.8 billion. The industry employs approx 60,000 people and on average pays out about \$102 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).

clarification that ASIC may exercise its powers under the Corporations Act 2001 (Cth).

- Electronic Communication (Schedule 2): the Bill provides certainty that electronic communication can be used to satisfy notice requirements under the IC Act. As the Explanatory Memorandum outlines, benefits from this reform include improvements in the convenience of information provision (for both insurers and consumers), and a reduction in costs of hard copy communications for insurers. This change will promote general insurance affordability through economic efficiencies and certainty that the delivery of insurance products can be achieved in a simple way that meets the expectations of the community in the twenty first century.
- Disclosure and misrepresentations (Schedule 4): the Bill clarifies the duty of disclosure for consumers and provides for notification of the duty in relation to eligible contracts of insurance at the time a contract is entered into and at the time of renewal.

The Insurance Council notes, as set out in the Explanatory Memorandum, that the measures are intended to provide a balance between ensuring insurers have reliable information to assess and price risk, while avoiding an unfair burden on consumers in meeting their duty of disclosure. The Explanatory Memorandum highlights that this change may benefit insurers, consumers and regulators by fewer and less complex disputes relating to disclosure. It is identified that this could ultimately be reflected in lowered costs to insurers and factored into premium rates.

- Third party beneficiaries (Schedule 6): the Bill explicitly provides that third party beneficiaries have rights and obligations under the IC Act.
- Subrogation (Schedule 7): clarification of how subrogation operates in relation to amounts recovered is provided in the Bill.

The Insurance Council notes that there was considerable disappointment at the loss of the 2010 Bill due to the proroguing of Parliament. In view again of the limited window of Parliamentary sitting days for the passage of the 2013 Bill, the Insurance Council urges the Senate to pass this Bill as soon as possible to deliver a number of widely welcomed changes to insurance law.

If you have any questions or comments in relation to our submission please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate

Yours sincerely

Robert Whelan
Executive Director & CEO