

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2014 - 2015

Department/Agency: ASIC

Question: SBT 4334

Topic: Insurance unaffordability

Reference: Hansard page no. 23-24 - 31 October 2014

Senator: Dastyari, Sam

Question:

Senator DASTYARI: But going back to my point: if I am in one of the new estates in the outskirts of Sydney or on the Nepean River—I will not get you to comment on that specific point here because you do not know the situation and you are not expected to know—where there are claims that insurance affordability is too high, would this regulation clarification allow them to make the same determination that someone in northern Australia would be able to make with the same information and criteria? Insurance unaffordability is a claim that people make, and I am not asking for a policy view on whether it is too high or not since it is not really your place to make that judgement—a broker can make that judgement under the existing regime. I want to be completely clear: this is not, 'We are changing it across the country, we are not changing it for northern Australia'?

Ms Quinn: The current regulation applies to the whole of Australia.

Senator DASTYARI: Yes, but we are not putting a geographic space on this?

Ms Quinn: That is not the current intention. Regulations go through a series of discussions and processes and regulatory impact statements and compliance cost estimates and the rest of it. That process is yet to come.

Senator DASTYARI: Minister, the point I will make—and I will leave it at this—is that I want to express concern. The government has looked at placing a specific geographic determination in this process and it has obviously decided not to do that. I am wondering where you would stop, which is the concern that people may have. You are saying that there is a specific set of circumstances for Northern Queensland because of a unique set of environments, which has been out there in the public domain, and good members of parliament on all sides of politics have expressed concern for housing and what it is doing to insurance. I do not understand why the government then would not have made a specific geographic thing.

CHAIR: Have you got a question?

Senator DASTYARI: Isn't the risk of doing this, Minister, the consequence that this is going to start extending beyond just Northern Queensland?

Senator Cormann: I will just go back to what I said right at the beginning. There is actually a set of exemptions that is available now—that is accessible now. What we have decided to do as part of our strategic focus on the challenge in northern Queensland, as part of a broader package of initiatives, is to put a particular spotlight on what is a pre-existing exemption for this aspect of the package.

Senator DASTYARI: You are going a bit further than that. You are changing the regulation to specifically outline price. Why have we not limited that geographically to northern Queensland?

Senator Cormann: It is clarifying that under the third part of the exemptions I read out before—risks that cannot reasonably be placed with an authorised Australian insurer—the

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2014 - 2015

reasonableness specifically includes a reference to price—

Senator DASTYARI: But my specific question, which you have not answered, is this: why would we not clarify the price issue for northern Queensland if, as you are saying, it is a policy response to a northern Queensland issue?

Senator Cormann: Because we do not think it would be appropriate to limit it to northern Queensland.

Senator WONG: Would there be constitutional limitations? Is that what the problem is?

Ms Quinn: In some circumstances it is difficult to identify particular regions. The other point to make is that this is the exclusion for insurance on all aspects across all types of insurance across the whole of Australia. Those exclusions are there, and at the moment it says 'reasonably placed within Australia'. It is the government's intention to clarify that one of the—

Senator DASTYARI: You are doing more. You are changing the regulations.

Ms Quinn: Clarify through changing the regulations, to clarify in the minds of brokers that 'reasonably placed within Australia' is not just about access—as in, there is no insurance for goldfish. It is also about the price. So there is a significant price differential between the insurance for goldfish in Australia and overseas. That is something they can consider as part of their process of advice to their client.

Senator DASTYARI: This may be a question for ASIC, and maybe you will want to take this on notice. How is the term 'reasonable' defined. Is it defined in the code of conduct, or not? I will put that on notice, because I imagine ASIC would administer that.

Ms Quinn: To be clear, the insurance brokers themselves have identified elements they consider reasonable as part of the code of conduct that their licensed brokers have to go through.

Answer:

Section 3A of the *Insurance Act 1973* (the Act) provides that the regulations may specify insurance contracts that are not considered to be insurance business.

Subregulation 4D(1) of the *Insurance Regulations 2002* (the Regulations) exempts contracts of insurance for other risks that cannot reasonably be placed in Australia from the prohibitions set out in the Act and *Corporations Act 2001*.

Subregulation 4D(2) provides that, in deciding whether the risk insured under that contract cannot reasonably be placed with an Australian insurer, the Australian insurance broker must be satisfied, on reasonable grounds, that:

- a) there is no Australian insurer that will insure against the risk; or
- b) the terms (including price) on which any Australian insurer will insure against the risk are substantially less favourable to the insured than the terms on which the unauthorised foreign insurer will insure against the risk; or
- c) insurance with an Australian insurer would be substantially less favourable to the insured than with an unauthorised foreign insurer because of other circumstances.

The insurance broker's determination needs to be reasonable and be based on a reasonable level of investigation and market analysis (see Subregulation 4D(3)).

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2014 - 2015

ASIC understands that there has been no judicial consideration of what is meant by the term 'reasonable' in the context of Regulation 4D.

Further, the Insurance Brokers Code of Practice provides that where the insurance is to be provided by a foreign general insurer that is not authorised under or subject to the provisions of the Act, an insurance broker will inform the client of the general risks the broker believes are involved in transacting insurance with such an insurer.