

The Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 6100

6 July 2007

Dear Mr Hallahan

Inquiries into Taxation and Financial Sector Legislation Bills

Thank you for your 27 June letter inviting submissions on the various bills referred to the committee.

The Insurance Council of Australia¹ (Insurance Council) wishes to raise a number of points regarding the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Bill 2007 (the Bill).

The Insurance Council supports the thrust of the Bill, which is to strengthen the regulatory environment and protect Australian policy holders by requiring that direct offshore foreign insurers (DOFI's) are authorised and regulated by APRA. We have previously provided our views regarding the DOFI regime in our submission to Treasury and APRA dated 8 June. A copy of this submission is attached.

We also understand that the purpose of the Bill is to enable the regulatory authorities concerned; APRA and ASIC, to issue standards or regulations that will put the framework established by the proposed legislation into effect. It is understood that Treasury and APRA are about to release consultation papers setting out details of the scheme, and these papers are eagerly awaited.

The Insurance Council is committed to the thrust of the Bill, but submits that protection of Australian policyholders and the provision of a regulatory level playing field are paramount. The principle concern that the Insurance Council wishes to bring to the Committee's attention is the proposed exemption regime.

Whatever exemption regime is adopted, we submit that it should start from the premise that Australian policyholders should, wherever possible, have the protection of obtaining their insurance cover through an insurer that has been authorised, and is supervised, by APRA. Further, we submit that insurers carrying on business in Australia should be operating in the same level playing field.

We note that the proposed new section 3A of the Insurance Act, as set out under paragraph 8 of Schedule 2 of the Bill, provides that "...insurance business does not include undertaking liability under a contract of insurance, or a kind of contract of insurance...".

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. 2007 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross premium revenue of \$28.2 billion per annum and has assets of \$82.2 billion. The industry employs approx 60,000 people and on average pays out about \$70 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, commercial property, and directors and officers insurance).

The proposed new section 3A suggests that if a certain class of insurance is specified in a regulation to sub section 3A(1), or is specified in a determination made under such a regulation, then that class of business could be exempt.

The Insurance Council appreciates that establishing a workable and equitable exemption regime will not be straightforward, and that considerable consultation with stakeholders will be required. However, we submit that a “class of insurance” approach has several inherent problems:

- It runs counter to the concept of a free market by allowing the local market to have classes of business singled out for special regulatory treatment
- There may be a potential effect on the local (APRA regulated) market by:
 - Removing tranches of business from the supervisory regime
 - Reducing the spread of risk by insurer
 - Lessening incentive to innovate and develop new products
 - Increased market uncertainty
 - Wasting prior costs expended on an exempted class – Australian authorised insurers have incurred considerable expense in order to comply with APRA and ASIC requirements.
- The difficulty in determining the class boundaries, when exempt, and when an entitlement to an exemption should be removed
- Publication of an exempt class of insurance may in fact encourage offshore insurers to enter the Australian market in competition with Australian authorised insurers.


In our 8 June submission to Treasury and APRA, we stated (on pages 2 & 3) that the Australian insurance industry is highly capitalised and is backed by a strong reinsurance sector. We therefore submitted that exemptions should be minimal, and only offered where there is a demonstrated inability of local insurers to offer cover.

We therefore propose to the committee that the Bill should provide the enabling authority for an exemption facility to be established. The specific details of the exemption scheme should then be set out in a regulation with the scheme mechanics to be established after further consultation with Treasury.

In closing, the Insurance Council reiterates that protection of Australian policyholders and the provision of a regulatory level playing field are paramount. Exemptions should only apply when insureds are genuinely unable to purchase insurance from an Australian authorised insurer.

Please do not hesitate to let myself, or Peter Anderson, Policy Advisor, Regulation Directorate on (02) 92535135 or panderson@insurancecouncil.com.au if you require any further information.

Yours sincerely



Kerrie Kelly
Executive Director & CEO