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Dear Mr Storer

SUBMISSION TO THE AUSTRALIAN CONSUMER LAW REVIEW

The Insurance Council of Australia¹ (Insurance Council) welcomes the opportunity to provide its views on the *Australian Consumer Law Review Issues Paper* of March 2016 (the Issues Paper). We understand that the Intergovernmental Agreement for the Australian Consumer Law (ACL) requires the terms and operation, as well as the enforcement and administration arrangements, of the ACL be reviewed within seven years of commencement.

This submission sets out our views on various matters raised in the Issues Paper, in particular, our position on whether contracts covered by the *Insurance Contracts Act 1984* (IC Act) should be subject to similar protections against unfair contract terms (UCT) as under the ACL and *Australian Securities and Investments Commission Act 2001* (ASIC Act).

The Insurance Council notes that the Issues Paper canvasses other issues of relevance to the general insurance sector, such as other protections under the ACL (e.g. unconscionable conduct) and emerging business models and consumer access to data. We have provided general comments in response to these issues that are detailed in the Attachment.

The Insurance Council understands the importance of a robust consumer protection framework to ensure that the consumer-business relationship is transparent and fair. In this regard, the General Insurance Code of Practice is the long standing code that sets service standards above those required by law.

In addition, the Insurance Council has led work to ensure that insurance disclosure documents are effective in not only informing but empowering consumers to make appropriate decisions about their insurance needs. The independent Effective Disclosure

¹The 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 2016 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$43.8 billion per annum and has total assets of \$118.5 billion. The industry employs approximately 60,000 people and on average pays out about \$124.2 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).

Taskforce that was established by the Insurance Council Board in 2015 is resulting in a comprehensive work program which is currently being implemented by industry.

With respect to UCT, the Insurance Council supports the policy goals underpinning the UCT protections provided under the ACL and ASIC Act. However, we submit that the existing regulatory regime already provides a high level of protection to consumers from UCT in relation to insurance they purchase. Therefore, the UCT provisions under the ACL and ASIC Act need not be extended to insurance contracts regulated under the IC Act.

Significantly, the IC Act places an obligation on insurers and insureds to act with utmost good faith towards each other, preventing either party from relying on a contract provision that would be contrary to this requirement. Bolstering the robust protections under the IC Act are additional protections available to policy holders under the *Corporations Act 2001*, the external dispute resolution mechanism provided by the Financial Ombudsman Service and the General Insurance Code of Practice. In addition, as recommended by the Financial System Inquiry and accepted by the Government, financial services product issuers and distributors will soon be subject to additional obligations to ensure that product design and distribution processes result in appropriate consumer outcomes. ASIC will also be given product intervention powers that will substantially enhance its regulatory toolkit.

Collectively, we submit that these protective measures provide equivalent, if not greater, protections to consumers from UCT in relation to insurance they purchase, relative to the UCT provisions under the ACL and ASIC Act.

The question of extending the UCT provisions, under the ACL and ASIC Act, to insurance contracts under the IC Act requires careful consideration. Importantly, this should only be undertaken in light of clear and specific evidence that where an imbalance exists, or where consumers are currently experiencing disadvantage or loss as a result of unfair contract terms, this cannot be addressed through existing remedies.

While there have been suggestions that certain general insurance policies may contain unfair terms, we are not aware of any evidence that would support a case that there are unfair terms that are causing consumers actual or potential loss or damage. In this regard, extending UCT to insurance contracts is likely to unnecessarily create confusion, additional costs and complexities without enhancing consumer protections. The Attachment to this submission sets out the detail underpinning our position on UCT and insurance contracts.

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, on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
Executive Director and CEO

The Australian Consumer Law – The Legal Framework

Protecting Consumers from Unfair Contract Terms

As noted earlier, the Insurance Council firmly submits that the protections under the IC Act, together with the additional protections provided under the *Corporations Act 2001* (Corporations Act) and through the Financial Ombudsman Service and the General Insurance Code of Practice, provide a strong level of protection to consumers from UCT in relation to insurance they purchase.

Applying the UCT provisions under the ACL and ASIC Act to general insurance contracts would result in an unwarranted layering of regulatory requirements on insurers. This would lead to material operating inefficiencies, the cost of which ultimately would be passed to consumers. More specifically, it would create uncertainty in the application of insurance terms to claims, which will likely lead to further disputes resulting in inconvenience and delay, increasing costs and possibly premiums.

For these reasons, the Insurance Council strongly submits that the UCT provisions under the ACL and ASIC Act should not be extended to insurance contracts under the IC Act.

Insurance Contracts Act 1984

Australian consumers when purchasing general insurance benefit from robust protection provided by the detailed provisions of the IC Act. When it was introduced into Parliament in December 1983, the IC Act's purpose was described to:

- improve the flow of information between the insurer and insured so that the insured can make an informed choice as to the contract of insurance he enters into and is fully aware of the terms and limitations of the policy, and
- provide a uniform and **fair** set of rules to govern the relationship between the insurer and insured². [Our emphasis].

The preamble to the IC Act describes it as:

*"An Act to reform and modernise the law relating to certain contracts of insurance so that a **fair** balance is struck between the interests of insurers, insureds and other members of the public and so that the provisions included in such contracts, and practices of insurers in relation to such contracts, operate **fairly**, and for related purposes."* [Our emphasis].

Insurance is a rare but important example where, decades ago, Parliament had the forethought to establish a comprehensive set of rights and obligations specifically around the insurance contract. Importantly, amendments made to the IC Act in 2013 strengthened the protections available to insureds; of particular relevance:

- failure to comply with the duty of utmost good faith is a breach of the IC Act (section 13(2);

² See Senate Hansard, 1 December 1983, pp3134-3138.

- where an insurer fails to comply with the duty of utmost good faith in the handling of a claim or settlement of a claim or potential claim, ASIC may treat this failure as a breach of financial services laws under the Corporations Act (section 14A); and
- ASIC has the power to intervene in any proceedings relating to a matter under the IC Act (section 11F).

Section 15 of the Insurance Contracts Act 1984

This section of the IC Act excludes insurance contracts from the operation of a Commonwealth, State or Territory Act that provides relief in the form of judicial review of unfair contracts or the making of a misrepresentation except for relief in the form of compensatory damages.

In its report which laid the foundation for the IC Act, the Australian Law Reform Commission concluded that in light of the utmost good faith obligation, it was unnecessary for insurance contracts to be subject to a facility for judicial review of unfair contractual terms³. In addition, the Review Panel for the Government's 2004 review of the IC Act concluded that the exclusion provided by section 15 was still valid⁴. The Review Panel also concluded that:

"The Review Panel believes that sections 13 and 14 of the IC Act relating to the duty of utmost good faith, have potential to be utilised by insureds in connection with insurer conduct that might otherwise be dealt with under statutes dealing with unfair contract terms or unconscionable conduct. This capacity will be enhanced further if the Review Panel's proposal for treating a breach of the duty of utmost good faith in Chapter 1 is adopted."⁵

As explained earlier, the IC Act was amended in 2013 to treat a breach of the duty of utmost good faith as a breach of the IC Act and, further, it would be a breach of the financial services laws if it were in relation to a claim. This provides ASIC significant enforcement powers to punish insurers for such breaches, including the withdrawal of an insurer's Australian Financial Services Licence (AFSL).

Key protections under the Insurance Contracts Act 1984

Sections 13 and 14 – utmost good faith

Two very important obligations are contained in sections 13 and 14 of the IC Act. These sections require a contract of insurance to be based on "*the utmost good faith*", which in effect renders any unfair clause void.

Section 13 provides: "*A contract of insurance is a contract based on the utmost good faith and there is implied in such a contract a provision requiring each party to it to act towards the other party, in respect of any matter arising under or in relation to it, with utmost good faith.*"

Although there is no statutory definition of the requirement to act in utmost good faith, it has been held by the Courts that it means to act with scrupulous fairness and honesty and the courts have broadly interpreted this concept. The High Court in *CGU v AMP (2007) HCA 36*

³ Australian Law Reform Commission December 1982, *Insurance Contracts* (ALRC Report 20), paragraph 51.

⁴ Treasury June 2004, *Review of the Insurance Contract Act 1984 (Cth), Final Report on second stage: Provisions other than section 54*, paragraph 6.15, page 53.

⁵ Treasury June 2004, *Review of the Insurance Contract Act 1984 (Cth), Final Report on second stage: Provisions other than section 54*, paragraph 6.16, page 54.

discussed utmost good faith in detail⁶. Gleeson CJ and Crennan J noted at paragraph 15 of the judgment that the concept of good faith is not limited to dishonesty; further, their Honours stated:

“In particular we accept that utmost good faith may require an insurer to act with due regard to the legitimate interests of an insured, as well as to its own interests. The classic example of an insured’s obligation of utmost good faith is a requirement of full disclosure to an insurer, that is to say, a requirement to pay regard to the legitimate interests of the insurer. Conversely, an insurer’s statutory obligation to act with utmost good faith may require an insurer to act, consistently with commercial standards of decency and fairness, with due regard to the interests of the insured. Such an obligation may well affect the conduct of an insurer in making a timely response to a claim for indemnity.”

Justice Kirby J noted at paragraph 127:

“The language of s13 [of the IC Act] including the statement of the general principle as a legal obligation separate from the implication of a provision into the contract, supports AMP’s submission that s13 of the Act had the effect of introducing a larger and reciprocal obligation between the insurer and the insured in place of what had, for all practical purposes, previously been a one-way street. Such a view of s13 would fit comfortably with other protections for consumers, introduced into the Act, based on the report of the Australian Law Reform Commission.”

Justice Kirby J further stated at paragraph 176 to 178:

“The principle is that the parties to insurance contracts in Australia, unlike most other contracts known to the law [our emphasis], owe each other, in equal reciprocity, an affirmative duty of utmost good faith. This is so now by s13 of the Act. In the context of that section, emphasis must be placed on the word “utmost”. The exhibition of good faith alone is not sufficient. It must be good faith in its utmost quality.

The resulting duty is one that pervades the dealings of the parties to an insurance contract with each other. In consequence of the Act, and of the reform that it introduced in s13, the duty of good faith as between insurer and insured now takes on a true quality of mutuality. It governs the conduct of insurers whereas, previously, as a practical matter, the duty of good faith was confined to a duty cast upon insureds because the remedies for proof of the absence of good faith were usually of no real use to the insured.

The duty is more important than a term implied in the insurance contract, giving rise to remedies for breach, although, by the express provision of s13, it is certainly that. The duty imposes obligations of a stringent kind in respect of the conduct of insurer and insured with each other, wherever that conduct has legal consequences.”

Callinan and Heydon JJ noted at paragraph 257:

“From the outset we should say that we agree with the Chief Justice and Grennan J that a lack of utmost good faith is not to be equated with dishonesty only. The analogy may not be taken too far, but the sort of conduct that might constitute an absence of utmost good faith may have elements in common with an absence of

⁶ See also: *Australian Associated Motor Insurers Ltd v Ellis* (1990); *Sheldon v Sun Alliance Ltd* (1989); *Barbaro v NZI Insurance Australia Ltd* (1994); and *Maksimovic v Royal & Sun Alliance Life Assurance Australia Ltd* (2003).

clean hands according to equitable doctrine which requires that a plaintiff seeking relief not himself be guilty of tainted relevant conduct.”

Importantly, the 2013 amendments to the IC Act added at section 13(2): “A failure by a party to a contract of insurance to comply with the provision implied in the contract by subsection (1) is a breach of the requirements of this Act”.

Kelly and Ball⁷ refer to a number of cases decided in relation to the duty of utmost good faith imposed by the IC Act to suggest that a more stringent standard applies in relation to conduct by the insurer than the insured, noting that: dishonest or fraudulent conduct by an insurer is certainly sufficient for a breach of the duty of utmost good faith; and conduct that is capricious or unreasonable, or amounts to unfair dealing may also be sufficient to breach the duty of good faith.

Section 14(1) provides: “If reliance by a party to a contract of insurance on a provision of the contract of insurance would be to fail to act with the utmost good faith, the party may not rely on the provision”. This section renders any unfair clause void – the effect is the same as under the unfair contracts provision of the ACL⁸.

As part of the 2013 amendments to the IC Act, section 14A was introduced:

“1) This section applies if an insurer under a contract of insurance has failed to comply with the duty of the utmost good faith in the handling or settlement of a claim or potential claim under the contract.

2) Despite any provision of Chapter 7 of the Corporations Act 2001 or any regulation made under that Chapter, ASIC may exercise its powers under Subdivision C of Division 4 of Part 7.6 of that Act or Subdivision A of Division 8 of that Part in relation to the insurer as if the insurer’s failure to comply with the duty of the utmost good faith were a failure by the insurer to comply with a financial services law.”

The duty of good faith imposed by sections 13 and 14 of the IC Act are not limited to contractual matters. The duty between an insurer and insured applies in respect of any matter arising under or in relation to the contract. We therefore submit that the duty of good faith goes further than the question of whether a particular term in a contract is ‘unfair’ in the circumstances.

Further, as Kirby J said in *CGU v AMP (2007) HCA 36*: “*the parties to insurance contracts in Australia, unlike most other contracts known to the law [our emphasis], owe each other, in equal reciprocity, an affirmative duty of utmost good faith.*” The unique character of insurance contracts (covering a wide range of possible factual circumstances and turning on a large number of risk factors) means that they require a separate legal modality for their management. We submit this modality has been the subject of careful and appropriate management in the framework of the IC Act. We further submit that the complexity of the product justifies it standing outside the UCT provisions.

⁷ *Kelly And Ball Principles of Insurance Law*. Contract of Insurance: Chapter 5 Terms of the Contract - The duty of utmost good faith.

⁸ See: *Barwon Region Water Authority v CIC Insurance Ltd (1997)*; *Banks v NRMA Insurance Ltd (1988)*; and *ACN 007 838 584 v Zurich Australia Ltd (1997)*.

Sections 21, 21A, 22 and 28 – non-disclosure

These sections place significant limits on when an insurer can rely on non-disclosure by an insured to reduce or refuse a claim. For example, for eligible policies of insurance (being motor, home, sickness & accident, consumer credit and travel) when cover is first offered an insurer is required by law to ask specific questions rather than just relying on a general duty of disclosure.

Sections 23, 24 26, 27 and 28 - misrepresentation

These sections place significant limits on when an insurer can rely on misrepresentation to refuse to pay a claim. For example, section 26 provides that where a statement that was made by a person in connection with a proposed contract of insurance was in fact untrue but was made on the basis of a belief that the person held, being a belief that a reasonable person in the circumstances would have held, the statement shall not be taken to be a misrepresentation. Section 27 provides that a person shall not be taken to have made a misrepresentation by reason only that the person failed to answer a question included in a proposal form or gave an obviously incomplete or irrelevant answer to such a question.

Sections 35 and 37 – notification requirements

These sections place obligations in insurers to make consumers aware of key terms in the contract. Section 35 requires insurers in relation to prescribed contracts to clearly inform customers up front as to how their contract terms differ from standard contract terms which are outlined in the Regulations to the IC Act. Section 37 requires insurers in relation to non-prescribed contracts to clearly inform the insured up front as to unusual terms in their policies.

If section 35 or section 37 is not complied with, the insurer will not be able to rely on those terms (except in the case of section 35 where the insured or a reasonable person in the circumstances could have been expected to have known of the term).

Sections 39 – instalment of premium

This section provides that an insurer cannot refuse to pay a claim in whole or part by reason of non-payment of an instalment of the premium unless the instalment has remained unpaid for a period of at least 14 days and before the contract was entered into the insurer informed the insured in writing of the effect of the provision.

Sections 46 – defect or imperfection in property

This section provides that where at the time when the policy was entered into, the insured was not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, a defect or imperfection in the property insured, the insurer may not rely on a provision included in the policy that has the effect of limiting or excluding the insurer's liability under the policy by reference to the condition of the property, at a time before the policy was entered into.

Sections 53 – contract variation

This section makes void a term of an insurance contract that seeks to authorise or permit the insurer to vary, to the prejudice of the insured, the contract.

Sections 54 – refusal to pay claims

This section limits the ability of an insurer to rely on terms of the policy in relation to acts or omissions of an insured. If the act or omission could not be reasonably regarded as being

capable of causing or contributing to the loss (or even if it could but the insured proves none of the loss was actually caused by act or omission), the insurer cannot rely on a clause in the policy to refuse the claim on the basis of that act or omission unless it can prove actual prejudice. Further if the act or omission only partly contributed to the loss, the insurer can only reduce the claim by the extent the act or omission caused or contributed to the loss.

Other legislative protections

As noted earlier, apart from the IC Act, there is also a variety of additional protections available to insurance policyholders. In particular, under the *Corporations Act 2001*, there is an overarching obligation on general insurers as the holders of an AFSL to do all things necessary to ensure that financial services covered by their licence are provided efficiently, honestly and fairly⁹.

Further, section 991A of the *Corporations Act 2001* states, “A financial services licensee must not, in or in relation to the provision of a financial service, engage in conduct that is, in all the circumstances, unconscionable”. If a person suffers loss or damage because a financial services licensee contravenes this provision, they may recover the amount of the loss or damage against the licensee. This provision is not impacted by the section 15 exemption in the IC Act.

In addition, the Government has accepted the recommendations of the Financial System Inquiry (FSI) to introduce a product design and distribution obligation to ensure that the suitability of a product is considered when designing product and distribution strategies. The objective of this obligation mirrors that of the ACL; promote fair treatment of consumers and build confidence and trust in the financial system. This will be supplemented by new product intervention powers for ASIC which, as recommended by the FSI, could allow ASIC to intervene by restricting distribution or even banning products.

Financial Ombudsman Service

There is also a requirement under the *Corporations Act 2001* for general insurers to be a member of an external dispute resolution scheme. Almost all general insurers choose to be members of the Financial Ombudsman Service (FOS).

This independent umpire provides free, fair and accessible dispute resolution for consumers that are unable to resolve a dispute directly with their general insurer. External dispute resolution processes can help to resolve disputes through negotiation or conciliation as an alternative to court proceedings and can make decisions which are binding on participating general insurers. In dealing with disputes, the FOS:

- must do what in its opinion is appropriate with a view to resolving disputes in a cooperative, efficient, timely and fair manner;
- shall proceed with the minimum formality and technicality; and
- shall be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations.¹⁰

Clause 8.2 of the FOS’ Terms of Reference state that in deciding a dispute: “FOS will do what in its opinion is fair [our emphasis] in all the circumstances.” FOS only has to have

⁹ Section 912A(1) of the *Corporations Act 2001*.

¹⁰ Financial Ombudsman Terms of Reference, 1.2.

'regard' to the law, industry codes, good industry practice and previous FOS decisions; but is not bound by them. In this sense, FOS has a de-novo jurisdiction to review contract terms which might be unfair.

General Insurance Code of Practice

The General Insurance Code of Practice (the Code), which has been adopted by members of the Insurance Council, has the following objectives:

- commitment to high standards of service;
- promotion of better, more informed relations between insureds and insurers;
- maintenance and promotion of trust and confidence in the general insurance industry;
- provision of fair and effective mechanisms for the resolution of complaints and disputes; and
- promotion of continuous improvement of the general insurance industry through education and training.

In regard to retail products clause 7.2 of the Code states: *"We will conduct claims handling in an honest, fair, transparent and timely manner [our emphasis]."*

Other ACL Protections

The Issues Paper outlines a range of other general and specific protections under the ACL that are replicated in the ASIC Act for financial services products, including protections against:

- unconscionable conduct (Part 2, Division 2, Subdivision C);
- misleading or deceptive conduct (section 12DA);
- false or misleading representations (section 12DC);
- pricing (section 12DD);
- referral selling (section 12DH);
- harassment and coercion (section 12DJ);
- pyramid selling (section 12DK); and
- unsolicited supply (sections 12DL, 12DK and 12DM).

We are unaware of any issues or limitations in relation to these provisions in the ASIC Act as they apply to the general insurance industry.

The Issues Paper also seeks feedback about whether the consumer guarantee provisions should be extended to financial services. We note that section 63(b) of the ACL specifically exempts contracts of insurance from the consumer guarantee provisions. The Explanatory Memorandum to the *Trade Practices Amendment (Australian Consumer Law) Bill (No.2) 2010* explains that insurance contracts are specifically exempt from the consumer guarantee provisions as these contracts are already covered by legislation that applies to insurance markets. As already explained in our submission, the IC Act extensively regulates contracts of insurance, and we are strongly of the view that the case for exempting insurance contracts remains unchanged.

In relation to financial services generally, we note that the *Corporations Act 2001* already establishes a comprehensive regulatory framework, in addition to the consumer protections under the ASIC Act, for financial services. As already noted in our submission, the existing regulatory framework is also soon to be supplemented with additional product issuer and distributor obligations and product intervention powers. Together, these protections comprehensively address the regulatory objectives of the ACL consumer guarantee provisions; namely, to ensure that services are provided with due care and skill, are fit for purpose, and in a reasonable time.

Other Issues

The Issues Paper seeks feedback on whether the ACL should prohibit certain commercial practices or business models that are considered unfair. The Issues Paper suggests that a general prohibition against unfair commercial practices may address aggressive commercial practices or business models resulting in significant harm to consumers. The Insurance Council strongly submits that any policy change in this regard needs to be supported by clear evidence that the existing ACL protections do not already adequately address this potential harm to consumers. From an insurance perspective, it is unclear how such a prohibition will interact with ASIC's impending product intervention powers.

The Issues Paper also seeks feedback on whether the current approach to defining a 'financial service' in the ASIC Act create unnecessary complexity in determining if certain conduct falls within the scope of the ACL or the ASIC Act. The general insurance industry has not experienced any issues with the definition of financial service which would lead to confusion about which legislation would apply.

We note that the Productivity Commission has been tasked with reviewing the enforcement and administration arrangements underpinning the ACL, with a focus on the effectiveness of the 'single-law, multiple regulator' model. The review will make findings on how the joint administration of consumer protections by the ACCC and ASIC could be strengthened and will assess the complementary roles of the regulators. We suggest that the interaction of the ACL and ASIC Act should be assessed through this review.

Emerging Consumer Policy Issues

Emerging Business Models and the Australian Consumer Law

The Insurance Council welcomes the inclusion of emerging business models in the Issues Paper. In response to the two questions posed, we would like to make some general comments in relation to the ACL and the sharing economy.

A report by Deloitte Access Economics estimated that in New South Wales alone, approximately 45,000 people have earned income on collaborative economy platforms. The report indicated that the collaborative economy in New South Wales has added at least \$504 million per year to the economy¹¹.

The figures are indicative of the increasing number of individuals who are using digital platforms to facilitate the commercial use of their private property. This activity has contributed to a growing number of microenterprise and self-employment.

¹¹ Deloitte Access Economics, *Review of the collaborative economy in NSW*, commissioned for the NSW Department of Finance, Services and Innovation, October 2015.

To provide clarity and confidence for both business owners and consumers, the Insurance Council has been calling on governments to clarify the regulatory environment governing all sharing economy businesses.

As detailed in the Issues Paper, clear protections are offered to consumers under the ACL when a supply occurs 'in trade or commerce'. However, establishing whether a supply occurs 'in trade or commerce' is particularly challenging for shared economy businesses. Regularity or frequency of transactions, and whether the transactions are a main source of income must be determined first. These are highly variable parameters and fluid concepts for emerging digital business models. As a result, the current regulations can be a potential source of confusion for business providers and consumers.

Currently the ACL is jointly administered by the Australian Competition and Consumer Commission and state based agencies. These networks of organisations will need to work together to develop new and innovative ways to provide a clear consumer protection framework for the shared economy.

A clear regulatory framework will also provide insurers with greater confidence to develop products that can provide protection to the thousands of new micro-business owners and their consumers.

Individuals who are using shared economy platforms may not be aware of their liability exposure. For example, a home owner who places their property on a digital platform for short-term letting, may not realise that their personal home and contents insurance policy may not be adequate. Under a commercial arrangement, a personal insurance policy may not cover damage to property or third party liability.

The Insurance Council considers raising awareness on the importance of adequate insurance an integral part of a consumer protection strategy for those engaged in the shared economy.

The Insurance Council agrees with the ACL's intention to not stifle innovation and business development. In this regard, we support the principle of competitive neutrality – that like goods and services should be subject to the same regulatory requirements.

We recognise that the unique model of sharing economy businesses may require a more agile regulatory structure than is currently in place. Nonetheless, we consider a level playing field imperative for like businesses. This will prevent established businesses having to navigate cumbersome regulatory and compliance requirements that new business models are not subject to.

[Consumer Access to Data](#)

The Issues Paper seeks feedback on the potential role of the ACL and the regulators in supporting consumers' access to their consumption and transactional data held by business. The Issues Paper also seeks feedback on whether the provision of data creates or increases risks to consumers that are not adequately addressed by the ACL.

We note that the Productivity Commission has been tasked with a wide-ranging review into the availability and use of data, including data held by business about consumers. Consumer access to data in an increasingly digital economy is a complex policy area that

requires a comprehensive review, and we suggest that the role of the ACL in promoting or mitigating the risks of data access should be considered by the Productivity Commission review.

The role of general insurance products in protecting consumers from financial harm associated with a range of risks results in a range of data collected about individuals and communities.

Access to this data could be beneficial to enabling consumers to make informed decisions about their financial needs; however, this requires careful consideration of the likely implications of increased access. The financial services sector has been subject to a comprehensive disclosure regime over the past fifteen years, and it is increasingly recognised that the provision of too much information can have detrimental consumer outcomes. The provision of multi-sourced data that may be inconsistent can also lead to poor outcomes.