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Dear Ms Zaheed

EXPOSURE DRAFT: INSURANCE CONTRACTS REGULATIONS 2017

The Insurance Council of Australia¹ (the Insurance Council) appreciates the opportunity to provide feedback on the Treasury's consultation on the exposure draft of the Insurance Contracts Regulations 2017 (the Exposure Draft). We recognise that the intent of the Exposure Draft is to "*remake and improve*" the Insurance Contracts Regulations 1985 (the Regulations) – due to sunset on 1 April 2018 – and that the proposed changes "*do not alter the substantive meaning or operation of the provisions*"².

We are chiefly seeking clarification on why the definition of "insured person" was removed – this would affect the operation of major insurance classes, such as sickness and accident, travel and consumer credit. The Insurance Council would appreciate clarification on why the definition³ of insured person has been removed in the Exposure Draft.

Recognising that the Exposure Draft seeks to improve the Regulations, we have also suggested several improvements regarding electronic disclosure, duty of disclosure and exclusions to the definition of home building.

Electronic Disclosure

The Insurance Council had sought changes⁴ to better align the *Insurance Contracts Act 1984* (the IC Act) with the *Corporations Act 2001* (the Corporations Act) in regards to the ability of insurers to provide electronic disclosure of insurance policy wordings and notices required under the IC Act. This would include, but is not limited to, an ability for insurers to provide these documents and notices by hyperlink or via a website, which would support more

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. June 2017 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$45 billion per annum and has total assets of \$124.9 billion. The industry employs approximately 60,000 people and on average pays out about \$135 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).

² [Explanatory Statement](#) of the exposure draft of Insurance Contracts Regulations 2017.

³ Insurance Contracts Regulations 1985 - Reg 2 Interpretation.

⁴ Insurance Council of Australia, 10 August 2016, Facilitating electronic disclosure in the insurance sector, submission to the Treasury.

innovative and contemporary disclosure methods. Essentially, electronic disclosure of IC Act documents, including policy wordings that may also be Product Disclosure Statements (PDS), can only be sent electronically (by email under the *Electronic Transactions Act 1999*).

Because the Australian Securities and Investments Commission (ASIC) does not have similar relief powers under the IC Act as it does under the Corporations Act, the relief ASIC provided to facilitate electronic disclosure⁵ for Corporations Act documents, such as PDSs (other than general insurance PDSs because of the above) and Financial Services Guides, does not apply to disclosures required under the IC Act.

As this creates an unintended disparity between the disclosure rules in the IC Act and the Corporations Act, and the disclosure options available for insurance versus other financial products, we suggest that regulations be prescribed to make the electronic disclosure rules consistent with the Corporations Act. We would be pleased to further explore with the Treasury how the Regulations could be modified to achieve this.

Duty of Disclosure

For eligible contracts of insurance, the duty of disclosure under s21A of the IC Act applies to new business and s21B applies at renewal. For both of these duties, in exercising their rights relating to non-disclosure, insurers can only rely on the disclosure of answers to specific questions that they have asked. For non-eligible contracts, the duty is broader and the insured is required to disclose all matters that are relevant to the decision of the insurer whether to accept the risk and, if so, on what terms.

For contracts of insurance that are not eligible, insurers can opt-in to the s21A duty by giving the insured an oral or written notice informing the insured of the general nature and effect of s21A. Where the insurer opts-in in this manner, the s21B duty will apply at renewal of the policy.

There is no mechanism to enable the insurer to opt-out from the eligible contract duty of disclosures; regulation 2B(3) enabling an insurer to opt-out was only effective up to 28 December 2016. An appropriate opt-out mechanism may be required where the insurer had inadvertently opted-in, or the insurer has changed their approach to the underwriting of the policy (e.g. a contract that was eligible at new business may no longer be eligible under the terms of the renewal). In practice, the inability to opt-out may require insurers to make all new business and renewals eligible. We do not believe that this is the intent of the legislation.

We suggest that existing regulation 2B(3) be remade to enable the insurer to opt-out for non-eligible contracts without any restrictions on when this can occur.

We also suggest the removal of the requirement in regulation 2B(3), that when opting out, the insurer include in the notice that the insurance is no longer an eligible contract of insurance. We do not see any benefit to this disclosure, given consumers are unlikely to understand it. Providing the notice without this statement should be sufficient as it clearly informs the consumer of the nature and effect of their duty of disclosure at the time they are renewing their policy.

⁵ ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 and ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649.

Exclusion to the Definition of Home Building

The definition of home building currently excludes “a building that is let or rented by the insured, as lessor, as a business **and is not the principal residence of the insured**” [our emphasis].

For insurance classes that would not ordinarily be captured by the definition of home building (e.g. landlord insurance), to avoid having two sets of documentation and to have to make investigations about the insured, insurers may make the assumption that the insured is using the building as a principle place of residence *and* as a rental business.

This can result in the provision of a Key Facts Sheet and the application of s21A to all insureds when, in reality, these obligations should only apply in a very small minority of situations. To solve this problem, we suggest that the emphasised portion of the above exclusion is removed – this would have no substantive impact on the exclusion.

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 tel: (02) 9253 5121 or email: janning@insurancecouncil.com.au.

Yours sincerely



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