

13 November 2018

Consumer and Corporations Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ProductRegulation@treasury.gov.au

Dear Sir/Madam

Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018

The Insurance Council of Australia (the Insurance Council) welcomes the opportunity to comment on the exposure draft *Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018* (the draft Regulations). The Insurance Council is pleased that our earlier submissions seeking an exemption for medical indemnity insurance from the proposed product design and distribution obligations have been addressed in the draft Regulations.

An exemption for medical indemnity is appropriate, as applying these obligations will unnecessarily complicate the mandated minimum medical indemnity product features under the *Medical Indemnity (Prudential Supervision and Product Standard) Act 2003*. The exemption for medical indemnity will ensure that they are treated the same way as all other professional indemnity insurance products, which will not be subject to the product design and distribution obligations.

The Insurance Council submits that the regulations should also address two issues raised in our submissions: clarity in how the distribution obligation will apply at renewal of an insurance policy and how the obligations will apply to bundled products which contain elements of retail and wholesale covers.

Application of the Distribution Obligation to Policy Renewals

The Insurance Council has raised with Treasury the need for there to be clarity in how the distribution obligation applies to policy renewals. While we understand that a policy decision has been made for the distribution obligation to capture insurance renewals, the obligation should apply in a practical and sensible manner recognising the differences between an insurance renewal and the issue of a new product. Unless a consumer's circumstances or the Target Market Determination (TMD) has changed, the appropriateness of a product should still be the same at renewal as when the consumer first purchased the policy.

The most common retail general insurance products are annual policies where consumers are given the option to renew at expiry. To minimise the risk of gaps in coverage, the industry has over time put in place systems and processes to make it as easy as possible for consumers to renew. Given these products are intended for mass markets, there is a greater

risk of financial detriment to a broad range of consumers being inadvertently uninsured, so accessibility and useability of processes to renew are of critical importance.

Recognising the importance of efficient processes for policy renewals, the consumer protections in place under the *Insurance Contracts Act 1984* (the IC Act) for policy renewals are substantial. Insurers are required to provide a renewal letter at least 14 days before a contract of insurance expires, which contains key information about the cover offered and reconfirms details of the asset/risk to be covered as previously disclosed by the insured. Insureds are invited to update these details if there has been any change to their circumstances. These protections ensure that consumers are fully informed at each renewal, but does not make the process so cumbersome that insureds cannot easily renew their policy.

If insurers are expected to ask underwriting questions again and recollect information already obtained, this would fundamentally change the way insurance policies are regulated under the IC Act and require extensive systems changes at substantial cost to the industry. Insureds would potentially have to contact the insurer, either by telephone or through a web portal, so that the insurer can obtain a positive reaffirmation of the information already provided. If the insured fails to do so, their policy would lapse and they would be left uninsured.

If, on the other hand, the distribution obligation can be met by insurers asking consumers to disclose any change to their circumstances at renewal, then the compliance burden for this aspect of the new regime will not be as substantial. To the extent that the TMD remains the same and there has been no change to the consumer's circumstances, the Insurance Council submits that the distribution obligation should not be applied so that insurers must obtain information from insureds which had already been collected when the policy was first purchased.

We submit that the Regulations should deem a customer to still be in the target market if an insurer:

- gives a description of the target market or a record of any questions previously asked to determine if the customer was in the target market;
- asks the customer to tell them if anything has changed; and
- the customer does not contact the insurer to tell them that anything has changed.

This is similar to one of the methods that can be used by an insurer to comply with the renewal duty of disclosure under s21B of the IC Act.

Application of the Design and Distribution Obligations to Bundled Products

Some general insurance package policies have components of cover that are partly wholesale and retail. It is unclear whether the obligations apply only to the retail covers of the policy or the entire policy.

For policies containing both retail and wholesale covers, the Product Disclosure Statement (PDS) requirements are typically considered to only apply to the retail component and not the whole contract – see s 761G (5) and regulations. For example Regulation 7.1.12 states:

*For subparagraph 761G(5)(b)(ii) of the Act, a home building insurance product is a contract **or part of a contract** that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of destruction of or damage to a home building. [our bold]*

Because these policies contain retail covers, the whole policy wording is prepared as a PDS. An example is a Farm Pack, which contains home and contents and domestic motor insurance as well as non-retail covers such as public and products liability, machinery and other breakdown and farm property cover.

Our reading of the obligations is that they would only apply to the retail cover part of the contract, however, clarification is required as to the intent in relation to these policies. It is not clear whether the intent is for the TMD to apply to *all* covers ie the retail and non-retail covers.

We note that an issue could arise if the retail cover in the package product is not equivalent (eg personal accident) to stand alone offerings. A conclusion would need to be reached that the retail cover offered generally meets the likely objectives, financial situations and needs of the target market. Is this the target market looking for a package cover offering or a person seeking the retail type cover alone? The answer is not clear.

The Regulations should prescribe that the obligations apply only to the retail component of a product. This would be consistent with the existing retail client definition and the preparation of PDSs where only the part of the policy that is retail is caught. This should at least be clarified in the explanatory materials.

If both retail and non-retail covers are caught, insurers will likely separate out the retail covers, requiring extensive and costly changes to systems and products for no consumer benefit. This would also be detrimental for consumers, who may no longer be able to conveniently have all of their risks covered under the one policy.

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



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