

16 October 2019

Design and Building Practitioners Bill 2019 Consultation
Better Regulation Division, Regulatory Policy
Department of Fair Trading
McKell Building
2-24 Rawson Place
Sydney NSW 2001

Dear Sir/Madam

Design and Building Practitioners Bill 2019

The Insurance Council of Australia¹ (Insurance Council) appreciates the opportunity to comment on the draft *Design and Building Practitioners Bill 2019* (the Bill), released as part of the Government's response to the Building Confidence Report². The authors of that report noted that:

"It is important that as many practitioners as possible hold professional indemnity and/or warranty insurance in order to support accountability. It is acknowledged that insurance is not currently available for the range of practitioners proposed to be registered. This weakness needs to be addressed. There should be ongoing discussion between governments and the insurance industry to ensure that the best possible insurance is available to all categories of registered practitioner." (p18)

The Insurance Council and its members support the objectives of the Bill, namely "to improve the quality and compliance of design documentation and to strengthen accountability across the design, building and construction sector"³, but we are concerned that elements of the Bill may potentially exacerbate rather than address the lack of available insurance highlighted in the Building Confidence Report.

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent approximately 95 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 2019 Australian Prudential Regulation Authority statistics show that the general insurance industry generates gross written premium of \$48.4 billion per annum and has total assets of \$128.4 billion. The industry employs approximately 60,000 people and on average pays out about \$151.4 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 Shergold P and Weir B (February 2018) "Building Confidence – Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia"

³ Accompanying consultation material: www.fairtrading.nsw.gov.au/consultation-tool/design-and-building-practitioners-bill-2019

For example, section 11⁴ of the Bill requires Registered Design Practitioners to be “adequately insured”:

“(2) For the purposes of this section, a design practitioner is adequately insured with respect to a declaration and work if the design practitioner—

- (a) is indemnified by insurance that complies with the regulations against *any liability* to which the design practitioner may become subject as a result of making the declaration or carrying out the work, or
- (b) is part of some other arrangement approved by the regulations that provides indemnity against the liability.” (emphasis added)

Professional indemnity policies typically contain exclusions relating to non-conforming products and practices, and certain other high risk exposures. To the extent that the reference in section 11 to “any liability” precludes an insurer from offering policies that contain these exclusions, insurers will not be able to participate in the market. The Insurance Council would welcome clarity in the drafting that this is not the intent of the legislation.

Looking forward, we recognise that “parts of the reform will be prescribed and finalised by the supporting regulation, once developed”⁵. In this regard, section 25 provides that the regulations may set out insurance requirements under the legislation and section 93 will allow insurers to be required to provide information about policies or particular classes of policies issued for the purposes of the legislation.

Consistent with the recommendation in the Building Confidence Report cited above, we would welcome continued discussion between government and our members on the regulations and on solutions to address the lack of available insurance in this space. The experience of the Insurance Council in other areas is that if the causes of the high risk of providing indemnity insurance for a particular profession are not addressed, regulations requiring those professionals to hold insurance on terms which are not commercially realistic leads to the likelihood of the professionals becoming unauthorised.

Similarly, while Insurance Council members are willing to contribute information to facilitate analysis of a problem, we find that it is more effective if authorities consult early with insurers on what information is required and how it can be provided.

If you have any questions or comments in relation to our feedback, 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

⁴ Similar requirements are contained in s14 (relating to principal design practitioners) and s20 (relating to building practitioners).

⁵ Accompanying consultation material: www.fairtrading.nsw.gov.au/consultation-tool/design-and-building-practitioners-bill-2019