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Dear Dr Sandilant

INSURANCE CONTRACTS AMENDMENT BILL 2013

The Insurance Council of Australia (Insurance Council) appreciates the opportunity to provide comment on the Insurance Contracts Amendment Bill 2013 (the Bill). We understand that Treasury is seeking feedback on the technical drafting aspects of the Bill only and make the following comments:

Schedule 2 - Electronic Communication

We strongly support the provisions contained in Schedule 2 - Electronic Communication, noting that the Electronic Transactions Regulations 2000 will need to be amended to remove the exemption for the Insurance Contracts Act 1984 before Schedule 2 comes into effect on a day to be fixed by proclamation or within 6 months of Royal Assent.

Schedule 4 - Duty of Disclosure

We appreciate that the transition period has increased to 30 months. As we have previously stated, a transition period of 30 months requires insurers to make the necessary changes to systems and documents within 18 months, in line with the original policy intent.

Section 21B: One of the ways to comply with new section 21B is to give the insured a copy of any matter previously disclosed by the insured in relation to the contract and request the insured to:

- disclose to the insurer any change to that matter; or
- to inform the insurer that there is no change to that matter (s21B(2)(b)).

Where s21B(2)(b) is relied on, if the insured does not respond the insured is taken to have informed the insurer that there is no change to the matter.

An insurer could not seek to rely on s21B(2)(b) prior to the end of the transition period as it may result in an insured being able to successfully argue that the provisions of sections 21(3) (section 21 currently applies to renewals of eligible contracts) and 27 of the IC Act apply.

This is on the basis that the lack of response would be a failure to answer a question for the purpose of those sections – the practice which the amendments were designed to address. Effectively this means insurers are required to ensure their systems changes come into effect on the exact day that the transition period concludes. This creates practical challenges for insurers.

To fix this, the Bill should be amended to specifically state that an insurer can opt in early to the s21B requirements. Insurers would only opt in early to the extent that they cannot get the systems and documentation ready for the exact transition date. Realistically an insurer may elect to opt-in a week before the end of the transition period. We do not anticipate insurers will have the capacity to opt-in months in advance (as noted in our submissions seeking the 30 month transition period). The ability to 'opt-in' before the end of the transition period would simply give insurers the flexibility necessary to make the transition more effectively. There would be no disadvantage for consumers.

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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