

Mr Cullen Smythe
Commissioner of State Revenue
Revenue NSW
The Lang Centre, 132 Marsden Street
PARRAMATTA NSW 2150

29 August 2017

Dear Commissioner

NSW INSURANCE STAMP DUTY EXEMPTIONS

The Insurance Council of Australia¹ (the Insurance Council) welcomes the opportunity to elaborate on matters raised at the meeting of 25 July 2017, in relation to the stamp duty exemptions announced in the NSW 2017-18 Budget that will apply to crop and livestock insurances and certain small business insurances from 1 January 2018. The Insurance Council strongly supports the policy goals underpinning the exemptions:

to “abolish inefficient taxes on insurance products that are a necessary part of doing business in New South Wales”² and

to “... reduce the cost of doing business, protect against under insurance and support jobs growth in New South Wales”³.

The Insurance Council would like to thank Revenue NSW for the initial guidance provided at the 25 July meeting and its formal response of 24 August to our detailed questions about the exemptions and a draft pro forma small business declaration that could be provided to small business policy holders.

We particularly appreciate the remarks made by Revenue NSW at the meeting in relation to the inherent complexity of the insurance duty exemptions and the invitation to the Insurance Council to elaborate on industry-wide issues that require close attention by Revenue NSW and/or the NSW Treasury. This letter responds to that invitation and also some of the key issues raised in Revenue NSW’s formal response. Given the likely need for a minor legislative amendment, we have copied it to Mr Richard Cox, Director, NSW Treasury.

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 NSW [Budget](#) 2017-18 Budget Paper No. 1 Budget Statement, page 1-13.

³ NSW [Budget](#) 2017-18 Budget Paper No. 1 Budget Statement, page 1-12.

Need for additional flexibility in compliance

Despite Insurance Council members having already invested significant resources in implementation of the exemptions, there is a growing risk that without additional flexibility in compliance our members will not be able to complete the necessary arrangements by the commencement date of 1 January 2018. As we explained at the meeting, from a systems and compliance perspective, the changes required to implement the exemptions are extensive and require considerable time and human resources to develop, test and implement. Indeed, intermediated insurers are facing added complexity, given the numerous parties (e.g. brokers, agents and financial institutions) which are required to complete their part to effect change.

Those challenges are further compounded by the fact that for some of the policies which will benefit from the exemption, renewal notices can be issued up to 3 months before the renewal date. This is often the case for insurance sold through the broker channel. For example, for a policy due for renewal on 1 January 2018, a renewal notice could be issued on 1 October 2017. This means that many of our members realistically only have a very limited window of opportunity to implement the required changes.

It must also be noted that at the very time our members are working to implement these administratively complex reforms, they are also facing the challenge of having to re-establish as quickly as possible collection of the Emergency Services Levy because of the NSW Government's decision to postpone indefinitely the introduction of a property based levy to fund emergency services in NSW.

In light of all these factors, the Insurance Council reiterates the importance of the declaration needed to support the small business exemption being able to be obtained from insureds in a manner which is efficient and non-disruptive for all stakeholders. The Insurance Council takes this position recognising that a delay of the 1 January 2018 commencement date would not be acceptable to the NSW Government at this stage.

Importantly, an unnecessarily complex or cumbersome declaration requirement will significantly prolong the established insurance policy approval and renewal processes and increase compliance costs, to the detriment of NSW small business owners and their insurers. This could easily exceed the benefits of the exemption to small businesses and would undermine the intent of the NSW Government's reforms.

An oral declaration or a negative assurance should be possible

Consequently, the Insurance Council submits that both an oral declaration (as evidenced by a voice recording) and a negative assurance (e.g. a declaration by way of proceeding to renew an insurance policy for which an exemption had previously been given) should also be available as a means of claiming eligibility as a small business.

In regards to an oral declaration, it is important to recognise that insurers already have established systems to accurately record and manage oral communications with their customers. With respect to a negative assurance, a suitable statement could be provided on any new policy or renewal notice. In a similar vein to using an oral declaration, a negative assurance mechanism would utilise established processes. As Revenue NSW may be aware, many of our members have considerable experience using negative assurances for Compulsory Third Party (CTP) insurance in NSW (as one example).

A legislative amendment may be necessary

The Insurance Council acknowledges Revenue NSW's view to date that voice recordings or negative assurances pose difficulties in terms of the current legislation. However, we submit that the successful rollout of this reform critically depends on enabling solutions that build on established processes and are consistent with the preferred everyday transaction methods between small businesses and their insurers in a modern economy.

Given the criticality and urgency of this matter, we submit that s 259C of the *Duties Act 1997* (the Act) must be appropriately amended to be technology neutral in order to accommodate common place compliance tools such as these.

Additionally, our members have identified another issue with the legislative provisions that concerns the trigger for stamp duty for general insurance under the Act. For the crop and livestock and small business insurance exemptions, the Act provides that those exemptions will apply to insurance policies that are "effected or renewed"⁴ on or after 1 January 2018. In contrast however, the imposition of stamp duty on general insurance under the Act is based on the time at which a premium is "paid" or "credited"⁵. Our concern is that the inconsistent provisions appear to operate as 2 separate triggers for stamp duty requirements. On this basis, we consider that the Act should be appropriately amended to also clarify the intended operation of the stamp duty trigger for general insurance.

Possibility of a Small Business Register

To give some idea of the potential volume of small business exemptions that will need to be managed by our members, there were around 680,000 small businesses operating in NSW as at 30 June 2016, representing around 93 per cent of all businesses operating in the State at that time⁶. This is potentially further magnified by the likelihood that small businesses may have multiple insurance policies falling within scope of the NSW insurance duty exemptions.

In order to provide certainty and ease of application, it is essential that insurers can rely on the declaration of a small business and not have to verify in any way their eligibility. While this is the intention of the legislation, the Insurance Council suggests that its practical realisation would be boosted if Revenue NSW established a register of small businesses that are eligible to claim an exemption. This would be similar to the process that Revenue NSW already has in place for charities wanting to claim an insurance duty exemption.

Timing of application of exemption to renewals

In addition to the policy avenues outlined above, we suggest that compliance with the 1 January 2018 commencement date would be facilitated if the exemption applied to new policies incepted on or after 1 January 2018 and policies where renewal notices are issued on or after 1 January 2018 (in contrast to renewal notices required to be sent before this date). This would help provide our members some more time to work on implementing the required systems changes and reduce the presently growing risk of non-compliance.

⁴ Sections 259, 259A, 259B, 259C and 259D of the *Duties Act 1997*.

⁵ Sections 229 and 232 of the *Duties Act 1997*.

⁶ Australian Bureau of Statistics, [Cat No. 8165.0](#): *Counts of Australian Businesses, including Entries and Exits, Jun 2012 to Jun 2016*. As at 30 June 2016, there were 676,719 businesses operating in NSW with a turnover of less than \$2million. There were 727,481 businesses operating in NSW in total at 30 June 2016.

The Insurance Council is committed to working closely with the NSW Government to help facilitate a smooth transition. We would welcome an opportunity to meet with Revenue NSW again to discuss its formal response and to provide some practical examples of the ongoing administration and compliance complexity that insurers are facing and discuss how these might be resolved.

Please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on tel: (02) 9253 5121 or email: janning@insurancecouncil.com.au if you require further information or would like to discuss any part of this submission.

Yours sincerely



Robert Whelan
Executive Director and CEO

Cc Mr Richard Cox
Director, Revenue Forecasting and Analysis Branch
NSW Treasury

Ms Jane Dudley
Director, Advisory and Review
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Revenue NSW.