



Law Council  
OF AUSTRALIA

*Legal Practice Section*

23 November 2017

Senior Advisor  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [mohita.zaheed@treasury.gov.au](mailto:mohita.zaheed@treasury.gov.au)

Dear Mohita

## **INSURANCE CONTRACTS REGULATIONS 2017 AND THE CONSEQUENTIAL REGULATIONS**

1. This submission has been prepared by the National Insurance Lawyers Group of the Law Council's Legal Practice Section (**the Group**).<sup>1</sup> The Group welcomes the opportunity to provide comments on the Insurance Contracts Regulations 2017 (**the Regulations**) and the Consequential Regulations.

### **Definition of insured person**

2. The definition of insured person has been removed in a number of contexts, including sickness and accident insurance, consumer credit insurance (**CCI**) and travel insurance. The removal of the concept limits the scope of the eligible contracts and definitions used to "insureds".
3. In the Act, 'insured' and 'insurer' include a 'proposed insured' and a 'proposed insurer', respectively. Typically, the term 'insured' refers to the contracting insured not third-party beneficiaries (the Group notes that there is some argument on this point).
4. The Group queries why this definition has been removed as it defeats the initial intention to catch third party beneficiaries under the Act.
5. In the sickness and accident context, this will have the effect of removing Corporate and most group travel policies from the eligible contract definition.
6. In the CCI and travel contexts the current definition only applies to insureds and the changes in the exclusions to remove insured person references achieves consistency. The Group question whether the original intent to confirm was broader?

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<sup>1</sup> The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

## Section 21A Insurer opt out

7. In relation to the change to paragraph 2B(3) of the of the Insurance Contracts Regulations, regarding eligible contracts of insurance, the Group queries ask that Treasury confirm with insurers that this is no longer practically necessary or appropriate.

## Key Fact Sheet (KFS) Requirements

8. The KFS requirement applies to the following classes of contracts of insurance:

- home buildings insurance contracts; and
- home contents insurance contracts

as defined in the Regulations (regulations 9 and 13).

The effect of the definition in the Contracts Regulations is that any policy/contract that contains the home buildings or home contents cover as defined in the regulations is caught. This will include standard home and contents policies.

9. However, other policies can be caught such as:

- landlords insurance (unless the building insured is also the principal residence of the insured);
- strata (not caught if only a body corporate is insured but can be caught if the insured is a natural person and owns all of the lots, subject to other criteria); or
- bundled/package policies (for example, farm packs) that contain such cover by reason of the way the definitions are drafted in the Regulations. Unfortunately, whether they will be caught or not can depend on the risk insured.

10. It will be for the insurer to determine if the policy is caught or not. As with Product Disclosure Statements (**PDSs**), insurers may choose to issue a KFS if there is a risk an insured risk may, in limited cases, be caught. Others may avoid doing so by restructuring the policy or underwriting acceptance criteria.

11. While technically the whole contract is caught, the KFS is only intended to apply to the relevant home buildings and/or home contents cover and not to other covers in the contract.

12. The confusion that can arise in such cases is obvious and the Group notes that insurers have previously expressed concerns to Government in this regard. This is a policy issue that can only be fixed by way of changes to the legislation or regulations. The Group suggests that now may be an appropriate time to address this issue.

## Australia's general insurance industry: sapping consumers of the will to compare

13. In a submission to the *Australia's General Insurance Industry: sapping consumers of the will to compare* Inquiry, the Group recommended that the government initiate an independent review of the current standard cover regime with particular regard to the efficacy of current disclosure requirements. The Group repeats this request.

## **Division 1—Motor vehicle insurance**

14. Regulation 6(b)(i) events declares the accidental damage to, or the theft of “a tool or appliance that is standard equipment for the motor vehicle **specified in the contract**” as a ‘prescribed event’ for the purposed of the regulations. In the proposed Regulations, the bold words have been deleted. The Committee queries why this change was made? Is the intent to remove the standard equipment link to insurance contracts?

## **Life Duty of disclosure notice**

15. The Group notes that there is no oral form of notice for life insurance and suggests that Guidance in this regard would be of assistance.

## **Contact**

16. The Committee would welcome the opportunity to discuss the submission further. Please contact John Farrell, Policy Lawyer, at [john.farrell@lawcouncil.asn.au](mailto:john.farrell@lawcouncil.asn.au) or (02) 6246 3714, if you would like further information or clarification in the first instance.

Yours sincerely



**Jonathan Smithers**  
**Chief Executive Officer**