13 November 2024

AI and Consumer Law Review Unit
Market Conduct Division
The Treasury

Via email: AIACLReview@treasury.gov.au

Dear sir/madam

Review of AI and the Australian Consumer Law

The Insurance Council of Australia (Insurance Council) welcomes the opportunity to provide a submission on this important topic.

The Insurance Council is the representative body of the general insurance industry in Australia and represents approximately 89% of private sector general insurers. As a foundational component of the Australian economy, the general insurance industry employs approximately 46,000 people, generates gross written premium of $66 billion per annum and on average pays out $159 million in claims each working day ($39.4 billion paid out per year).

The Insurance Council and its members welcome the Australian Government's commitment to a modern and efficient regulatory system as a critical input to unlocking innovative uses of artificial intelligence (AI) in the Australian economy.

The Insurance Council appreciates the scope limitations of this review to just the *Australian Consumer Law* (ACL). However, we note the contemplation of possible further work to harmonise or modify consumer protections in other laws. In our view, there is a high likelihood of regulatory duplication relevant to AI (particularly between the ACL and each of the *Australian Securities and Investments Commission Act 2001* and the *Corporations Act 2001*), and we strongly encourage future consideration of reducing burdens for impacted businesses and their customers across the broader legislative suite.

The development and deployment of AI will create new AI-enabled goods and services and as outlined in the *Review of AI and the Australian Consumer Law Discussion Paper* (the Discussion Paper), AI-enabled goods and services can offer substantial benefits to consumers and businesses but may also amplify or create new risks. In financial services, it has been observed that current use of AI is "quite cautious in terms of decision making and interactions with consumers", although adoption of AI is rapidly accelerating.[1]

In this context, we believe the current technology neutral ACL should be maintained and applied to new and emerging technologies as it already is. This approach, together with the Government's Voluntary AI Safety Standard and proposed mandatory guardrails for AI in high risk settings, would provide the opportunity for Government and regulators to continue to monitor the use of AI within the existing ACL. This could facilitate the identification any potential gaps in the ACL in relation to AI-enabled goods and services, should they arise.

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[1] Australian Securities and Investments Commission. 2024. *Beware the gap: Governance arrangements in the face of AI innovation*.

We believe this approach could also be supported by regulatory guidance and clarification of expectations, and we note the Discussion Paper recognised that several stakeholders "considered that there could be scope for greater guidance from regulators." We support regulatory guidance that would provide industry and consumers with greater clarity in relation to the application of the ACL to AI-enabled goods and services, and we note there are already examples of this.[2] This would help avoid potential unintended consequences that may flow from legislative change if potential risks to consumers are not clearly identified.

Where applicable, guidance should be developed with consideration to other AI-related regulation, proposed regulation, as well as recent reviews and reports highlighting regulators' approach to AI such as:

- The Department of Industry, Science and Resources' proposal for the introduction of mandatory guardrails for AI in high-risk settings.

- The Attorney-General's Department's recommendations for reforms to the *Privacy Act 1988.*

- The Australian Securities and Investments Commission's *REP 798 Beware the gap: Governance arrangements in the face of AI innovation.*

- The Office of the Australian Information Commissioner's *Guidance on privacy and developing and training generative AI models.*

Thank you for the opportunity to comment. If you have any queries, please contact Eamon Sloane, Adviser at esloane@insurancecouncil.com.au.

Regards

Andrew Hall
Executive Director and CEO

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[2] For example, the Office of the Australian Information Commissioner has issued *Guidance on privacy and developing and training generative AI models* and *Guidance on privacy and the use of commercially available AI products*.