

Professor Rosalind Croucher
President
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2000

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Via email: age_barriers_to_work@alrc.gov.au

Dear Professor Croucher

DISCUSSION PAPER: GREY AREAS - AGE BARRIERS TO WORK IN COMMONWEALTH LAWS

The Insurance Council of Australia (Insurance Council)¹ welcomes the opportunity to provide a further submission to the Australian Law Reform Commission's (ALRC) inquiry into *Grey Areas: age barriers to work in Commonwealth Laws* (Discussion Paper). We appreciated meeting with you and your legal officers on 16 November 2012 to discuss the insurance chapter of the Discussion Paper. The Insurance Council is also grateful for the additional time to finalise this submission.

Concerns have been identified in the Discussion Paper in relation to income protection insurance, travel insurance and workplace insurance for mature age workers. Reforms have been suggested around the availability of, and information about, insurance products of mature age workers; age based limitations on some insurance products; and the relevance, transparency and accessibility of the actuarial and statistical data upon which age based insurance underwriting and pricing processes occur.

Given the Insurance Council is the representative body for general insurance in Australia, our comments in Attachment A deal only with general insurance (such as travel, volunteer and personal sickness and accident insurance). In relation to workers' compensation, we refer to our previous comments in the Insurance Council's submission of 14 June 2012.

The Insurance Council is disappointed the Discussion Paper refers to a need for intrusive reform of some aspects of the general insurance industry including commercial matters such as the design and redesign of policies. The numerous examples of general insurance products suitable for mature age Australians which the Insurance Council has provided to the ALRC demonstrate the robust response of Insurance Council members to the improving longevity and health of mature age Australians. Similarly, listings on the Insurance Council's insurer referral service

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 2012 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$37.5 billion per annum and has total assets of \$118.2 billion. The industry employs approx 60,000 people and on average pays out about \$115 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).

website are evidence of the wide availability of appropriate policies for this group. We therefore question the need for systemic reforms, particularly in light of the low levels of complaints (of any nature) to the Australian Human Rights Commission (AHRC) regarding general insurance.

We also take this opportunity to clarify a serious misunderstanding as to how travel insurance operates. The Discussion Paper at para 4.54 refers to stakeholder concerns that the design of travel insurance is problematic. It is suggested that pre-existing medical conditions (common in mature age persons) limit access to travel insurance, necessarily precluding basic cover for luggage and personal effects. However, our members advise that an exclusion (whether for a medical condition or otherwise) would not automatically preclude cover for other items such as luggage and personal effects. These are key concepts which the Insurance Council would be keen to clarify in discussions with the Insurance Reform Advisory Group (IRAG).

We note the Discussion Paper makes a number of proposals for the consideration of the IRAG. As you are aware, on 2 August 2012 the ALRC and the Insurance Council attended the IRAG roundtable on travel insurance². At that meeting a number of options to increase awareness and education on how travel insurance works were proposed for further discussion. Insurers also outlined their respective approaches to age and pricing and possible developments in this area. Treasury undertook to prepare a short paper detailing issues for further consultation which would act as a guide the future discussions.

The Insurance Council has taken up with Treasury the need for follow-up on this point. Consequently, our responses in Attachment A to those proposals to be referred to the IRAG are preliminary in nature.

We note the ALRC intends to further consider developments in relation to the Tasmanian Anti-Discrimination Commissioner's inquiry into volunteers and the Commonwealth Consolidation of Anti-Discrimination Laws project. The Insurance Council will continue to actively engage with these projects.

Finally, as the Insurance Council does not have access to the intellectual property, including statistical and actuarial data held by its members for underwriting and regulatory compliance purposes, Attachment A responds in broad policy terms to the proposals in the Discussion Paper.

If you require further information, please contact Mr John Anning, Insurance Council's General Manager Policy- Regulation Directorate at janning@insurancecouncil.com.au

Yours sincerely



Robert Whelan
Executive Director & CEO

² With representatives from IAG, Suncorp, Allianz, QBE, Actuaries Institute of Australia, COTA, National Seniors, ASIC, Treasury, Choice and Legal Aid NSW.

Proposal 4-1 The Insurance Reform Advisory Group should examine:

- a. options for the development of a central information portal or source in order to provide mature age persons with clear and simple information about available insurance products;***
- b. the design and redesign of comprehensive and affordable insurance products tailored to the needs and circumstances of mature age persons;***
- c. mechanisms for reviewing age-based insurance pricing and underwriting across the industry;***
- d. mechanisms for ensuring that the insurance industry utilises relevant and appropriate actuarial and statistical data upon which to make decisions about insurance offerings, based on age; and***
- e. training of insurance distributors in order to facilitate the provision of clear and simple information about available insurance products.***

Industry response:

(a.) Access to information about insurance products

The Insurance Council will continue to participate in IRAG discussions to identify ways to better publicise the range of policies offered by our members, particularly those suitable for seniors. However, Insurance Council questions the necessity and practicality of a new special-purpose central information portal proposed by the Discussion Paper. As illustrated by the Insurance Council's insurer referral service and the snapshot of general insurance products suitable for consideration by seniors³, a broad insurance offering is available for mature age persons, with some insurers specifically targeting the mature age sector.

The Insurance Council's referral service⁴ encourages comparative shopping to determine whether a product suits individual needs. It can be accessed through the dedicated www.findaninsurer.com.au website or via a page on the Insurance Council's own website. Since the launch of the online referral service on 1 July, consumers have viewed the referral service categories (including sub-categories) over 170,000 times. The Service advises that the sub-categories of 'Travel – pre-existing medical conditions' and 'Seniors Travel insurance' are part of the 20 most visited pages, constituting 2.18% and 2.04% of web page views respectively.

The perceived difficulty that mature age people have in shopping around for insurance is not borne out by the findings of the "Ageism in Travel Insurance Survey 2012" provided by National Seniors Australia and COTA to the IRAG meeting of 2 August 2012 (the Travel Survey). The Travel Survey found that 69% of respondents shopped around for travel insurance⁵:

- 44% usually obtained a couple of quotes;

³ Insurance Council correspondence, 28 August 2012

<http://www.insurancecouncil.com.au/assets/submission/2012/accessibility%20and%20availability%20of%20general%20insurance%20for%20seniors.pdf>

⁴ The Service does not provide personal advice and does not recommend one member's products over another.

⁵ National Seniors Australia and COTA, "Ageism in Travel Insurance Survey 2012", page 12.

- a further 8% shopped around if they were unhappy with the first price quoted; and
- another 7% shopped around if it is hard to get cover for pre-existing medical conditions.

It is instructive to look at the reasons given by respondents that didn't shop around:

- 9% didn't shop around because they used their credit card travel insurance;
- 11% had a preferred insurance provider; and
- 16% were content to go with the recommendation of their travel agent.

Similarly, 77% of respondents spent time and effort shopping around⁶, with 78% obtaining 2 to 3 quotes⁷.

The Insurance Council suggests that the Travel Survey results indicate that, at least for travel insurance, vigorous shopping around is already taking place. We would question what further initiative could be taken to supplement the numerous web based tools for comparing travel insurance.

The effectiveness of product disclosure is a key question for most areas of retail general insurance and the Insurance Council and its members are ready to work within IRAG on practical ways that more consumers can be helped to make informed decisions about the insurance they need.

In considering the practicalities of providing clear and simple information, an important factor to remember is that general insurers typically sell on a 'no advice' model, complying with obligations in Chapter 7 of the Corporations Act 2001 (Corporations Act) and relevant regulatory guidance (Regulatory Guides 175, 146, and 36 for example). This issue is explored in the response below to Proposal 4-1(e).

Apart from the questionable need for the proposed portal, it should also be highlighted that the mere fact an insurance product might appear on an information portal for mature age persons would not guarantee the product would be available to a particular individual, having regard to claims experience and destination of travel, for example. Other matters requiring consideration are establishment costs, responsibility for updating, ongoing maintenance and how such information could be made available in hard copy as suggested in the Discussion Paper (para 4.46).

(b.) Age limits and need to redesign insurance products

The ALRC suggests IRAG should discuss appropriate product design and redesign, balancing the need for risk assessment with the potentially discriminatory effects for mature age people of existing insurance offerings and design of products. In particular, it is proposed IRAG should examine the design and redesign of comprehensive and affordable insurance products tailored to the needs and circumstances of mature age people.

⁶ National Seniors Australia and COTA, Op. cit., page 13.

⁷ National Seniors Australia and COTA, Op. cit., page 14.

As discussed above, the Insurance Council is disappointed that, rather than focussing on the legal framework within which insurance works, the Discussion Paper's proposals seek to alter commercial decision making, impacting the prudential basis, underwriting and marketing of general insurance products. It is submitted that the market is already catering for mature age persons, as shown by the snapshot of insurance compiled by the Insurance Council, and the Travel Survey where 90% of respondents did **not** report they had been refused travel insurance because of their age (page 17).

The Insurance Council welcomes continuing discussions within IRAG on consumer needs and wants for general insurance. Competition policy obviously prevents discussion by industry members on how to react commercially to consumer views. However, this does not minimise the potential role of IRAG discussion as an inspiration for product innovation. General insurers are continually reviewing their product offerings to identify potential improvements. The ALRC will remember from the August IRAG travel insurance roundtable that industry members outlined systems developments that would address consumer concerns about premiums that increased by marked steps according to age band.

(c.) Mechanisms for reviewing age based pricing and underwriting

The Discussion Paper notes a number of stakeholders submitted the imposition of age limits and the inclusion of age in the underwriting and pricing process (which may result in increased premiums), act as a disincentive to employment and other productive work (para 4.15). It also observes that in circumstances where insurers continue to consider age a vital factor in underwriting and pricing processes, there is a need to ensure that decisions considering age are based on relevant and appropriate actuarial and statistical information is available to consumers (para 4.53).

As our previous submission outlined, rigorous risk assessment determines the underwriting criteria and pricing for insurance and is the basic principle that underpins the successful operation of insurance models. It allows the insurer to offer insurance at a price appropriate to the insured and enables the insurer to put aside reserve funding for future liabilities and estimate the required level of reinsurance.

It also allows insurers to target certain risks and provide a broad range of insurance products for the community. If the ability to price appropriately based on risk variables (such as age) were put in doubt, the Insurance Council is concerned there would be an impact on the overall costs of insurance for the whole community and a possible reduction in diversity and competition in the market place.

At the IRAG travel insurance roundtable, the ALRC will recall discussion of the results of the Association of British Insurers publication "Age and Insurance – helping customers understand insurer's use of age"⁸. The published data shows in some product lines, such as travel and motor, there is a strong correlation between a person's age and the probability of their making a claim, and the likely cost of that claim. (The UK is one of the top 10 global countries based on insurance premiums and is an authoritative source of insurance data)⁹. For example, the UK data showed that in relation to travel insurance:

⁸ ABI: Publication found at http://www.abi.org.uk/Facts_and_Figures/Data_by_Age_and_Gender.aspx

⁹ Geneva Association (2011): Global insurance industry fact sheet:

<http://www.genevaassociation.org/pdf/News/2011globalinsuranceindustryfactsheet.pdf>

- Ages 66-70 were more than 2.5 times as likely to make a claim and the average cost of the claim was 5.5 times greater compared to ages 21-25;
- Ages 81 and over were 4 times as likely to make a claim with the average claims cost more than seven times greater than ages 46-50.

In motor insurance, the younger age brackets were more likely to make a claim. However, the average cost of a claim for ages 85+ was almost double that of ages 61-65.

The Insurance Council notes that age as a factor in determining a premium is commonly referred to in the Product Disclosure Statement (PDS)¹⁰. Indeed, the Travel Survey 2012 (page 25) stated:

'The age loading built into travel insurance premiums is seen by many, but not all, respondents as discriminatory. This is not necessarily the case, however, because insurance premiums of any kind are risk based and age is one of the risk factors travel insurers usually explicitly identify in their Product Disclosure Statements'.

Interestingly, the Travel Survey found that after reading through the PDS, brochures and websites, 63% of those surveyed had difficulty in understanding how any age restrictions operate.

In light of the above, the Insurance Council is concerned therefore at the utility of the proposal to require the provision of data, statistics and other relevant information, which is the intellectual property of insurers, and which would be difficult to interpret by most people without statistical or actuarial training. For further on this matter, please see the response to Question 4-2 below.

(d.) Underwriting and actuarial data

The Discussion Paper specifically does not suggest that insurers routinely make decisions without sufficient actuarial, statistical or other reasonable basis such that they fall outside the terms of the insurance exemption. However, given the preliminary concerns expressed by stakeholders, in addition to the mechanisms the ALRC suggests should be examined by IRAG, the ALRC requested feedback on potential reform options aimed at addressing these concerns (para 4.95). For example:

- establishment of the body or mechanism by which the information could be considered independently or;
- quarterly publication of a report by insurers outlining their claims experience based on age and other relevant data upon which their ongoing reliance on the exemption is based.

The fundamental objective of insurers is to sell policies which are efficient by being priced appropriately and according to risk. It is worth noting that while some premiums may increase with age, other premiums for insurance products such as home building and

¹⁰ Some insurers may incorporate details about premiums into their PDSs by reference. That is, they may have a reference in the PDS to a "Premium, Excess and Discount" (or words to that effect) document, which is available on-line or hard copy upon request to customers.

contents, may decrease taking into account factors such as retirees being more likely to be present in the premises.

As discussed above, the Insurance Council is concerned by any proposals relating to the public disclosure of sensitive underwriting and other data specific to the operations of individual insurers in a competitive market, without demonstrated evidence of a regulatory or market problem.

Given the complexity and likely costs of establishing either an independent body or a quarterly reporting mechanism for insurers, and the evidence already available in the UK, the two ALRC proposals do not appear necessary. In addition, there is already in place in Australia a strong legislative regime to require the insurer to prove it meets all evidentiary requirements to rely on an insurance exemption.

(e.) Training

Providing clear and simple advice about available insurance products raises issues under the Corporations Act. In order to keep service costs to a minimum, most general insurers providing retail products operate on a no advice business model¹¹.

The detail of what constitutes personal or general advice and how it is scaled is currently the focus of the FOFA reforms. The Insurance Council has had productive discussions with ASIC on how tailored information can be provided to a customer without triggering general or personal advice obligations. We are hopeful that the regulatory guidance which ASIC issues on this subject will facilitate the provision of clear and simple information which will help consumers make better insurance purchasing decisions.

The ALRC also suggests that insurers ensure appropriate training of employees in their insurance distribution networks about engaging with mature age people in the range of products available for them (para 4.47). Subject to the comments made above about financial advice models, the Insurance Council is happy to discuss training with the IRAG, noting that insurers are obliged to comply with the training requirements of the Corporations Act.

Proposal 4–2 The Insurance Reform Advisory Group should keep a watching brief on developments in the insurance industry in relation to age, both in Australia and overseas, with a view to reviewing Australian insurance practices as the need arises.

Industry response:

While it has no issues with this proposal, the Insurance Council notes that Australia has in place its own strong regulatory regime to prevent unlawful discrimination. The ALRC may be interested to know that Insurance Council has recently become one of 31 founding members of the newly established Global Federation of Insurance Associations representing 87% of the worldwide insurance business. This membership will assist the Insurance Council to

¹¹ Personal advice is given or directed to a person (including by electronic means) in circumstances where the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or a reasonable person might expect the provider of the advice to have considered one or more of those matters. If a business provides financial product advice, they are providing a financial service under the Corporations Act and, unless an exemption applies, they must hold an Australian financial services licence in relation to the advice.

update the IRAG on relevant insurance developments internationally. GFIA has working groups specifically on financial inclusion and market conduct.

Proposal 4–3 From 2012, the General Insurance Code of Practice is being reviewed by an independent reviewer. In the course of the review, the ways in which the Code could be amended to encourage insurers to consider the needs and circumstances of mature age persons should be examined.

Industry response:

The Insurance Council notes the ALRC has referred a number of issues to the Code Reviewer for consideration.

Subject to the findings of the independent Code review, and not to preclude any recommendation or decision of the Insurance Council Board, the Insurance Council does not consider the Code an appropriate place to address anti-discrimination issues in detail, having regard to the strong regulatory regime already in place in Australia to prevent unlawful discrimination. It may be appropriate to have an overarching principle in the Code committing Code participants to working to satisfy the general insurance needs of the whole community regardless of financial situation, age or disability. The Insurance Council will however carefully consider any comments made by the Independent Reviewer in this area.

Question 4–1 In addition to the General Insurance Code of Practice, are there other industry standards or codes that should be reviewed in order to encourage insurers to consider the needs and circumstances of mature age persons? For example, the Financial Services Council Code of Ethics and Code of Conduct?

Industry response:

It is not for the Insurance Council to respond in relation to other sectors of the insurance industry.

Question 4–2 In the course of the consolidation of federal anti-discrimination legislation, the Australian Government is considering the operation of the insurance exemption under the Age Discrimination Act 2004 (Cth). If the specific exemption is retained, what changes, if any, should be made? For example, should:

- a. the application of the exemption be limited in some way;***
- b. there be provision for an individual to request and receive the actuarial or statistical data on which the action or decision was based; or***
- c. clarification be provided as to what are ‘other relevant factors’?***

Industry response:

Since the publication of the ALRC’s Discussion Paper, the exposure draft *Human Rights and Anti-Discrimination Bill (Cth) 2012* has been released by the Attorney General’s Department for consultation. As the Consolidation project sought to lift differing levels of protections to the highest current standard, the draft insurance exception is based on the Sex Discrimination Act 1984 (SDA).

While we welcome the retention of an insurance specific exception in the proposed Bill, the Insurance Council is concerned that in following the SDA model a provision has been included that:

(iii) if the other person has given the first person a written request for access to the data—the first person has, within a reasonable period after the request is made, provided the other person with a copy of the data, or with reasonable access to the data.

The Insurance Council's initial view is to oppose such an obligation on the basis that:

- the individual may not be able to readily interpret statistical and actuarial data – this may limit the usefulness of the obligation and add cost to the provision of insurance;
- the data may be part of commercially sensitive information – and concern pricing aspects or sensitive medical data. It is considered more appropriate therefore to provide the data to the AHRC, a court or tribunal on a confidential basis for review and explanation where necessary;
- There is limited industry experience on the practical outcomes of the obligation under the SDA given the low level of discrimination complaints relating to general insurance.

The Insurance Council is working with its members to further develop the industry position in a submission to the Senate Committee inquiry into the exposure draft. See below for more information.

Question 4–3 Is the power of the Australian Human Rights Commission under s 54 of the ADA sufficient or should there be some other mechanism for requesting or requiring the actuarial or statistical information relied upon by insurers seeking to rely upon the insurance exemption?

Industry response:

Consistent with the comments above, the Insurance Council submits that the current legislative regime requiring insurers to provide actuarial or statistical information upon request is appropriate. This information is held by insurers for commercial underwriting purposes. Insurers advise that the Commission does use its power and insurers take their responsibilities seriously in responding to any requests from the Commission.

Proposal 4–4 The Australian Human Rights Commission, in consultation with the Insurance Council of Australia and the Financial Services Council, should develop guidance material about the application of any insurance exemption under the Age Discrimination Act 2004 (Cth) or consolidated anti-discrimination legislation.

Industry response:

The Insurance Council would be pleased to co-operate with the AHRC and industry stakeholders on this matter.