

1 March 2021

Data Economy Unit
Market Conduct Division
Treasury
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PARKES ACT 2600
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Dear Sir/Madam

MODERNISING BUSINESS COMMUNICATIONS

The Insurance Council of Australia¹ (Insurance Council) supports the deregulation priority of the Government and welcomes the opportunity to make a submission on the Treasury Consultation Paper, *Modernising Business Communications: Improving the Technology Neutrality of Treasury Portfolio Laws*. We recognise that the intent is to amend Treasury portfolio laws to reflect the way Australians want to engage and communicate with one another in business.

The COVID-19 pandemic has caused disruption for individuals, businesses, and governments and driven the need for more adaptable and flexible communication formats and methods. In this context, the ICA welcomes ongoing efforts by the government to increase flexibility for businesses and their customers so that they can capitalise on the digital environment. It is expected that these changes will support economic recovery by lowering costs and saving time for business and consumers.

Following the Government's announcement in June 2020 on the next two priority areas for its Deregulation Taskforce, the Insurance Council made a submission² to the Assistant Minister to the Prime Minister and Cabinet, the Hon Ben Morton MP supporting modernising and digitalising compliance requirements. The Insurance Council provided a detailed list of State and Commonwealth reforms that would increase flexibility and bring compliance into line with current technologies. Whilst the Insurance Council acknowledges that the focus of this

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent approximately 95 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.

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 [Insurance Council – Submission to The Hon Ben Morton MP- Modernising and Digitalising Compliance Requirements – 12 August 2020](#)

consultation is to explore changes to Commonwealth Treasury laws only, it is important that the wider context be acknowledged. For any changes that result from this review to achieve the greatest benefit other impediments to flexibility should be identified and appropriately reformed in parallel.

Presently, the requirements in the following three sets of legislation must be met in order for general insurers to be compliant with their disclosure obligations:

- the Corporations Act 2001 (Corporations Act);
- the Insurance Contracts Act 1984 (IC Act); and
- the Electronic Transactions Act 1999 (ETA).

There are inconsistencies in how these three legislative frameworks apply which should be ameliorated as a part of any reforms resulting from the current consultation process.

A key issue raised in the August 2020 submission is the need to amend IC Act to allow unimpeded electronic disclosure of insurance documents. At present, specific consent from a customer is needed before certain documents can be sent via electronic communications. Secondly whilst the provisions of the ETA apply to the IC Act, the ETA does not apply to the Corporations Act. For the sake of clarity and consistency, the ETA should apply to the Corporations Act as it does to the IC Act.

One practical consequence of inconsistencies between the three sets of legislation is that any ASIC relief that can be, and is, provided in respect of electronic disclosure under the Corporations Act cannot apply to the IC Act. Therefore, the Insurance Council recommends that ASIC be empowered to provide instant regulatory relief to impediments to send electronic business communications within the IC Act, as it is currently empowered to do under the Corporations Act.

Further details on our suggested reforms, as well as the Insurance Council's response to the consultation paper questions can be found in Attachment A. The Insurance Council looks forward to continuing to work with Treasury to progress these reforms and welcomes further engagement on this issue.

If you would like to discuss these matters further, please do not hesitate to contact Aidan Devitt, Policy Advisor, Regulation Policy at adevitt@insurancecouncil.com.au or (02) 9253 5134.

Yours sincerely



Andrew Hall
Executive Director & CEO

ATTACHMENT A – INSURANCE COUNCIL OF AUSTRALIA’S RESPONSE TO MODERNISING BUSINESS COMMUNICATIONS

Question 1

Do the business communications requirements in Treasury laws create a burden on business?

If so, what categories of communication (as outlined in this paper) or legislative provisions are creating a burden and should be prioritised for reform?

Are there non regulatory requirements that inhibit businesses, consumers, or regulators from using their preferred method of communication? If so, please provide examples.

In general, Treasury laws provide adequate scope to enable digital communications with stakeholders. However, there are some inconsistencies that exist in Treasury laws as well as other Commonwealth and State and Territory legislation and regulation. Whilst the Insurance Council acknowledges that the focus of this consultation is on Treasury portfolio laws, we feel it is important that this consultation consider inconsistencies more broadly. For any change that results from this process to be fully effective and provide maximum benefit for both customers and businesses, inconsistencies in both federal and state and territory regulatory frameworks must be identified and appropriately reformed.

The Insurance Council highlighted these inconsistencies in a 12 August 2020 submission³ to the Assistant Minister to the Prime Minister and Cabinet, the Hon Ben Morton MP in support of modernising and digitalising compliance requirements. Key areas that were highlighted in the submission included a national approach to executing deeds, consistent national approach to electronic signatures, and enabling the electronic sharing of tax file number declarations with insurers. The submission also highlights state and territory legislation and regulations that hinder electronic communications, particularly for workers compensation and CTP claims.

By way of background, the requirements in the following three sets of legislation must be met in order for general insurers to be compliant with their disclosure obligations:

- the Corporations Act 2001 (Corporations Act);
- the Insurance Contracts Act 1984 (IC Act); and
- the Electronic Transactions Act 1999 (ETA).

There are inconsistencies in how the three legislative frameworks apply which could be improved as part of any reforms resulting from the current consultation process.

³ [Insurance Council – Submission to The Hon Ben Morton MP- Modernising and Digitalising Compliance Requirements – 12 August 2020](#)

A key issue raised in the August 2020 submission is the need to amend IC Act to allow unimpeded electronic disclosure of insurance documents. At present, specific consent from a customer is needed before certain documents can be sent via electronic communications. The regulatory framework should allow electronic communication as a default as opposed to post, eliminating the need for specific consent to electronic disclosure. Secondly whilst the provisions of the ETA apply to the IC Act, the ETA does not apply to the Corporations Act. For the sake of clarity and consistency, the ETA should apply to the Corporations Act as it does to the IC Act.

Finally, one anomaly of insurer disclosure obligations sitting across three sets of legislation is that any ASIC relief that can be, and is, provided in respect of electronic disclosure under the Corporations Act cannot apply to the IC Act. Therefore, we submit that ASIC be empowered to provide instant regulatory relief to impediments to send electronic business communications within the IC Act, as it is currently empowered to do under the Corporations Act. Further detail on impediments to electronic disclosure within the insurance sector can be found in our submission of 10 August 2016 to the Treasury.⁴

The Insurance Council also considers there needs to be more detailed consideration of compliance requirements, particularly when there is a requirement to provide evidence, whether it is the disclosure of information or the execution of a contract via electronic means. We submit that the ETA include a presumption of successful delivery to the recipient's preferred form of electronic communication unless there is an automated failed delivery receipt. Whilst section 14A of the ETA provides that "the time of receipt of [an] electronic communication is the time when the electronic communication becomes capable of being retrieved by the addressee at an electronic address designated by the addressee", what constitutes "electronic communication" is worth clarification and needs to take account of new and evolving platforms of communication e.g. dropbox.

Finally, as you may be aware, there are several reforms related to general insurance that are being implemented as a result of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (FSRC). It is expected that these reforms will significantly change the way insurers communicate with their customers. The Insurance Council submits that the technology-neutral principles outlined in the consultation paper apply to the new reforms and associated regulatory guidance.

⁴ [Insurance Council - Submission to Treasury - Facilitating Electronic Disclosure in the Insurance Sector - August 2016.](#)

Question 2

What is the cost of complying with current regulations? Please provide a breakdown of costs and an indication of the frequency at which these communications occur.

Would these costs be reduced if the law technology neutral? Please provide a breakdown of any anticipated savings and non-monetary benefits?

Question 4

How could stakeholders (such as consumers and investors benefit or be disadvantaged from greater technology neutrality in Treasury laws? Please provide any relevant data, if available.

The Insurance Council is only able to provide a high-level overview of the cost of complying with current regulations that restrict certain forms of digital communications. Given that communications with large amounts of stakeholders is a complex process, involving many different aspects and forms of communication., it is difficult to give a more detailed cost breakdown of complying with current legislation.

As you may be aware, there are significant costs in mail overheads and storage of hardcopy documents in instances where insurers are required to provide paper-based communication. These costs are significantly multiplied when you consider the various documents and circumstances in which they need to be sent, including new and renewed policies, and additional documents required when their policy changes. There are also significant environmental costs as a result of printing and transportation.

While we acknowledge that there is a cohort of customers who would prefer paper-based communications, the regulatory framework should accommodate consumer preference for electronic communication. Technology is an increasingly critical part of people's day to day lives. Therefore, it is important that business communications adapt to reflect consumer preferences and the legal framework should be conducive to a seamless customer experience.

More timely communication through instantaneous electronic means, as compared to postal communication, is likely to increase customer satisfaction. As a corollary, any customer disputes resulting from untimely communication are likely to add to the burden faced by the regulatory and judicial systems.

In summary, while reforms are likely to increase consumer satisfaction, at this stage it is difficult to quantify the total benefits to both consumers, businesses and the wider economy.

Question 3

Do you agree with the categories of communications outlined in the consultation paper?

Are there other types of business communications that should be considered?

Do you agree with the proposed principles outlined in the consultation paper or are there additional or alternative principles that should be considered?

What, if any, barriers would restrict implementation of the proposed principles?

The Insurance Council is comfortable that the five categories of communications outlined in the consultation paper capture a significant proportion of interactions between stakeholders. Any reforms that enable the use of technologies in these categories is welcomed.

In addition, the Insurance Council is satisfied with the outlined proposed principles for policy reform of the five categories of communication. The consultation paper specifically refers to hearings where affected persons may be given an opportunity to appear before a regulator or tribunal to submit evidence. In this context, the Insurance Council submits that there should be clear principles and guidance issued on how evidence may be provided through electronic communications. The Insurance Council considers that a principles-based approach should cater for evolving technology and platforms utilised across general insurance and financial services more broadly.

Question 4

Which of the options identified on page 3 do you consider would have the biggest benefits while appropriately managing risk?

The Insurance Council has provided significant details in previous submissions that there is a need for government to take actions that would modernise business communications. As such, we feel it would be unsuitable to maintain the status quo.

While the Insurance Council is comfortable with the proposed approach to legislative change in the consultation paper, we recommend that there is a whole-of-government effort in relation to all portfolios and across jurisdictions to modernising business communications. Otherwise, any reforms may have the opposite effect to intended policy as businesses are left to navigate a multi-jurisdictional web of inconsistent requirements.

An example of the potential interaction between any Treasury amendments and other Commonwealth legislation is the *Spam Act 2003*, which requires express or implied consent to the sending of an email/SMS. If the consent model of the ETA was to be reformed such that consent is no longer expressly required for all forms of communication under the IC Act,

other laws such as the Spam Act may hinder insurers' electronic communication with policyholders.

Question 6

If technology neutral reforms are introduced, what should businesses do to manage the impact of these changes, to ensure that benefits are realised and disadvantages overcome?

Question 7

What transitional issues do you foresee for businesses, consumers and regulators in moving to technology neutral communication methods?

What are the key implementation risks and their likelihood of occurring? How can we mitigate these risks? Please provide examples.

The Insurance Council welcomes any reforms of Treasury portfolio laws that may result from this process which allows for enhanced business communications through the use of technology. Such changes stand to provide benefits to government, businesses and customers. However, any changes should not create undue burdens for stakeholders in implementation and operation.

If technology neutral reforms are introduced as a result of this process, insurers will need to consider how they transition communication methods from current consumer preferences. This includes how to implement any new permitted default methods of communication where customers have previously given consent to another method. If a new default communication medium no longer requires customer consent, insurers will have to consider how to capture and record customer preferences for communications so as to be able to demonstrate that they are communicating with their customers in accordance with customers' preferences.

Changes should not prescribe the use of any form of communication, rather provide a principle-based approach which allows flexibility of choice of format to send business communications. Such an approach recognises that businesses use diverse technologies to engage with their stakeholders.