

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001
By email: info@alrc.gov.au

30 June 2014

Dear Sir/Madam

EQUALITY, CAPACITY AND DISABILITY IN COMMONWEALTH LAWS

The Insurance Council of Australia¹ (Insurance Council) appreciates the opportunity to respond to the Discussion Paper released on 2 May 2014 by the Australian Law Reform Commission (ALRC) for its inquiry “*Equality, Capacity and Disability in Commonwealth Laws*” (Discussion Paper).

At 11.73 in the Discussion Paper, the ALRC comments that:

“The key concerns expressed by stakeholders with respect to people with disability and insurance relate to:

- the availability of, information about, and the cost of insurance;
- the operation of policy exclusions, including for example in relation to pre-existing conditions and mental illness;
- the relevance, transparency and accessibility of the actuarial and statistical data on which disability-based insurance underwriting and pricing occurs; and
- reliance on the insurance exemption under the DDA.”

The Insurance Council endorses the ALRC’s intention not to make proposals where these concerns do not relate directly to concepts of legal capacity or decision-making capability which are the focus of the current inquiry.

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. September 2013 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$40.4 billion per annum and has total assets of \$112.6 billion. The industry employs approximately 60,000 people and on average pays out about \$92.5 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).

The Insurance Council notes that the ALRC draws attention to the possible relevance of the conclusions that it reached in its report *Access All Ages—Older Workers and Commonwealth Laws*. These were:

- the need for clear and simple information about available insurance products;
- the desirability of an agreement between the Australian Government and insurers requiring the publication of data upon which insurance offerings based on age rely;
- review of insurance exceptions under Commonwealth, state and territory anti-discrimination legislation as they apply to age as well as the development of guidance material about the application of any insurance exception under Commonwealth anti-discrimination legislation; and
- amendment of the General Insurance Code of Practice and the Financial Services Council Code of Ethics and Code of Conduct to include diversity statements or objects clauses that encourage consideration of the needs and circumstances of a diverse range of consumers, including mature age persons.

The Insurance Council discussed the above recommendations with stakeholders including the Australian Human Rights Commission (AHRC), National Seniors and COTA. There was agreement that the first priority should be an education initiative to help older Australians better understand travel insurance and how to shop around more effectively for an appropriate policy. The Insurance Council is currently working with its members on a first draft of this material.

Similarly, the Insurance Council and its members are willing to discuss with disability organisations ways of improving access to general insurance for those with a disability, particularly a mental illness. As explained in the Insurance Council's submission of 16 December 2013 which responded to the ALRC's Issues Paper for the current inquiry, the Insurance Council raised last year with the AHRC the possibility of instigating a comprehensive stakeholder process to review the current guidance on disability and insurance but we understand there is currently no intention on the part of the AHRC to do so.

If you have any questions or comments in relation to our submission please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on tel: 02 9253 5121 or email: janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
Executive Director & CEO