

Professor Rosalind F Croucher
President
Australian Law Reform Commission
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SYDNEY NSW 2000

14 June 2012

Via email: age_barriers_to_work@alrc.gov.au

Dear Professor Croucher

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

The Insurance Council of Australia (Insurance Council) welcomes the opportunity to provide a submission to the Australian Law Reform Commission's (ALRC) inquiry into *Grey Areas: age barriers to work in Commonwealth Laws* (Issues Paper) and appreciated the opportunity to meet with you and your legal officers on 24 May 2012 as part of your early consultation phase.

The Insurance Council is the representative body of the general insurance industry in Australia.¹ General insurers provide insurance products ranging from those usually purchased by individuals (home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (workers compensation insurance and services, product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

A number of recent consultative processes have considered insurance for older Australians and Commonwealth or state laws. The Insurance Council has actively participated by:

- Submission (26 July 2011) to the Tasmanian Anti-Discrimination Commissioner's inquiry into Volunteers, Insurance and Age in relation to the provision of insurance to volunteers in Tasmania;
- Membership of the Insurance Reform Advisory Group (IRAG) from 5 September 2011 to date with recent consideration of travel insurance for senior consumers and mental health issues. The Insurance Council will participate in a roundtable on travel insurance for seniors, foreshadowed by the Minister for Financial Services for July;
- Input on 11 November 2011 to the Secretariat of the Advisory Panel on the Economic Potential of Senior Australians in relation to policies available to seniors;
- Submission (1 February 2012) to the Consolidation of Commonwealth Anti-Discrimination Laws project in support of the retention of an insurance specific exemption in any consolidated law.

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. March 2012 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$36.6 billion per annum and has total assets of \$115.9 billion. The industry employs approx 60,000 people and on average pays out about \$111 million in claims each working day.

In responding to the chapter on Workers Compensation and Insurance in the ALRC's Issues Paper, the Insurance Council's industry responses, set out in **Attachment A**, draw upon the key issues we have raised during the above consultative processes such as:

- Rigorous risk assessment determines the underwriting criteria and pricing for insurance and is the basic principle that underpins the successful operation of insurance models;
- Commonwealth insurance exemptions provide a means to manage risks lawfully and differentiate on the basis of risk, for example by application of an exclusion or a premium loading;
- Exemptions do not provide a blanket exemption for insurance from the operation of the Acts. Rather, the exemption only applies to the refusal to offer, or a restriction on the offer based on actuarial or statistical data (upon which it must also be reasonable to rely). Where no such data is available or can be reasonably obtained, the Commonwealth Age and Disability Discrimination Acts allow an exemption to apply to reasonable discrimination based on other relevant factors;
- There is a low incidence of discrimination complaints against general insurers.

The Insurance Council is keen to better understand community and government concerns about the availability of insurance for older Australians and will continue to participate in consultations with a view in particular to identify ways to better publicise the range of policies offered by our members suitable for seniors.

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

ATTACHMENT A

The Insurance Council believes that effective workers' compensation systems focus on preventing injuries and providing appropriate care for injured workers. This involves providing the right incentives for return to work, with a preference for ongoing treatment and rehabilitation rather than lump sum compensation for the seriously injured.

The role that our member insurance companies play in particular workers compensation schemes varies depending on the particular scheme. Insurers privately underwrite the schemes in Western Australia, ACT, Northern Territory and Tasmania. Some of our members also provide private underwriting for the Seacare commonwealth compensation scheme.² They operate as managed fund scheme agents in NSW, Victoria and South Australia. Our members currently have no involvement in the centrally funded scheme in Queensland.

The Insurance Council understands that the particular arrangements put in place for various types of workers compensation schemes across Australia have arisen from the government policy of individual states and territories. These differ widely on a range of issues. While we understand that SafeWork Australia has a strategic issues group looking at ways to improve the national consistency of these issues, this remains an ongoing process.³

Question 47: Should volunteers be eligible for workers' compensation at a Commonwealth level or is current state and territory coverage sufficient?

Industry Response:

As noted above the Insurance Council believes that scope of the particular schemes in place is a matter for the relevant government's determination. Each state and territory has significantly different provisions concerning coverage of volunteers. In some states fire fighters and other emergency personnel have specific provisions under the workers compensation schemes. In NSW, benefits similar to those under the general scheme are paid to emergency workers under the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

In Victoria there are a range of Acts which cover volunteer fire fighters, assistants to the police force, and jurors which extend the workers compensation payable under the Accident Compensation Act 1985 to these particular groups.⁴

In other jurisdictions such as the ACT particular volunteers are noted as "deemed workers" and can be compensated under Section 17A *Workers Compensation Act 1951* which nominates the range of volunteers which are covered under the legislation - section 14 (Trainees), section 17 (Religious workers), section 18 (Commercial voluntary workers), section 19 (Public interest voluntary workers).

² Seacare is separate to the Comcare scheme. More information can be found at <http://www.seacare.gov.au/home>

³ An update of SafeWork Australia's progress and their meeting on 20 April 2012 is available on the website at <http://www.safeworkaustralia.gov.au/sites/SWA/WorkersCompensation/Action%20Plan/Pages/progress-WC-Action-Plan-2010-2013.aspx>

⁴ *Victorian State Emergency Services Act 1987, Juries Act 2000, Emergency Management Act 1986.*

While many of the provisions are similar there is no consistency between jurisdictions. The Insurance Council submits that appropriate arrangements at the Commonwealth level are a matter for Federal Government policy.

Question 48: In what ways, if any, should retirement provisions in Commonwealth workers' compensation legislation be amended? For example, are any of the following approaches appropriate:

- a) removing all age based restrictions;
- b) removing all age based restrictions, but imposing benefit period or amount restrictions; or
- c) increasing the age at which compensation is no longer payable to age 67, except in certain circumstances?

Industry Response:

The Insurance Council believes that the age limits that apply to workers' compensation are a matter for the relevant state or territory governments and their statutory authorities.

On 1 October 2011, amendments to the *Workers Compensation and Injury Management Amendment Act 1981* in Western Australia removed the age limit for receipt of weekly payments of compensation for injured workers. The Insurance Council and our members participated as a stakeholder in the legislative review process and subsequent amendments.

Generally, the Insurance Council submits that any change to existing age limits that apply to workers' compensation under any of the schemes should be carefully assessed for the impact these may have on premiums paid by employers.

Question 49: What other changes, if any, should be made to the Commonwealth workers' compensation scheme to remove barriers to mature age participation in the workforce or other productive work?

Industry Response:

The Insurance Council has no comment in relation to this question.

Question 50: In what ways, if any, do age-based limitations and higher premiums for insurance policies for mature age persons act as a barrier to participation in the workforce or other productive work?

Industry Response:

Risk assessment allows insurers 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. For reasons of competition policy, the Insurance Council is unable to canvass the specific commercial activities or data of our members in relation to particular policies of insurance and premiums. Our responses will therefore address the broad policy questions of the paper.

As outlined in the Insurance Council's submission on the Consolidation of Commonwealth Anti-Discrimination laws, a lawful ability to reasonably differentiate on the basis of risk, is essential to the provision of affordable general insurance for the community. Depending on the nature of the risk being assessed, risk profiles may differ for different age groups and premiums reflect this risk accordingly. Key risk factors, predominantly based on actuarial and statistical data, which impact on premiums may include for example:

- **Motor insurance**

Premiums reflect the risk attached to the age and sex of the insured driver. Younger drivers typically have less driving experience and are more likely to engage in high risk behaviour, with male drivers presenting a greater risk than female drivers. For example: While speeding-related crashes involve all age groups, over 50% involve male drivers aged between 17 and 39 years.⁵ Other criteria will also influence motor premiums, for example: type of motor vehicle being insured, location of a residence, driving record, claims history, whether a car is used for private or business purposes, is subject to finance, and the agreed value of the car. Individual circumstances may also be considered such as whether a driver has completed a driver skill/safety course.

- **Travel insurance**

Premiums will take into account a range of factors including age, the destination and duration of travel and any pre-existing medical conditions. Members offering travel insurance have advised based on their experience that:

- Application for cover is assessed on a case by case basis;
- Older Australians are more prone to medical issues and insurance cover for this risk is rated in accordance with that risk;
- Medical reasons is one of the major grounds why travel arrangements are cancelled so there is a correlation between the pricing of the risk of cancellation and the likelihood of illness;
- There are a number of travel insurance products available specifically targeting the seniors market including several insurers who specialise in offering cover to consumers with acute pre-existing medical conditions;
- For all other insurers, consumers with a pre-existing medical condition may be excluded from making a claim relating to that specific condition however cover remains for all other items listed under the policy; and
- Several insurers currently have travellers insured who are over the age of 90.

- **Sickness and accident insurance**

Premiums reflect information on the likelihood of particular age groups to have accidents; including chances of an accident leading to hospitalisation; the average length of time spent in hospital and the cost of hospital treatment; as well as the likelihood of death of particular age groups following an accident.

⁵ NSW Roads and Traffic Authority, (October 2011) *Road Users Handbook*, p. 39.

- **Medical indemnity insurance**

The Insurance Council, as part of its input to the Secretariat of the Advisory Panel into the Economic Potential of Older Australians, consulted members who offer professional indemnity insurance to registered medical practitioners for their views on any observable insurance issues (for instance, scope of cover or price) likely to impact on older practitioners' participation in the workforce. Members reported anecdotally that medical practitioners continue to work in some capacity much longer than the average retirement age. While affordability of insurance was not reported by members as a common concern, some members advised it is the income of the practitioner, not the age (unless it is a new practice), which is considered as the relevant risk for the purposes of insurance premiums. While a commercial decision for individual insurers, older practitioners may in some cases therefore see a reduction in premium as they wind down and their income is reduced, without an impact on the scope of the cover. Members did not raise any concerns in relation to insuring older practitioners.

Of interest, the broad definition of 'practice' was cited as a potential deterrent for older practitioners to continue to participate in some aspects of medical work, as it includes, for example, working in education, research, advisory, regulatory or policy development roles (whether remunerated or not). We note the Medical Board of Australia is currently considering the definition following public consultations.

- **Volunteering**

In relation to volunteering, the Insurance Council's submission to the Tasmanian Anti-Discrimination Commissioner's inquiry noted that the changing nature and diversity of volunteering activities can present challenges to the assessment of the relevant level of risk to be covered. However, there are a variety of insurance products in the Australian market, available through insurers or brokers, to support volunteers across a range of ages.

In its April 2010 paper on 'Issues related to Insurance Protection for Volunteers', Volunteering Australia describes a trend to a less formal, episodic and more mobile volunteer workforce potentially impacting on insurance cover. While there remain some insurance age limit gaps in available cover, Volunteering Australia reports (page 11) that access to 'affordable insurance cover has improved over the past decade and there is evidence that access to insurance is not a significant barrier to volunteerism in formal not-for-profit agencies'.

Surveys have shown many volunteer organisations find insurance complex and there is a widespread lack of awareness of the level of insurance cover held by the volunteer organisation. The Insurance Council submitted therefore to the Tasmanian inquiry that information on the availability of insurance cover should form part of the overall training provided to volunteers, especially managers of volunteers. It is considered such training will foster a greater awareness of products in the market, the ability to shop around and make inquiries in a competitive environment about whether arrangements to cover specific age ranges could be made directly with an insurer (by way of endorsement on the cover).

Question 51: In what ways, if any, should the insurance industry be regulated to address barriers to mature age participation in the workforce or other productive work? For example:

(a) Should insurance industry Codes of Practice be amended to encourage or mandate the removal or extension of age-based limitations on insurance policies?

Industry response:

Recognising that the financial health of the general insurance industry is grounded in sound risk management, restricting the ability of an insurer to determine the risk they acquire by, for example mandating the removal of age-based assessments, through industry Codes or other regulatory means, has the potential to adversely impact the willingness to offer particular insurance or, if offered, could lead to serious consequences in relation to an insurer's obligations under the prudential regime supervised by Australian Prudential Regulatory Authority where increased risk profiles have increased capital requirements.

The General Insurance Code of Practice (Code) sets minimum standards of customer service for signatories and contains a specific obligation on insurers to refer cases where an insurer is unable to provide insurance to the National Insurance Brokers Association or, from 1 July, to the Insurance Council of Australia. This obligation assists consumers, including senior consumers, by providing an avenue for information about alternative insurance options.

The Code is a living instrument, which may be updated from time to time, as well as formally by independent review every three years. The Insurance Council has been proactive to ensure the Code continues to meet public expectations, making a number of Code changes to address concerns raised during the 2011/2012 catastrophes.

As a sign of the industry's commitment to the continual improvement of the Code, the scheduled 2013 Independent Review has been brought forward to 2012 and Mr Ian Enright, was announced as the Independent Reviewer on 4 May 2012. The Independent Review provides an ideal opportunity for the ALRC to discuss with the Independent Reviewer, any specific issues it may have.

The Insurance Council would be happy to facilitate this discussion.

(b) Should a regulatory framework be introduced to ensure that age-based limitations on insurance policies are appropriate?

Industry response:

The Insurance Council submits the current Commonwealth laws provide a robust regulatory framework to ensure that age-based limitations on insurance policies are appropriate. The insurance exemptions do not provide a blanket exemption for insurance from the operation of the Anti-Discrimination laws. Rather, the exemption only applies to the refusal to offer, or a restriction on the offer based on actuarial or statistical data (upon which it must also be reasonable to rely). The current framework also provides an appropriate complaint/dispute resolution service for consumers.

Section 47 of the Victorian Equal Opportunity Act 2010 provides the preferred industry insurance exemption for the consolidated law as it provides a specific focus on discrimination based on actuarial or statistical data and 'any other relevant factors'.

Insurers advise they may consider available reliable data (such as the Australian Bureau of Statistics and the Australian Institute of Health and Welfare) and their claims book experience, to assess risk factors and determine their risk appetite. This enables them to develop innovative, uniquely targeted products at affordable and sustainable prices to the market. The insurance cover is able to be tailored over time by the expertise of the insurer and its knowledge of its own claims experience.

Members advise that insurers constantly review the market and reassess opportunities for expansion of their business within their particular business objectives. It is therefore natural in a free market economy that insurers offer policies targeted at particular groups. Even with the best of policy goals in mind, requiring uniform policy offerings, for example in the case of seniors, would distort competition and significantly impact insurers' prudential requirements.

Question 52: What other changes, if any, should be made to insurance laws to remove barriers to mature age participation in the workforce or other productive work?

Industry response:

As stated above, the Insurance Council believes the current Commonwealth regime is appropriate. However, we are working proactively with stakeholders through the IRAG to consider ways to improve consumer understanding and access to insurance and will shortly participate in a roundtable on travel insurance.

We note that the Australian Human Right Commission's (AHRC) annual report shows a low incidence of discrimination complaints received. For the financial year ending 30 June 2010, Financial Ombudsman Service statistics show almost 36 million general insurance policies were issued. Of those policies issued, in 2010-2011, only 4 of the 297 complaints made under the Age Discrimination Act to the AHRC related to the area of 'superannuation, insurance'.

The Insurance Council has therefore requested as part of the IRAG process further information and examples of any particular areas where senior Australians have faced difficulties in accessing insurance so we may consider them closely with members. This information may also provide some insight into whether, if at all, access to general insurance is a barrier to senior participation in the workforce.