

5 April 2007

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Insurance Contracts Act Review
Corporate & Financial Services Division
The Treasury
Langton Cres
PARKES ACT 26001

Dear Sir/Madam,

INSURANCE CONTRACTS ACT REFORM PACKAGE

We refer to the exposure drafts of the Insurance Contracts Amendment Bill 2007 and regulations released by Treasury in February 2007, which seek comment on the materials in the reform package designed to update the Act, respond to market developments, clarify provisions in light of judicial interpretation and address anomalies in the operation of the Act.

AAI appreciates and welcomes the opportunity to participate by providing comments on the materials in the reform package.

1. Our background

Australian Alliance Insurance Company Limited (AAI) is an Australian financial services licensee (AFSL 235011) authorised to issue general insurance products and to deal in such products by applying for, acquiring, varying or disposing on behalf of another person. Unlike some other general insurance issuers, AAI is also authorised to provide personal financial product advice limited to its own general insurance products to both retail and wholesale clients.

AAI currently distributes and brands its general insurance products through three authorised representatives:

- (a) Australian Pensioners Insurance Agency Pty Limited (Rep no 239591) (**APIA**);
- (b) Shannons Limited (Rep no 239594) (**Shannons**); and
- (c) InsureMyRide Pty Limited (Rep no 308301).

Each of these authorised representatives is granted authorisation by AAI to provide advice about their own branded products that are issued by AAI.

2. Schedule 2 – Electronic Communication

AAI supports this proposal, which updates the Act by allowing electronic communication. However, we do have concerns with the difficulties that lie with the “in writing” requirements of proposed s77(1A)(a) and s77(1)(B) around: Opt-in or opt-out; nomination of address; and changes or cancellation.

AAI consumers predominantly conduct transactions via telephone and increasingly over the Internet. This form of communication is presently used to obtain a quote, commence a policy, make a claim, endorse a policy, pay for a policy and nominate a postal address for communications amongst other things. Considering the ‘form-free’ call centre environment that our customers are accustomed to, reverting to written requests will be considered an unnecessary nuisance and are unlikely to be embraced.

The introduction of a written request for electronic communication becomes more burdensome for all concerned. The consumer would be required to follow through on a telephone/internet communication with a further paper-based step creating some of the common complications of yesteryear including, forgetfulness, reliance on post, forms being lost, more information in the mail and so on.

For AAI it would mean more complex system changes, administrative difficulties related to more paper including resources, postage, storage, processing and follow-up.

The “in writing’ requirement seems to diminish the potential of the Act to lower costs and increase convenience for insurers and insureds. And whilst, the draft regulation resolves some existing concerns, it does create new ones.

In order to make this proposal workable for both the insurer and insured AAI recommends:

- Sections 77(1A) and 77(1B) omit the “in writing” requirement; and
- Establishing a consistent approach to other federal laws, namely the Electronic Transactions Act 1999 by adopting the same definition of ‘consent’.

3. Schedule 9 - Third party rights to obtain Policy documents on request

AAI understands the intent of providing third party beneficiaries with rights and therefore updating various sections of the Act. However, AAI believes the inclusion of third party beneficiaries to s74 (Policy documents to be supplied on request) inadvertently enables third party beneficiaries to obtain a consumer’s personal information that they may not ordinarily be entitled to under the Privacy Act. By virtue of National Privacy Principle 2.1(g) an insurer would be obliged to provide that personal information to the third party beneficiary because the Insurance Contract law provides for this.

AAI has no objection to providing a third party beneficiary with the general terms and conditions of the contract contained in a PDS/Policy booklet. However, 'Policy documents' as defined in the Insurance Contracts Act includes, *a document prepared by the insurer as evidence of the contract*. In AAI's opinion that extends to a policy schedule that is read in conjunction with the PDS/Policy Wording but is specific to the individual insured and contains personal information. As a result, the Insured loses control over the way information about them is handled. It also provides opportunity for unsavoury characters (claiming to be third party beneficiaries) with greater access to the personal information of an Insured.

AAI recommends the extent of 'Policy documents' to be supplied to a third party beneficiary should be limited to the general terms and conditions of the contract i.e. PDS/Policy booklet.

4. Schedule 9 - Third party recovery rights against insurer – when judgement obtained

This proposal introduces an additional avenue for persons to recover damages from an Insured (or third party beneficiary) by obtaining a default judgement. Obtaining a judgement can be quite simple and it is our concern the judgement could be used by the courts to establish liability even though an Insurer may not have had the opportunity to defend the proceedings and prove that it is not liable to the claimant.

In line with the submission of the Insurance Council of Australia, AAI is also of the view that the proposed subsection 51(1) should be clarified so that it is clear that an insurer will have the opportunity to defend the proceedings brought by the third party claimant against the insured (or third party beneficiary) in accordance with normal practice.

Please contact me on (03) 8520 5170 if you have any queries or require any further information.

Yours sincerely,



RICHARD SANZIN
Head of Professional Standards & Risk Management
on behalf of Australian Alliance Insurance