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Dear Mr Flavel

PRE-BUDGET SUBMISSION 2017-18

The Insurance Council of Australia¹ (the Insurance Council) welcomes the opportunity to provide views on the priorities for the Commonwealth Government's 2017-18 Budget. The Insurance Council considers that Commonwealth Budget planning will be enhanced if greater consideration is given to the funding of disaster mitigation. We also propose that funding be prioritised for a review of Australian marine insurance law and updating Australian Bureau of Statistics' *National Survey of Mental Health and Wellbeing*. This submission sets out the reasoning underpinning our proposals.

Funding of disaster relief

The Insurance Council has made a number of submissions urging the Commonwealth Government to address a number of issues associated with funding of disaster arrangements. In its 2015-16 pre-Budget submission, the Insurance Council supported the implementation of recommendations concerning mitigation funding from the Productivity Commission's Inquiry on Natural Disaster Funding Arrangements (the Inquiry). The Insurance Council notes that the Commonwealth Government's announced its response to the Inquiry on 22 December last year (the response).

The response included a commitment to work closely with state, territory and local governments to develop a long-term approach to achieve the right balance between mitigation and recovery funding. This, and the commitment to explore the option of states using efficiencies realised following reconstruction of public assets on future disaster mitigation activities, is strongly supported by the Insurance Council. The Insurance Council

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 2016 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$44.1 billion per annum and has total assets of \$120.5 billion. The industry employs approximately 60,000 people and on average pays out about \$124.6 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).

considers the Commonwealth Government's investment in disaster resilience and mitigation programs will significantly help communities strengthen their resilience to natural disasters.

However, the Insurance Council notes that there continues to be a concerning imbalance in total government spending on major national natural disaster funding, which is heavily biased toward recovery when contrasted with mitigation. The Insurance Council believes the 2017-18 Budget should prioritise disaster mitigation funding to reduce community exposures from natural disasters, which is likely to lessen the need for disaster response activities. If the Australian Government reduces the relief and recovery funding it provides to state and territory governments, it should increase annual mitigation expenditure gradually to \$200 million, distributed to the states and territories on a per capita basis. Increased mitigation funding should be conditional on matched funding contributions from the states and territories and best practice institutional and governance arrangements for identifying and selecting mitigation projects.

The Insurance Council supports the Government's commitment to optimise the flow of public and private data in Australia to assist with the estimating the potential cost of disasters in the response. We commend the Government for providing states and territories with financial assistance to develop and publish state-wide risk assessments. The Insurance Council supports the Government's intention to work with industry and invest in detailed research on risk reduction to develop the evidence to inform decision making.

While a range of disaster resilience and natural hazard data is publically available, these are not optimal for insurance underwriting. The Insurance Council strongly supports the Australian Government publishing estimates for the future costs of natural disasters in the Budget's Statement of Risks. This would facilitate a better recognition of the benefits of mitigation measures. We also submit that the natural disaster recovery budget should be informed by catastrophe modelling, rather than the simple historical average of costs currently used in NSW.

Funding a review of Australian marine insurance law

The Insurance Council proposes that the 2017-18 Budget should prioritise funding for the Australian Law Reform Commission (ALRC) to review *Australia's Marine Insurance Act 1909* (MIA).

As the Treasury may be aware, the United Kingdom's (UK) Insurance Act 2015, which came into effect from 12 August 2016, introduced material amendments to the UK's Marine Insurance Act 1906 (UK MIA), upon which the MIA (and the marine law of many of Australia's trading partners) is based.

The Insurance Council is concerned about the potential consequences of the UK reforms for Australian marine insurance providers. In particular, Australian marine insurers may be materially impacted if Australian marine insurance law is not appropriately aligned with the UK and international practice. As marine insurance is a competitive global market, it is important for Australia that, where possible, marine insurance is taken out in Australia rather than in a competing foreign jurisdiction.

The MIA is almost identical to the UK MIA in substance; it is a codification of marine law that is practised globally. Historically, care has been taken to maintain consistency between Australian law and international practice. For instance, the practices of the Australian marine

insurance market have long reflected practices in the UK marine insurance market (the most important marine insurance market globally) and there has generally been consistency in judicial interpretation of the legislation in Australia and the UK. The ALRC in its 2001 Review² of the Marine Insurance Act 1909, explored many of these important considerations.

The ALRC found that the present codification of marine insurance law and practice is long established and well known, and that this has contributed to a business environment in which the meaning of contracts is well understood and is backed up by comprehensive case law.

The ALRC went further to warn that unilateral changes to Australian marine insurance law may impact adversely on and isolate the Australian market by severing the association between Australian and United Kingdom law and practice, a link shared with marine insurance regimes in other common law systems and also many other countries as well.

The UK Insurance Act 2015 makes fundamental amendments to the UK MIA in relation to the areas of utmost good faith, disclosure, remedies for breach of contract and warranties. Notably, the UK MIA now adopts a more pro insured approach; it would seem probable that this will place the Australian marine insurance market at a competitive disadvantage and at real risk of losing business.

The Insurance Council is concerned that the MIA now retains provisions that have been discarded in the UK, and that Australian marine insurance law will become obsolete in respect of the changes to the UK MIA. Consequently, the international competitiveness of Australian marine insurers may diminish. In that case, marine insurance contracts for Australian risks would likely to be increasingly issued by Australia's global competitors.

This would also have a material flow on impact to associated domestic industries, including surveyors and other service providers appointed by insurers, as well as resulting in dispute resolution and litigation being managed in foreign jurisdictions. We consider that the adverse Australian economy-wide implications resulting from this could be substantial.

In this respect, we believe that the MIA is in need of reform to ensure that it remains in step with global expectations of marine law; importantly, this would help safeguard the global competitiveness of the Australian marine insurance industry. The Insurance Council therefore proposes that funding be provided in the 2017-18 Budget for the MIA to be reviewed to ensure that it remains fit for purpose.

As an indicator of market size and potential economic impact, the total annual value of gross written marine insurance premium from Insurance Council members is worth in the order AU\$0.6 billion. Given the significance of the Australian marine insurance industry, the Insurance Council submits that it is necessary that Australian marine law maintains the global competitiveness of the domestic industry. Indeed, taking no action would be akin to making unilateral changes to the MIA, which the ALRC had warned against in its review.

In December 2016, the Insurance Council wrote³ to the Commonwealth Attorney-General, Senator the Hon George Brandis QC, explaining the need for a review of the MIA.

² Australian Law Reform Commission: [Review of the Marine Insurance Act 1909 \(Cth\) \(ALRC Report 91\)](#).

³ Insurance Council of Australia: [Submission](#) of 12 December 2016, refers.

Funding an update to the National Survey of Mental Health and Wellbeing

The increasing reported incidence of mental illness in Australia and its impact on individuals, families and communities is an important public policy issue. In Australia, it is estimated that 45 per cent of people will suffer from a mental health condition in their lifetime⁴.

The Insurance Council recognises the important role the general insurance industry can play in facilitating financially inclusive outcomes; it has made valuable contributions through product innovations for vulnerable communities, such as older Australians and those on lower incomes.

In recent years, there has been an increasing demand for the coverage of general insurance products to be expanded for people suffering from a mental health condition. Many features of a travel insurance policy are widely available for people with a mental health condition. However, policies will typically not provide them cover for financial losses related to their condition. General insurance policies are risk-based products, and insurers' access to sophisticated data is critical to their ability to assess and price risk that is specific to an individual.

One of the key challenges that insurers face is having the appropriate data at hand to quantify the risks associated with mental health conditions. The industry currently has access to public sector statistical data on mental health, the key publication being the National Survey of Mental Health and Wellbeing conducted by the ABS in 2007. The Insurance Council has met with the Australian Institute for Health and Welfare, and noted the following limitations of the wide range of public sector data currently collected and published on mental health:

- there are no 'neat' data sets. The data is in silos which makes connections difficult to see;
- the classification of mental health conditions differ;
- the datasets do not count individuals but, for example, admissions; and
- datasets are not available over long time periods.

While the number of public sector datasets regarding mental health is considerable, much of the data is not adequate for insurance underwriting. In order to create the right conditions for improved access to general insurance for those with a mental illness, more granular, up-to-date data is essential to accurately assess the risk of providing cover for mental illness related claims. We believe that it would be beneficial for industry and the Government to work together on developing a work program to access more useful data for the purposes of improving insurers' ability to quantify risks associated with a range of mental health conditions.

As a first step, the Insurance Council urges that the Australian Government prioritises updating nationwide mental health data, by directing the ABS to update the 2007 National Survey of Mental Health and Wellbeing (the survey), as soon as possible. This survey is the most comprehensive national publication capturing mental health data. The National

⁴ Australian Bureau of Statistics (2008), National Survey of Mental Health and Wellbeing: Summary of Results, 2007, Cat. No. 4326.0

Survey of Mental Health and Wellbeing was first conducted in 1997 and the 2007 update followed to provide relevance for the next decade. Another decade will shortly pass since the last publishing and it would be prudent for the Government to include expenditure to renew the survey in the 2017-18 budget. At a time when reported incidence of mental illness and the number of Australians affected by mental health continues to increase, this is an important public health concern. Conducting the survey would contribute to the public's understanding of mental health issues and provide a fundamental basis for government policy making.

This would be consistent with the Government's objective to further develop the evidence base on mental health conditions, as stated in its response to the National Mental Health Commission's review of mental health programme and services. The Insurance Council estimates that the cost to update the survey and conduct follow-up analysis is relatively modest at \$17-18 million.

If you have any questions or comments in relation to our feedback, 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 and CEO