



AUSTRALIAN BANKERS' ASSOCIATION

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The Secretary
Insurance Contracts Act Review Secretariat
Department of Treasury
Langton Crescent
CANBERRA ACT 2600

Dear Secretary,

The Australian Bankers' Association ("ABA") welcomes the opportunity to comment on the Exposure Draft, Insurance Contracts Amendment Bill 2004.

The ABA understands that the proposed amendments will restore the legal position in relation to notifiable circumstances (not being claims made against the insured) to what it was prior to the High Court's decision in the Hospital Care Case.

As a general comment, we found that, overall, the proposed amendments to sections 40 and 54 were reasonable in light of the findings in the Report into the Operation of Section 54 by Alan Cameron and Nancy Milne ("Report").

Section 40

In particular, we found the language of the proposed amendments to section 40 to be easily comprehensible.

We do not believe there is a need to define the word "claim", since this is usually defined in the relevant policy.

We submit that the proposed reporting period be extended from 45 days to 60 days. This would provide insureds with a more appropriate period within which to make an informed decision whether to notify the insurer of facts that might give rise to a claim. There are many reasons why it might not be immediately or readily apparent to an insured whether to notify. One example is where facts emerge in a piecemeal fashion and it is only after enough facts materialise and they are considered as a whole that it becomes apparent that a claim might be made. Another example is

where it is clear at the outset that a claim might be made but it is initially thought that its quantum will be well within the deductible - it may not become apparent that the deductible might be exceeded (and that notification should be made) until after further information emerges. We note from page 21 of the Report that Mr Cameron and Ms Milne received suggestions for an extended reporting period ranging from 14 days to 6 months. We believe a period of 60 days is a fairer compromise than 45 days.

Section 54

In relation to section 54A, we submit that while it appears that the intention of the section is to implement the recommendations in the Report (the general thrust of which we support), the actual wording is complex and an endeavour should be made to simplify it. In particular, the double negative in paragraph 54A(2)(b) is difficult to follow. If a claim is not made before the policy expires, then logically notice of such a claim cannot be given before the policy expires.

Should you require any further information, please contact Ardele Blignault directly on (02) 8298 0410 or at ardeleb@bankers.asn.au

Yours sincerely,



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