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Regulation Review
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

ipart@ipart.nsw.gov.au

Insurance Australia
Group Limited
ABN 60 090 739 923
388 George Street
Sydney NSW 2000
Telephone 02 9292 9222
iaglimited.com.au



Insurance Australia Group (IAG) welcomes the Independent Pricing and Regulatory Tribunal's (Tribunal) Draft Report – *Investigation into the burden of regulation and improving regulatory efficiency* released in July 2006 and the opportunity to comment on key draft recommendations.

IAG is supportive of those recommendations to fine-tune the framework for regulatory process to: improve consultation; better target analysis of regulatory impacts so that it is proportionate to potential impacts; improve the quality of regulatory analysis; achieve best practice implementation of regulation; and ensure appropriate review of regulation. IAG is particularly supportive of those recommendations to facilitate more efficient cross-jurisdictional regulation and those that reduce unnecessary regulatory burdens in specific areas of New South Wales regulation.

IAG is however, disappointed that the Tribunal has made no recommendations in relation to the removal of the regulatory burden of insurance taxes. IAG believes insurance taxation reform at the State level could provide significant immediate gains to business and the community and that there is a clear economic case for reducing State Government insurance taxes and charges ahead of many other taxes. IAG encourages the review of the current taxation regime that affects the affordability of insurance in New South Wales.

The Tribunal's key recommendations for Government action of interest to the insurance sector include:

Recommendation 23

That the Government, through the Motor Accidents Authority and the Office of Fair Trading (Department of Commerce), continue to work with the Australian Prudential Regulation Authority to ensure that regulatory efforts are co-ordinated and that there is no overlap in the prudential regulation of insurers.

Agree.

Recommendation 24

That, in reviewing its Policy Statement on Professional Indemnity Insurance, the Professional Standards Council considers the Federal Government's implementation of the findings of the Review of Discretionary Mutual Funds and Direct Offshore Foreign Insurers.

Agree.



Recommendation 25

That the Government ask the Ministerial Forum on Insurance Issues to consider whether greater cross-jurisdictional harmonisation can be achieved in the regulation of providers of statutory classes of insurance (taking into account work that is already occurring in the area of workers' compensation, via the Australian Safety and Compensation Council and the Heads of Workers' Compensation Authorities).

Agree. IAG supports nationally consistent frameworks in the key areas of workers' compensation insurance and occupational health and safety; such frameworks would remove unnecessary costs and compliance burdens while at the same time act to deliver optimal outcomes for injured workers and provide employers with a regulatory environment better attuned to modern business practices.

Recommendation 27

That the Government:

a) support efforts to achieve greater cross-jurisdictional harmonisation of personal liability for directors and other officers of corporations

b) in pursuing this objective, consider the findings of the Corporations and Market Advisory Committee (CAMAC) when the final report becomes available, particularly with regard to recommendations on the adoption of a standard approach/template for personal liability provisions (such as one of the options put forward by CAMAC).

Agree.

Recommendation 29

That the Government:

a) ensure that the findings of the NSW Law Reform Commission inquiry into privacy regulation, which includes consideration of the desirability of nationally consistent privacy regulation, are made publicly available and given priority consideration by the Government

b) request the NSW Law Reform Commission to include in its inquiry an examination of how consistency between state and federal privacy regulation can be achieved

c) request the NSW Law Reform Commission to include in its inquiry an examination of whether a nationally consistent approach to workplace surveillance regulation is desirable and how it could be achieved.

Agree. IAG believes there is a need to clarify the relationship between State and Federal Government activities and the way that different jurisdictions interact and function as a whole in relation to privacy regulation.

Recommendation 32

That the Government endorse the Federal Regulation Taskforce's recommendation in this area, and support efforts, via COAG, the Heads of Workers Compensation Authorities and the Australian Safety and Compensation Council, to achieve national consistency in key areas of workers' compensation, including (but not limited to):

- a) *return to work arrangements*
- b) *key definitions, such as worker, wages and injury*
- c) *premium payments for businesses operating across borders*
- d) *audit requirements of each state authority*
- e) *reporting and documentation requirements*
- f) *self-insurance arrangements.*

Agree. A well-designed and administered national system for workers compensation can deliver fairer support for injured workers, by eliminating arbitrary differences in entitlements for the same injuries, and better social and health outcomes through better performance measures and better targeting of services. A competitive national market will reward good employment practices with affordable premiums and create real incentives to reduce risks and prevent accidents.

Recommendation 52

That the Government consider reviewing the Insurance Act 1902, to identify any unnecessary provisions and requirements.

Agree.

Recommendation 53

That the Government monitor compliance with NSW tax and levy requirements for insurance provided by direct offshore foreign insurers (DOFIs) and, if necessary, consider options to enhance compliance with these requirements.

Agree. IAG believes that one of the key requirements for an efficient general insurance market is a “level regulatory playing-field” for the various market participants. While technically insurance policies offered by DOFI are subject to stamp duty, there is little if any enforcement mechanisms to ensure that these taxes are paid. This ultimately results in higher tax payments for Australian insureds who source their insurance through APRA authorised general insurers and are subject to stamp duty.

IAG believes that regulation has an important role to play within the Australian insurance market. IAG contends that the rationale for prudential regulation of general insurance is one of consumer protection. It also has a role in ensuring that an even “playing field” is maintained with respect to competition when implementing prudential regulation. Within the general insurance sector, IAG considers that a substantial information “asymmetry” exists, in that policyholders may not be equipped with sufficient information on which to base a decision to insure. The consequences of this are adverse for policyholders if it results in insurance claims not being met. It is unreasonable to expect retail consumers to conduct a detailed review of the financial security of their insurance contract or its provider. They should be entitled to assume a base level of security from all providers of retail insurance operating in the local market.

While direct offshore foreign insurers are permitted to continue to operate without either obligations to provide “true” insurance (i.e. an enforceable contract to pay claims for specified losses rather than a right to request a fund to exercise its discretion in favour of the claimant) or meet capital adequacy requirements, consumers remain inappropriately exposed. Accordingly, regulatory reform must ensure that consumers are adequately protected and that market failures are alleviated, but also that competitive forces are sustained. In fact, we believe that Australian consumers believe that they are protected by regulation from the impact of insurance company failure.

IAG believes it is necessary to provide the same level of protection to consumers (and third parties) of products supplied by direct offshore foreign insurers as is provided to consumers of products supplied by insurers subject to prudential regulation under the provisions of the *Insurance Act 1973*.

Recommendation 56

That the Government and WorkCover ensure that the review of the Occupational Health & Safety Regulation 2001 proceeds next year as a priority, and that this review:

- a) follows the principles of best practice regulation, including subjecting all proposed OH&S requirements, and all viable options, to stakeholder consultation and a transparent and robust cost-benefit analysis*
- b) considers regulatory provisions/approaches of other jurisdictions and COAG’s commitment to achieving greater consistency and harmonisation of OH&S requirements between jurisdictions, where this will enhance the NSW OH&S framework*
- c) considers the following specific issues, which have been raised in submissions to the*

Tribunal:

- differential impacts across small, medium and large businesses*
- the application of requirements to ‘low’ risk industries/activities, particularly for small business*
- the requirement for Safe Work Method Statements and OH&S Safety Management*

Plans for the construction industry, and the suitability of adopting Victoria’s non-mandatory model for these Statements and Plans

- clause 56 of the regulation, ‘Prevention of falls from heights’, taking into account practices adopted in other jurisdictions*

Agree.

Recommendation 57

That the Government:

- a) require draft NSW OH&S codes of practice to be subject to proportionate cost-benefit analysis and consultation*
- b) review the OH&S Act again within five years of commencing amendments to the Act, in recognition of the significance of OH&S to stakeholders and the broader community.*

Agree.

Recommendation 63

In relation to workplace surveillance, that the Government:

- a) undertake a post-implementation review of the Workplace Surveillance Act 2005 within two years of its commencement, to assess the impact (in terms of costs and benefits) of contentious aspects of the Act and identify whether the Act is achieving its objectives, and make the findings of this review available to the public*
- b) provide resources/training to help businesses understand their obligations and responsibilities under the Act, particularly with respect to:*
 - notification/disclosure of surveillance (eg, of employee's emails)*
 - how the Act's requirements affect information flowing from overseas or interstate*
 - defining the boundaries of the 'workplace' (eg, remote access to a company's computer systems).*

Agree. There should be an appropriate process put in place for post-implementation reviews. It would be beneficial to have a two year review particularly given the rapid technological developments in this area. A two year review may also assist in achieving consistency with such equivalent legislation as may be enacted or amended in other States and Territories during this period.

Recommendation 70

That the Government subject reforms flowing from the Macken Report on Definition of a Worker to post-implementation review no later than two years after implementation.

Agree.

IAG would be happy to discuss this submission and to assist in any way we can. If you wish to discuss this matter or make further inquiries please contact David Wellfare, Senior Adviser, Economics & Policy on (02) 9292 8593 or me on 9292 9744.

Yours sincerely



Nola Watson
**Head of Government and International Relations
Insurance Australia Group**