

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE
Inquiry into exceptions and exemptions in the Equal Opportunity Act

Melbourne — 4 August, 2009

Members

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Mr J. Anning, general manager policy, regulation directorate; and
Ms A. Butler, manager, regulatory affairs and policy, personal lines insurances, Suncorp.

The CHAIR — Thank you for attending this public hearing. The purpose of these hearings is to report to Parliament on whether any amendments should be made to the exceptions and exemptions to the Equal Opportunity Act 1995. Anything you say or publish before the committee today is protected by parliamentary privilege; however, once you leave the hearing anything you say or publish outside this room is not so protected.

I would like to invite you to make a brief statement to the committee on the relevant issues that you consider are important to your organisation concerning the inquiry, and we will follow it up then with questions.

Mr ANNING — The Insurance Council of Australia appreciates the opportunity to appear before the committee as part of its review. This review is taking place against a background of growing interest in achieving consistent antidiscrimination legislation across all Australian jurisdictions.

The Standing Committee of Attorneys-General agreed on 28 March last year to establish a working group to develop, for the consideration of ministers, options for harmonising commonwealth, state and territory antidiscrimination laws. The issue gained more momentum with the standing committee approving on 25 July last year terms of reference for the working group. It is also anticipated that the issue of harmonisation will be raised in the national human rights consultation, which we understand is expected to report in September this year.

By eliminating inconsistencies between jurisdictions a national regime of antidiscrimination protection would create greater certainty as to what was prohibited conduct, thereby increasing the likelihood of better compliance. Compliance costs would also be lower as businesses would not have to take account of variations in the law in different jurisdictions. Therefore the insurance council strongly urges the committee to consider the advantages of recommending that the findings of its review be fed into the broader standing committee work being undertaken on a nationally consistent antidiscrimination regime.

While recognising the right and indeed the responsibility of the Victorian Parliament to act in what it sees as the best interests of the citizens of Victoria, the insurance council submits that recommendations by the committee that Victoria change the act unilaterally, without regard for the wider work being undertaken, would only exacerbate the extent of the problem of inconsistency between jurisdictions.

The insurance council appreciates the understanding shown in the committee's options paper that the Equal Opportunity Act's exemption for insurance allows the application of meaningful risk factors that enable premiums to be calculated in line with the risk involved. As the options paper does not provide evidence of detriment being experienced by consumers, we submit that lack of any identified concerns should weigh heavily in favour of leaving the exemption as currently worded.

Rather than repeat the material in the insurance council's submission on the four options, we would be happy to take questions on the council's position in relation to each of them. We would be pleased, in particular, to discuss option 4, which we consider inappropriately combines use of the exemption with the issue of providing an explanation of the reasons why a claim is declined. Thank you.

The CHAIR — Thank you, John. I wanted to first ask a question around insurance and the reliance on actuarial or statistical data. The exemption allows other 'reasonable to rely on' data and information in terms of making the discrimination. What does not rely on actuarial or statistical data? Is not all insurance based around that information? Are there other things there that we can rely on?

Mr ANNING — Predominantly it is actuarial, statistical data; but I will hand over to Annabelle to further answer that question.

Ms BUTLER — Yes. In terms of pricing and underwriting, generally it is the actuarial, statistical data; so when the underwriter is asking you questions, that is what that information goes into; and then depending on the insurance company, some have smaller books than others. For example APIA only insures over 55s working part-time, whereas other insurers such as AAMI insure a far broader part of the population.

The CHAIR — So do we need to maintain 'reasonable to rely on' information or data, other than actuarial or statistical, in terms of the actual exemption as it sits at the moment? At the moment you can refuse insurance

based on actuarial and statistical data or on 'reasonable to rely on' data or information, and I am just wondering what that could possibly be.

Ms BUTLER — In terms of denying insurance?

The CHAIR — Yes.

Ms BUTLER — When an underwriter refuses to underwrite because they are outside the criteria of that insurer; is that what you are asking?

The CHAIR — Yes.

Ms BUTLER — Would it be anything other than discriminatory information? They may not underwrite in that state, for example. That could be one issue. For example, you do have state-based insurers like Suncorp, which is a Queensland-based insurance company, which principally writes in regional Queensland and would not normally write in Victoria, for example, because that is not where its portfolio is based. Another example is where you might be outside the scope of what they are looking for in terms of a consumer, but that would normally rest more within the discriminatory side. There are small insurers that may, for example, only insure women. I know that one of the Budget Direct groups is specifically for females and that is that. I do not think I know of anything else, really.

Mr ANNING — No, it is predominantly on the actuarial data.

Ms BUTLER — It is predominantly about that. It is normally for pricing.

The CHAIR — Okay. It just shows I know very little about insurance. What sort of groups or individuals fall outside and can be denied insurance? Just a few examples, because I am not really clear on it in my own head.

Ms BUTLER — Okay, I will give you an example. You may have an 18-year-old driving an extremely expensive Mercedes-Benz, and your main-line insurers probably would not want to pick them up, so they may do that in a couple of ways. They may make the policy so expensive that the individual cannot afford it, which is one method of doing so; or they may just refuse to underwrite. That would depend on the insurance company itself.

In terms of market, there are insurers who specialise in very high risk. That is all they do. For example, Just Car Insurance is one of those insurers that does that. They would normally pick that type of individual up, but of course they are going to be paying a premium for it and a very large excess if they damage the car, because the likelihood of an 18-year-old having a crash is far higher than older people who have got more experience.

There will be times when insurers refuse, and I know that some of the insurers in the industry, as I said before, are quite conservative in the way that they underwrite, so they are only looking for a very specific type of risk, whereas the bigger insurers tend to be a lot broader — the AAMIs of the world. It is a national insurer, and it takes on a lot broader risks.

Mr ANNING — The risk assessment would have affected the pricing and ultimately whether they take the risk.

The CHAIR — But fundamentally we are working on the basis of risk?

Mr ANNING — Yes.

Ms BUTLER — Yes.

Mr BROOKS — I want to clarify that. The insurance industry would assess risk based on someone's age as one of the attributes, not just the years of driving experience; is that correct?

Ms BUTLER — Yes. If you look at most of the underwriting practices, you will find that for a motor insurance policy, which is really where this comes into play more than anything, it would be age, the type of car

and obviously driving history that would be relevant to the insurer. Also finance of that vehicle — if it is financed or not financed — and there are a couple of reasons for that, and who actually owns the vehicle.

What else would we ask questions about? Some would go into profession. That does happen, but not in my group. I am with the Suncorp Group, and we do not do that, but I know that there would be other underwriters who are interested about profession.

Mr BROOKS — Profession, yes.

Ms BUTLER — That is, are people on the road all the time or are they sitting in an office or whatever they may be doing. That would occur. A question about marital status is very common. There is a belief, certainly from an underwriting perspective and a pricing perspective, that the middle age group where people have children and are married with a family tend to be driving a bit more carefully — because they tend to have the kids in the car — than people who do not. That question will get asked at underwriting time.

These are common factors. I am trying to use the common factors across all insurers, not just the ones I know about from my group. What else do we use? Insurance history — that is a question of whether you have had a claim in the last three years and were you at fault with that claim. That is another question that is commonly asked.

Mr LANGUILLER — I wonder what comments you may be able to share with us in relation to public housing tenants, particularly high-rise, with respect to contents insurance and car insurance, and whether you are aware of any issues, particularly if there is any actuarial report data that may be conducive to a particular policy that some of your members may have.

Ms BUTLER — I do not work for the Insurance Council; I should make that clear now. I work for Suncorp. I have been brought as the industry representative, so I cannot speak on behalf of every business, but it is interesting that you raise the issue, because the affordability of insurance has been raised quite recently. There is a code review going on at the moment. There is a general insurance code of practice, and that is coming through part of this process. Plus with the Victorian bushfire commission there are also discussions going on regarding insurance or lack of insurance in certain areas of the state, and a lot of that is principally around affordability.

In terms of people living in housing commission flats, we would not discriminate on the fact that they live there. We would not even actually know it was a commission flat, to be honest with you. We do not ask those questions. We only ask for an address, so we do not have a database that has that sort of information.

The AAMI business actually offers what we call ‘renters insurance’, which is specifically designed to help that market access low-cost insurance. We developed it with the Brotherhood of St Laurence about four years ago, and we are now looking at trying to develop an equivalent comprehensive insurance and also building insurance to try to help with this issue of affordability and try to fill some of the gaps that do exist. But we would not actually know where people lived in the sense of what kind of building it was, or it would not be asked.

Mrs PEULICH — Unless there was a history. If there was a higher propensity to crime or burglaries or something like that.

Ms BUTLER — It is not done on that level. It is done on a postcode level. We do not have the systems or the sophistication to do that. That is one of the reasons why the insurance industry has really struggled with flood insurance, because we just do not know enough about it. The GIO-Suncorp companies have introduced flood insurance recently, and we can go down to a street level but we cannot go down to a house level.

The CHAIR — A few years ago it became very difficult to get insurance, particularly for public liability, for a whole host of community activities, such as horseriding. A lot of community groups were finding it very difficult, and the state government intervened in that situation to try to protect them and provide public liability cover for a whole lot of community activities.

I am just going back to the issue of statistical actuarial data. Was that withdrawal, I suppose, from the insurance industry based around risk and data, or was it just a period of things getting tough and a withdrawal of certain product?

Mr ANNING — There are several factors at play here, and primarily it would reflect risk, but it also reflects the state of financial markets. At the moment, given the global financial crisis, there is a global shortage of capital, so you are finding that some classes of insurance that are riskier are becoming more expensive, not only because of the function of the risk, but the insurers as such are less willing to put money into that area of insurance.

Ms BUTLER — It is also costing the insurers more and more to reinsure, so that is the other side of the equation. I am sure you are aware by now that insurance premiums in general will be going up this year because the reinsurers have said they have had enough. They have had about three or four really bad years with Australia in general, and they are saying, ‘We are not going to cross-subsidise you any more. We are actually going to start charging you a lot more than you have been charged’. So that is going to have an effect on pricing at the moment. If there is an increased fire services levy, which I understand — —

Mrs PEULICH — Increased what, sorry?

Ms BUTLER — If the fire services levy increases, then that is going to affect premiums as well. I gather they are looking at a 30 per cent increase. That has got to get carried back to the consumer, because that is how it works.

The CHAIR — I take it that the insurance industry then reinsures with wholesalers in the insurance industry.

Ms BUTLER — Yes; overseas mainly. Yes, they do.

Mrs PEULICH — So the risk obviously is based on your data. Will that also apply to people who live in bushfire-prone areas, say, in Victoria?

Ms BUTLER — We have not done that to date. I am sure you are aware that there were some issues with underinsurance moving forward, and we are now under a lot more pressure from the reinsurers. The AAMI business actually offers something called the complete replacement cover, which means there is unrestricted liability on building insurance. That relates to any business that has miscalculated the cost of rebuild by quite a significant amount. The issue mainly was that when people had water tanks in those areas, they had big concrete water tanks that cost \$50 000 or \$60 000, and when they had a shed, it was an enormous shed often built years and years ago, whereas now when you have to rebuild a shed you have to have concrete floors and it has to be made properly. It is not how it was. You know, as time has gone on building standards have improved. So that has caused a few problems within the portfolio and with the reinsurers.

Mrs PEULICH — So how is that being sorted out?

Ms BUTLER — At this point we are looking at changing the way we underwrite. So we will be asking more questions for regional postcodes about what exactly it is you have on your property, because we did not foresee a town like Kinglake being destroyed by fire almost in its entirety. That will change.

I am not sure about the other insurers. I cannot imagine the RACV would pull out of the market, but it has stayed in it— —

Mrs PEULICH — So will there be a fair degree of cross-subsidy of those affected from, obviously, a broader pool of insurance funds?

Ms BUTLER — Well, that is how it works now. Insurance is a pool, and people do cross-subsidise each other.

Mrs PEULICH — But if you have underestimated it, then that is obviously going to be quite significant.

Ms BUTLER — Yes.

Mr LANGUILLER — I have actually anecdotally received a report from tenants in public housing to the effect that they had insurance refused. Their assumption, because they could not ascertain it as a matter of fact, was that they had insurance refused on the basis that they lived in a high-rise. I could not ascertain one way or the other. But my question to you is: if you do refuse insurance arrangements to a person, why could you not explain why and say so?

Ms BUTLER — Well, we do.

Mr ANNING — Yes. Sorry, there are a couple of things there at the minute. I am not saying it did not happen, but it does surprise me, because — —

Mr LANGUILLER — Nor do I.

Mr ANNING — Legally under the Insurance Contracts Act if someone is declined insurance and has asked for the reasons, the insurer is obliged to provide reasons in writing. Also, Insurance Council of Australia members — and our members represent 90 per cent of the general insurance premiums written in Australia — have an obligation under the general insurance code of conduct to always explain reasons why insurance is denied.

Mr LANGUILLER — Do you mean on the phone when a person rings up and you say, ‘No. Look, I’m sorry, but we are declining’, you are saying that they should be explaining that on the phone, or should the person stick that in writing?

Ms BUTLER — There is an obligation on the insurer to provide it in writing to that individual if they are asked for it.

Mr ANNING — If they ask. But under the code they should explain anyway; there is that obligation.

Ms BUTLER — The PDSs, which is actually what they now call insurance policies, also outline the key factors that go into making up premiums. They explain the relationship that the insurer has with age, the type of vehicle or the type of home et cetera as well. There is also further information required under the Corporations Act.

Mr BROOKS — As you would be aware, section 43 allows an insurer to discriminate in a blanket fashion — subsection (a) refers to a number of other acts — essentially if the discrimination is based on either statistical or actuarial data, or secondly, if there is no such data, on other data that it is reasonable to rely on. Failing that, it goes on to say:

and is reasonable having regard to that data and any other relevant factors ...

Essentially I would imagine an interpretation of that is that someone can be refused insurance for just about any reason. So it is a very wide exception and it is completely open to the insurance industry to refuse insurance to people. I was just wondering, outside of actuarial or statistical data, precisely what sort of data or other factors would there be to cause the insurance industry or an insurer to refuse insurance to someone? What other sorts of information are out there that insurers would use? Then could you answer whether you think it is reasonable that such a blanket exemption exists for the insurance industry?

Mr ANNING — I think Annabelle covered off in response to the first question in saying that primarily it would be actuarial data, but there may be other factors such as that the insurer does not do business in a particular state.

Mr LANGUILLER — I am sorry; I could not hear you.

Mr ANNING — Predominantly discrimination would be based on actuarial data, but there may be other reasons why the insurer decides to discriminate. But the act is qualified. It does not provide the insurer with the ability to discriminate on any basis which no-one can question; it is qualified by providing that it has to be reasonable to do so. So those provisions would be open to some challenge to them if it seemed the insurer had chosen a particularly frivolous or specious reason for discriminating against someone.

The CHAIR — All right. John and Annabelle, thanks a lot. That was really useful and very helpful.

Ms BUTLER — It was a pleasure.

Witnesses withdrew.