INSURANCE COUNCIL OF AUSTRALIA

Mr John Hawkins
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Senate Economics Legislation Committee
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28 August 2009

Dear Mr Hawkins

TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL 2009

The Insurance Council of Australia Limited[1] (Insurance Council) refers to its previous submission on this issue dated 4 August 2009, and appreciates the opportunity both to lodge a supplementary submission, and to appear before the Committee on Wednesday, 26 August, to discuss the unfair contract term provisions of the Trade Practices Amendment (Australian Consumer Law) Bill 2009 (the Bill).

In this supplementary submission the Insurance Council wishes to reiterate and expand upon the points we have previously made, that:

1. The Insurance Council acknowledges that, in regards to many sectors of the economy, there may be benefits for consumers as a result of a national consumer protection regime covering unfair contract terms. However, in relation to general insurance, nationally consumers have been well protected for some time by the Insurance Contracts Act 1984, supplemented by other laws such as those in the Corporations Act 2001 and ASIC Act 2001;
2. The evidence does not support the need for the application of the proposed unfair contracts terms legislation to general insurance. To do so would result in unwarranted layering of regulatory requirements on insurers and would lead to operating inefficiencies, the cost of which ultimately is passed on to the consumer;
3. The proposed unfair contract terms legislation rather then assisting insureds will create uncertainty in the application of insurance terms to claims, which will likely lead to further disputes resulting in inconvenience and delay for consumers in settlement, increasing costs and possibly premiums; and,

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[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. March 2009 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross premium revenue of $31.7 billion per annum and has total assets of $93.8 billion. The industry employs approx 60,000 people and on average pays out about $99.2 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).

4. The existing exemption under section 15 of the Insurance Contracts Act for insurance contracts from the operation of unfair contracts terms legislation should be retained.

Protection provided by the Insurance Contracts Act 1984

Australian retail consumers of general insurance already benefit from robust protection provided by the detailed provisions of the Insurance Contracts Act 1984 (the Act). When it was introduced into Parliament in December 1983, the Act's purpose was described as:

- to improve the flow of information between the insurer and insured so that the insured can make an informed choice as to the contract of insurance he enters into and is fully aware of the terms and limitations of the policy, and
- to provide a uniform and **fair** set of rules to govern the relationship between the insurer and insured.(*our emphasis*)[2]

The preamble to the Act describes it as:

> "*An Act to reform and modernise the law relating to certain contracts of insurance so that a **fair** balance is struck between the interests of insurers, insureds and other members of the public and so that the provisions included in such contracts, and practices of insurers in relation to such contracts, operate **fairly**, and for related purposes.*" [3] *(our emphasis)*

The Act has been in operation since 1 January 1986. It is incorrect, as has been argued in some submissions and the media, to assert that insurance is no different to other industries such as telecommunications and energy. Insurance is a rare but important example where, decades ago, Parliament had the forethought to establish a comprehensive set of rights and obligations specifically around the insurance contract.

Statistical data points to the effectiveness of the consumer protection currently provided to general insurance policyholders. In the Financial Ombudsman Service's (FOS) Annual Report for 2008, Table 11 Summary of Insurer's Annual Returns for personal lines shows that of 3,167,439 claims lodged with insurers, over 98% were paid. Only 17,973 (0.57%) involved a dispute, and of those, only 2,046 (0.065%) were referred to FOS. Similar percentages apply for 2007 and 2006. Considering the Ombudsman scheme is free for consumers to access and use (see below), these numbers show how effectively general insurers meet their responsibilities under the Act.

Amongst the many consumer protection provisions in the Act that protect against unfair terms are the following:

i) Sections 13 and 14

Two very important obligations are contained in sections 13 and 14 of the Act.

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[2] See Senate Hansard, 1 December 1983, pp3134-3138.

[3] The Insurance Contract Act applies to most insurance contracts apart from reinsurance, health insurance, and marine insurance, see section 9 of the Act for a complete list.

Section 13 provides:

> "*A contract of insurance is a contract based on the utmost good faith and there is implied in such a contract a provision requiring each party to it to act towards the other party, in respect of any matter arising under or in relation to it, with utmost good faith*."

Although there is no statutory definition of the requirement to act in utmost good faith, it has been held by the Courts that it means to act with scrupulous fairness and honesty and the courts have broadly interpreted this concept. The High Court in CGU v AMP (2007) HCA 36 recently discussed utmost good faith in detail.[4]

Gleeson CJ and Crennan J noted at paragraph 15 of the judgment that the concept of good faith is not limited to dishonesty. Further their Honours stated

> "*In particular we accept that utmost good faith may require an insurer to act with due regard to the legitimate interests of an insured, as well as to its own interests. The classic example of an insured's obligation of utmost good faith is a requirement of full disclosure to an insurer, that is to say, a requirement to pay regard to the legitimate interests of the insurer. Conversely, an insurer's statutory obligation to act with utmost good faith may require an insurer to act, consistently with commercial standards of decency and fairness, with due regard to the interests of the insured. Such an obligation may well affect the conduct of an insurer in making a timely response to a claim for indemnity*."

Kirby J noted at paragraph 127:

> "*The language of s13* [of the Insurance Contracts Act 1984] *including the statement of the general principle as a legal obligation separate from the implication of a provision into the contract, supports AMP's submission that s13 of the Act had the effect of introducing a larger and reciprocal obligation between the insurer and the insured in place of what had, for all practical purposes, previously been a one-way street. Such a view of s13 would fit comfortably with other protections for consumers, introduced into the Act, based on the report of the Australian Law Reform Commission"*

His Honour further states at paragraph 176 to 178:

> ""*The principle is that the parties to insurance contracts in Australia, <u>unlike most other contracts known to the law</u>* [our emphasis], *owe each other, in equal reciprocity, an affirmative duty of utmost good faith. This is so now by s13 of the Act. In the context of that section, emphasis must be placed on the word "utmost". The exhibition of good faith alone is not sufficient. It must be good faith in its utmost quality.*
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> *The resulting duty is one that pervades the dealings of the parties to an insurance contract with each other. In consequence of the Act, and of the reform that it introduced in s13, the duty of good faith as between insurer and insured now takes on a true quality of mutuality. It governs the conduct of insurers whereas, previously, as a practical matter, the duty of good faith was*

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[4] See also:

- Australian Associated Motor Insurers Ltd –v- Ellis (1990);:
- Sheldon v Sun Alliance Ltd (1989);
- Barbaro v NZI Insurance Australia Ltd (1994); and
- Maksimovic v Royal & Sun Alliance Life Assurance Australia Ltd (2003).

confined to a duty cast upon insureds because the remedies for proof of the absence of good faith were usually of no real use to the insured.

The duty is more important than a term implied in the insurance contract, giving rise to remedies for breach, although, by the express provision of s13, it is certainly that. The duty imposes obligations of a stringent kind in respect of the conduct of insurer and insured with each other, wherever that conduct has legal consequences."

Callinan and Heydon JJ note at paragraph 257:

"At the outset we should say that we agree with the Chief Justice and Crennan J that a lack of utmost good faith is not to be equated with dishonesty only. The analogy may not be taken too far, but the sort of conduct that might constitute an absence of utmost good faith may have elements in common with an absence of clean hands according to equitable doctrine which requires that a plaintiff seeking relief not himself be guilty of tainted relevant conduct."

Section 14(1) provides:

"*If reliance by a party to a contract of insurance on a provision of the contract of insurance would be to fail to act with the utmost good faith, the party may not rely on the provision.*"

Section 14 renders any unfair clause void. The effect is the same as under the unfair contracts legislation. See the following cases:

- Barwon Region Water Authority v CIC Insurance Ltd (1997);
- Banks v NRMA Insurance Ltd (1988); and
- ACN 007 838 584 v Zurich Australia Ltd (1997).

ii) Section 21, 21A, 22 and 28- non disclosure.

These sections place significant limits on when an insurer can rely on non disclosure by an insured to reduce or refuse a claim. For example, for eligible policies of insurance (being motor, home, sickness & accident, consumer credit and travel) an insurer when cover is first offered is required by law to ask specific questions rather than just relying on a general duty of disclosure.

iii) Sections 23, 24 26, 27 and 28- misrepresentation

These sections of the Act place significant limits on when an insurer can rely on misrepresentation to refuse to pay a claim. For example, section 26 provides that where a statement that was made by a person in connection with a proposed contract of insurance was in fact untrue but was made on the basis of a belief that the person held, being a belief that a reasonable person in the circumstances would have held, the statement shall not be taken to be a misrepresentation.

Section 27 provides that a person shall not be taken to have made a misrepresentation by reason only that the person failed to answer a question included in a proposal form or gave an obviously incomplete or irrelevant answer to such a question.

iv) Sections 35 and 37

Section 35 requires insurers in relation to prescribed contracts[5] to clearly inform customers up front as to how their contract terms differ from standard contract terms which are outlined in the Regulations to the Act.

Section 37 requires insurers in relation to non prescribed contracts to clearly inform the insured up front as to unusual terms in their policies.

If section 35 or section 37 are not complied with then the insurer will not be able to rely on those terms (except in the case of section 35 where the insured or a reasonable person in the circumstances could have been expected to have known of the term).

v) Section 39 and 62

Section 39 says an insurer cannot refuse to pay a claim in whole or part by reason of non payment of an instalment of the premium unless the instalment has remained unpaid for a period of at least 14 days and before the contract was entered into the insurer informed the insured in writing of the effect of the provision.

Section 62 says an insurer cannot cancel a instalment contract of insurance unless at least one instalment of the premium has remained unpaid at the time the contract is sought to be cancelled for a period of at least one month and before the contract was entered into the insurer clearly informed the insured of the effect of the provision.

vi) Section 46

Section 46, in relation to prescribed contracts, restricts the ability of insurers to rely on certain terms in their policy where there was a defect or imperfection in property and the insured was not aware or the defect or imperfection and a reasonable person in the circumstances could not have expected to have been aware of it.

vii) Section 52

Section 52 prevents an insurer from contracting out of the Act.

viii) Section 53

Section 53 makes void a term of an insurance contract that seeks to authorise or permit the insurer to vary, to the prejudice of the insured, the contract (unless the contract is exempt from the section by the Regulations to the Act).

ix) Section 54

Section 54 limits the ability of the insurer to rely on terms of the policy in relation to acts or omissions of the insured. There are two arms to the section. If the act or omission could not be reasonably regarded as being capable of causing or contributing to the loss (or even if it could but the insured proves none of the loss was actually caused by act or omission), the insurer cannot rely on a clause in the policy to refuse the claim on the basis of that act or omission unless it can prove actual prejudice.

Thus for example, if the insurer was seeking to rely on an alcohol exclusion to refuse a motor vehicle damage claim, it could only generally do so if it could be shown the act of driving under the influence of alcohol could be reasonably regarded as being capable of causing or contributing to the loss. Further even if the insurer can prove this, if the insured can prove none of the loss was actually caused by the act of driving under the influence then the insurer must generally pay the claim.

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[5] Contracts prescribed in the regulations to the Act are for the following classes of insurance: motor vehicle, homebuilding, home contents, sickness and accident, consumer credit and travel

Section 15 of the Insurance Contracts Act

Section 15 of the Insurance Contracts Act excludes insurance contracts from the operation of a Commonwealth, State or Territory Act that provides relief in the form of judicial review of unfair contracts or the making of a misrepresentation except for relief in the form of compensatory damages. As explained below, this exemption leaves untouched a number of avenues of consumer redress.

In its report which laid the foundation for the Act, the Australian Law Reform Commission concluded that in light of the utmost good faith obligation, it was unnecessary for insurance contracts to be subject to a facility for judicial review of unfair contractual terms.[6] The Panel which reviewed the Act in 2004 concluded that the exclusion provided by section 15 was still valid.[7]

The Review Panel did go on to comment that:

> "If a nationally consistent model for review of consumer unfair contracts is developed, the balance of consideration may shift and the issue should be revisited."[8]

However, it also concluded that:

> "The Review Panel believes that sections 13 and 14 of the IC Act relating to the duty of utmost good faith, have potential to be utilised by insureds in connection with insurer conduct that might otherwise be dealt with under statutes dealing with unfair contract terms or unconscionable conduct. This capacity will be enhanced further if the Review Panel's proposal for treating a breach of the duty of utmost good faith in Chapter 1 is adopted."[9]

It should be noted that the recommendations which the Review Panel made in May 2004 remain to be translated into legislation. A draft Bill to update the Act was released for comment on 12 February 2007. After a very significant amount of work by all stakeholders, agreement was reached in late 2007 on the broad matters to be addressed in the amending legislation. The Insurance Council is currently hopeful that a Bill will be introduced into the current session of Parliament. Any consideration of section 15 should therefore take account of the proposed amendments to make the operation of the Act more effective, including the introduction of powers to enable ASIC to intervene in any proceeding under the Act.

Other protections available to consumers

Apart from the Act, there is also a variety of additional generic protections available to insurance policyholders. (See Appendix A for details.) In particular, under the Corporations Act 2001 there is an over arching obligation on general insurers as the holders of Australian Financial Services Licences to do all things necessary to ensure that financial services covered by their licence are provided efficiently, honestly and fairly[10].

Further, section 991A of the Corporations Act 2001 states "A financial services licensee must not, in or in relation to the provision of a financial service, engage in conduct that is, in all the circumstances, unconscionable." This section provides if a person suffers loss or damage because a financial services licensee contravenes this

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[6] Australian Law Reform Commission 1982, Insurance Contracts ALRC 20, para 51.
[7] Review of the Insurance Contract Act 1984, Final Report on second stage, page 53.
[8] Ibid.
[9] Review of the Insurance Contract Act 1984, Final Report on second stage, page 54.
[10] Section 912A(1).

provision they may recover the amount of the loss or damage against the licensee. This provision is not be impacted by the section 15 exemption.

It is also very important to note the ability of general insurance policyholders to access the Financial Ombudsman Service. This independent umpire provides free, fair and accessible dispute resolution for those unable to resolve a dispute directly with their general insurer. External dispute resolution processes can help to resolve disputes through negotiation or conciliation as an alternative to court proceedings and can make decisions which are binding on participating general insurers.

Impact of contravening the Act

Under the unfair contracts provisions in the Australian Consumer Law Bill, if a term in a consumer contract is unfair, the supplier (or party that is not the consumer) will not be able to rely on that term as it will be void. The remainder of the contract will still be valid to the extent it is capable of operating without the unfair term.

As has been shown above, the same remedy is already provided by the Act, with parties being unable to rely on unfair contracts terms. The Insurance Council submits that if a general insurer were to seek to rely on a clause in a policy and it was found to be void (for example under section 14) and the contract could not effectively operate without it, an insurer would clearly be prevented from seeking to rely on the rest of the contract. To the extent an insurer sought to do so, the consumer would potentially be entitled to a claim for damages for breach of the insurer's duty of utmost good faith under section 13. The insurer would also be in breach of its Corporations Act obligations (as explained above).

There have been statements in a recent media article[11] that the unfair contracts provisions of the Bill go beyond the Act in that it would force insurers to strike out clauses in all similar contracts not only the contract the subject of a dispute. This is incorrect and misleading as there is no such consequence unless very specific steps are taken such as the Minister prescribing by regulation the term as prohibited or ASIC obtaining a declaration from the Court that a term is unfair or prohibited.

Currently, under the Act, ASIC has no right to bring an action on behalf of the consumer as it does under the Bill, although it can seek to appear as an interested party. However, as explained above, this right is amongst the amendments proposed to be made to the Act in light of the Review Panel's recommendations.

In summary, **taking action under the unfair contract terms provisions of the Bill would in many cases see consumers worse off than if they had taken action under the Insurance Contracts Act.** For example, specific remedies unavailable in the Bill apply under the Act to the termination of a contract. Some terms cited in the Bill as being potentially unfair actually operate under the Act to curtail the rights and remedies insurers would otherwise have under the contract.[12] These include:

- avoiding a contract for fraud (section 31);
- minimum claim amounts in relation to certain types of insurance (section 35);
- the requirement that pre-contractual written notice be provided of unusual terms (section 37);
- rendering void provisions in interim contracts of insurance that make the application to, or the acceptance of replacement cover by the insurer a condition precedent to the interim cover (section 38);

[11] Sydney Morning Herald, Money Supplement, 12 August 2009, page 11.

[12] The Insurance Council recognises that operation of the unfair contract terms provisions will not apply to terms required or expressly permitted by a law of the Commonwealth or a State or Territory.

- excluding or limiting liability due to another insurance contract (section 45);
- relying on exclusions regarding pre-existing defects, imperfections and pre-existing sickness or disability (sections 46 and 47); and
- termination of some renewable insurance contracts (section 58).

Whether terms are unfair or not

Some submissions lodged with the Senate Economics Committee point to individual cases where it is alleged unfair terms prevented claims from being paid. However caution needs to be exercised in taking into account individual cases as a justification for generally applying change for the following reasons:

a) The full facts and circumstances of such claims need to be properly examined before a conclusion can be drawn that the term relied on was unfair.

b) There is a clear difference between terms that may be unfair as distinct from terms that may be otherwise fair but allegedly applied unfairly

For example, in its submission of 30 July 2009, the Consumer Action Law Centre cites two examples of disputes arising over travel insurance claims where claims had been denied because of a policy condition that required the insured to take all reasonable precautions to safeguard their luggage and personal effects. The cover would not operate if the luggage and personal effects were left unsupervised in a public place.

The Insurance Council submits that such a condition is not unfair or unreasonable. The terms of an insurance contract represent a fine balance between the risks that an insurer is willing to assume and the price that a consumer is willing to pay. It is impossible to imagine that an insurer would provide cover through a policy undertaking to indemnify those not taking reasonable precautions or leaving their luggage or personal effects unsupervised in a public place.

The Insurance Council does not make comment on the specific conclusions reached by the FOS Panel in these cases but submits that the crucial elements for adjudication would be "reasonable precautions" and "unsupervised".

Similarly, in the Insurance Law Service's example involving the uninsured motorist extension, it is not unfair that the insurer requires that they accept that the insured would be legally entitled to recover more than 50% of the cost of repairs to their car from the uninsured driver. It is not open to the insurer, as stated in the Insurance Law Service submission, simply to refuse to accept for no good reason that the insured has the required legal entitlement.[13] Such a refusal would be contrary to section 14 of the Act that a party to an insurance contract cannot rely on provisions except in the utmost good faith.

Section 15 of the Insurance Contracts Act does not need to be amended

In light of the matters raised in this submission the Insurance Council submits that there is no need to alter the limited exemption in section 15 of the Act to allow the unfair contract term provisions of the Bill to apply to insurance contracts.

Apart from being unnecessary, adding another layer of requirements will lead to confusion for the insured and the insurer because it will be unclear how the two tests - the duty of utmost good faith and fairness - apply in relation to each other.

[13] The insurer involved has already explained to the Committee the circumstances behind this claim, which were not fully disclosed in the Insurance Law Service's submission.

The Committee will appreciate that evaluating the application of the unfairness test will be especially problematic given the subjective nature of judgements about the balance of rights and obligations. Any exclusion could be seen as impacting significantly on the consumer's rights. The issue is then whether the term is reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term. This is another subjective judgement where an insurer may emphasise prudent risk management while a consumer may focus on their own economic well-being.

The use of two tests may lead to increased costs as all contracts will have to be reviewed. It is likely that these costs will be passed onto the consumer via premiums, without adding any value to the consumer. General insurers will also need to address the complication that, while the Australian Consumer Law will apply to consumer contracts, the Act applies to insurance contracts for business as well.

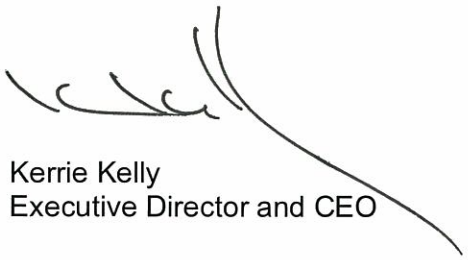
It is a major tenet of good regulatory practice that, before regulation is adopted, a problem is identified and consideration is given to whether new government action is needed to correct the problem.[14] The Insurance Council strongly submits that a problem of unfairness has not been demonstrated to exist with general insurance contract terms.

If the Committee comes to the conclusion that the Bill's provisions do offer better protection to insurance policyholders, the Insurance Council urges the Committee to recommend that a separate and thorough review be undertaken on the interaction between the Australian Consumer Law and the Act. It is likely that further significant amendments, apart from alterations to section 15, would also be necessary to remove all duplication and inconsistency.

Without such detailed analysis, it would risk serious confusion to simply add the repeal or amendment of section 15 to the reform package to update the Act which is expected to be considered shortly by the Commonwealth Parliament.

Please do not hesitate to contact Mr John Anning, Insurance Council's General Manager, Policy–Regulation Directorate on (02) 9253 5121 or janning@insurancecouncil.com.au if you require any further information.

Yours sincerely



Kerrie Kelly
Executive Director and CEO

[14] Australian Government, Best Practice Regulation Handbook, August 2007, page 52.

ADDITIONAL PROTECTION FOR INSURANCE POLICYHOLDERS

The Corporations Act 2001

The Corporations Act also contains provisions that protect directly or indirectly against unfair contract terms.

i) Cooling off

There is a 14 day cooling-off period for risk insurance products acquired by retail clients.[15] This means the customer can always cancel in this period and receive a fair refund of premium.

ii) Product Disclosure requirements

The Act prescribes minimum content requirements for Product Disclosure Statements (PDS). For general insurance, PDSs usually comprise part of the contract of insurance between the insurer and insured. They must be provided to the customer either at the time of sale or, in some circumstances, within 5 business days of the sale and be written in a clear, concise and effective manner.[16] For general insurance, the PDS must include:

- contain information about significant characteristics or feature of the product or of the rights' terms and conditions and obligations attaching to the product;
- dollar disclosure of significant benefits, and the costs of the product;
- the terms and conditions of the policy itself (with the meaning of the Insurance Contracts Act and in particular section 35 and 37 Insurance Contracts Act notice information);
- information about the dispute resolution process available to the customer; and
- information about the cooling off regime.

There is also a general obligation to include other information in a PDS that might influence a decision of a consumer whether or not to acquire the product.[17]

A customer may recover the amount of any loss or damage suffered because a PDS was defective[18]. ASIC also has specific powers in relation to issuing a stop order on a defective PDS[19].

In addition there is an over arching obligation on insurers as the holder of a Australian Financial Services Licence to do all things necessary to ensure that financial services covered by their licence are provided efficiently, honestly and fairly[20] and to maintain compensation arrangements for retail clients[21].

Further, section 991A of the Corporations Act 2001 states "A financial services licensee must not, in or in relation to the provision of a financial service, engage in conduct that is, in all the circumstances, unconscionable." This section provides if a person suffers loss or damage because a financial services licensee contravenes this provision they may recover the amount of the loss or damage against the licensee.

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[15] Corporations Act section 1019A(1)(a)(i)
[16] Corporations Act sections 715A and 1013C.
[17] Sections 1013D and 1013E, Regulation 7.9.15D, 7.9.15E and 7.9.15F.
[18] Sections 1022A and 1022B.
[19] Section 1020E.
[20] Section 912A(1).
[21] Section 912B.

The unconscionable conduct remedies under the Corporations Act and ASIC Act (see below) are presumed to be unaffected by section 15 of the Insurance Contracts Act 1984 which does not impact actions for compensatory damages.

ASIC Act 2001

In terms of wrongful conduct as distinct from unfair terms, there are also the following provisions in the ASIC Act:

- unconscionability (ss 12CA, 12CB);
- misleading or deceptive conduct or representations (ss 12DA and 12DB); and
- remedies (Part 2 Div 2G).

Financial Services Ombudsman (FOS)

There is a requirement under the Corporations Act 2001 for a general insurer to be a member of an external dispute resolution scheme. General insurers that are members of the FOS are bound by its terms of reference. That body deals with disputes between insurers and their insureds and the body is entitled to have regard to what is fair and reasonable in all the circumstances when determining disputes.[22]

General Insurance Code of Practice (the Code)[23]

The Code which has been adopted by members of the Insurance Council has the objectives:

a) to promote better, more informed relations between insurers and their customers;
b) to improve customer confidence in the general insurance industry;
c) to provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
d) to commit insurers and the professionals they rely upon to higher standards of customer service.

Amongst the obligations that Insurance Council members assume by adopting the Code, it is worth noting Section 2.4 that applies to the selling of an insurer's products by its Employees and Authorised Representatives:

> "Its Employees and Authorised Representatives will conduct their services in an honest, efficient, fair and transparent manner."

[22] General Insurance Terms of Reference, Clause 11.15. A similar provision is likely to be contained in the uniform FOS terms of reference currently being developed.
[23] http://www.codeofpractice.com.au