Attention: Mr Joseph Waugh  
Department of Justice, Law Reform and  
Sentencing Council Secretariat- Strategy and Policy  
GPO Box 31  
SYDNEY NSW 2001  

By Email: joseph.waugh@justice.nsw.gov.au

5 October 2016

Dear Mr Waugh,


We thank you for the opportunity to review the draft Bill to implement the Law Reform Commission’s proposal for reform of Section 6 of the Law Reform (Miscellaneous Provisions) Act, 1946 (NSW).

The ALA remains of the view that the most appropriate remedy is to repeal and replace Section 6 of the 1946 Act with a plain language provision, similar to Section 601AG of the Corporations Act, which is in terms:

“A person may recover from the insurer of a company that is deregistered an amount that was payable to the company under the insurance contract if:

a) the company had a liability to the person; and

b) the insurance contract covered that liability immediately before deregistration.”

In the ALA’s previous submissions, we also suggested that it would be necessary to amend the provision so that deregistration is not a criteria and so that the remedy covers natural persons as well as insured corporations.

In these circumstances, the ALA supports clause 7 of the proposed Bill.

The ALA acknowledges the practical implications of the Insurance Contracts Act and accordingly also supports clause 8. The ALA further supports the proposition that should leave be granted pursuant to clause 7, the insurer would be entitled to carry on proceedings in the same manner in which an insured person may have carried on proceedings. We therefore support clauses 9, 10, 11 and 12.
The ALA commends the drafting in respect of clauses 13 and 14 in that the practical effect is:

a) an insurer may discharge its liability by making a payment to the Claimant only; and

b) that an insurer is not entitled to reduce any payment made by the insurer to the insured person unless the insured person, who has received a payment from an insurer, has passed on that payment to the Claimant in respect of the insured event.

Finally, in respect of clause 15, the ALA believes that specific reference should be made to common law actions, the Civil Liability Act 2002 (NSW) and the Motor Accidents Compensation Act, 1999 (NSW) to avoid any ambiguous interpretation as to it’s application to those Acts and bodies of law in New South Wales.

We thank the Law Reform Commission for this further opportunity to provide our responses in relation to the recommendations released in the report.

The ALA remains committed to assisting the Law Reform Commission in this inquiry. Should any further assistance be required, please do not hesitate to contact the General Manager, Mr Richard Trim on (02) 9258 7700 or by email at richard@lawyersalliance.com.au.

Yours sincerely

Roshana May
NSW Branch President
Australian Lawyers Alliance