



General Manager
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600
By Email: futureofadvice@treasury.gov.au

19 February 2014

Dear Sir/Madam

EXPOSURE DRAFT – FUTURE OF FINANCIAL ADVICE AMENDMENTS

The Insurance Council of Australia¹ (Insurance Council) welcomes the opportunity to provide comment on the draft legislation and draft regulations to amend the Future of Financial Advice (FOFA) regime. The Insurance Council would like to express its support for the proposed amendments that relate directly to the sale of general insurance products.

Scaled Advice

The Insurance Council has had long standing concerns, expressed in our submissions to Treasury during the development of the original FOFA legislation, that there was insufficient clarity that express agreements to limit the scope of advice could not be disregarded by the regulator with the benefit of hindsight. This did not give general insurers the certainty required to incorporate scaled advice into their business models.

We therefore support the government's policy goal of reassuring licensees that clients and advisers can agree on the scope of the advice to be provided. However, we understand from discussions with stakeholders that there are concerns that the proposed clarification may not apply to the best interests duty in all situations. In order to achieve this, the Insurance Council requests that Treasury consider the need for the proposed 961B(4A) to refer to both subsections 961B(1) and (2) as not preventing the client agreeing with the provider the subject matter of the advice sought.

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. September 2013 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$40.4 billion per annum and has total assets of \$112.6 billion. The industry employs approximately 60,000 people and on average pays out about \$92.5 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).

Best Interests Obligation

Almost all general insurance benefits from 961B(4) which requires advisers advising on general insurance products to comply with only the first three steps in order to satisfy the best interests duty safe harbour. However, Consumer Credit Insurance (CCI), because it sometimes includes life insurance features, is currently subject to all seven steps in 961B(2)

The Insurance Council agrees with the statement in the Explanatory Memorandum (page 7) that the 'catch-all' provision in paragraph 961B(2)(g) "creates significant legal uncertainty and renders the safe harbour unworkable for providers because of its open ended nature". The Insurance Council therefore strongly supports the deletion of 961B(2)(g).

Furthermore, the ICA also supports the proposed clarifications in 961b(3) and (4) that:

- an agent or employee of an ADI is not required to satisfy the steps in 961B(2)(d) to (f) in relation to personal advice when the subject matter sought by the client relates to a consumer credit insurance product (the exemption in relation to general insurance products already being clear); and
- the short form of the best interests duty applicable to general insurance products is spelled out in the Corporations Act itself rather than in the subsidiary regulation.

If you have any questions or comments in relation to our submission, please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on tel: (02) 9253 5121 or email: janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
Executive Director & CEO