

Senate Economics Committees, SG.64
PO Box 6100
Parliament House
Canberra ACT 2600
Australia
Email: economics.sen@aph.gov.au

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Dear Sir/Madam

CORPORATIONS AMENDMENT (FUTURE OF FINANCIAL ADVICE) BILL 2011

**CORPORATIONS AMENDMENT (FURTHER FUTURE OF FINANCIAL ADVICE
MEASURES) BILL 2011**

The Insurance Council of Australia¹ (Insurance Council) welcomes the opportunity to provide this submission to the inquiry into the Corporations Amendment (Future of Financial Advice) Bill 2011 (the FOFA Bill) and the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 (the Further FOFA Bill). The Insurance Council has no issues that it wishes to raise in relation to the first Bill but will focus its comments on the Further FOFA Bill.

Improving the quality of and access to financial advice will benefit both insurance policyholders and insurers and improve understanding of general insurance products throughout the Australian community. The Insurance Council and its members therefore strongly support the policy goals of the FOFA reforms. The current requirements of the Corporations Act 2001 regarding financial services advice and uncertainty in relation to its application to general insurance have encouraged a focus on strict legislative compliance rather than maximising beneficial customer interactions. The Future of Financial Advice reforms present an opportunity for the Commonwealth Government to correct this imbalance.

The Insurance Council considers that the Further FOFA Bill takes a balanced approach to the regulation of advice on general insurance products through differential application of the Best Interests Duty (BID) and an exemption from the ban on conflicted remuneration. This approach recognises that the problems experienced with advice on investment products, at

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. June 2011 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$34.3 billion per annum and has total assets of \$114.9 billion. The industry employs approx 60,000 people and on average pays out about \$95 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).

which the FOFA initiatives are aimed, have not been experienced in relation to general insurance products.

When evaluating the impact of the Further FOFA Bill provisions on the way that general insurance is sold and the consequences for consumers, it is necessary to take account of the fact that most retail general insurance is sold to the consumer by the insurer whose product it is, either directly or through tied intermediaries. The insurer or their representative only sells its own products or those of related brands. This situation is well understood and if the consumer wants advice on the comparative suitability of a range of insurance products, they use the services of an insurance broker.

It should also be remembered that general insurance is commonly held and consumers well understand the nature of the product. Consumers enjoy the protection of a strong regulatory regime for general insurance. For retail customers, as well as the *Corporations Act 2001* (Cth) (the Corporations Act) and the provisions in the *Insurance Contracts Act 1984* (Cth), consumers also receive protection from the *ASIC Act 2001* (Cth), the General Insurance Code of Practice and can access alternative dispute resolution through the Financial Ombudsman Service.

The current advice requirements under the Corporations Act 2001

Under the Corporations Act, a financial services licensee may provide personal advice, general advice or factual information to a customer. Section 945A of the Corporations Act currently outlines a requirement to have a reasonable basis for personal advice. However, the general insurance industry is generally unwilling to provide personal advice and often even general advice on its products as there is uncertainty in relation to the boundary between personal advice and general advice and the means by which personal advice can be scaled.

It is challenging for a general insurer to give advice on the appropriateness of a general insurance product without operating a fully developed personal advice business model. This is heavily influenced by the call centre environment in which the most commonly purchased general insurance products are generally sold to retail customers. It would be prohibitively expensive to train and script call centres for such discussions.

Comparable issues arise in relation to indirect distribution of general insurance products through tied intermediaries (such as authorised representatives), where the industry experience has been that most general insurance underwriters do not authorise their intermediaries to provide personal advice due to the burdens created by training, risk and monitoring obligations that exist under the current regime. The lack of general or personal advice can hinder the customer's ability to make decisions on the most appropriate insurance policy for their needs.

When first announced, the Insurance Council welcomed the FOFA project as an opportunity to improve the regulatory regime applying to general insurance. It was hoped that the ability to "scale advice" would be put beyond doubt (i.e. the scale of the advice provided and the regulatory requirements met could be moved up or down in line with the scope of the advice requested by the consumer). Encouraging insurers to provide more advice on their products to the benefit of consumers has been the goal which has guided the Insurance Council in its participation in the consultation process used to develop the FOFA bills. By repealing section 945A of the Corporations Act and replacing it with a sector specific application of the

BID provision, the Further FOFA Bill has the potential to produce better outcomes for both consumers and industry.

The Best Interests Duty and the differentiated treatment proposed for general insurance

The Insurance Council understands the environment in which the FOFA reforms were conceived, in particular the customer detriment that was occasioned by inappropriate advice regarding investment products. The Insurance Council and its members consider that the sale and distribution of general insurance products does not create equivalent risks, and the case has not been made for applying the full range of prescriptive provisions flowing from the proposed BID obligation.

General insurers are interested in providing more advice to enable customers to make informed decisions which meet their needs and objectives. Furthermore, this is consistent with the objectives of the General Insurance Code of Practice (binding on Insurance Council members) which includes promoting better, more informed relations between insurers and their customers and improving customer confidence in the general insurance industry.

We welcome the Government's decision to limit the application of the BID to general insurance to paragraphs (a), (b) and (c) of section 961B subsection 2 of the Further FOFA Bill. We submit that these arrangements for basic banking products and general insurance products are appropriate and support the statements made in the Explanatory Memorandum that general insurance products are more widely understood by customers, leading to a lower risk of customer detriment. Insurance Council members have sought to encourage the greater availability of advice but not through a lessening of the obligations currently imposed by section 945A. It is our view that the provisions of the best interests' duty, as it applies to basic banking products and general insurance (i.e. 961B(2)(a), (b) and (c)), largely and appropriately reflect the current requirements under section 945A of the Corporations Act.

As noted above, currently there is uncertainty in relation to the boundary between personal advice and general advice and the means by which personal advice can be scaled. We therefore welcome the explicit acknowledgement that the process in paragraph 961B(2)(b)(i) has been designed to accommodate the provision of scaled advice which focuses on a specific issue.

The full BID obligations (ie. the proposed provisions of 961B(2)(d)-(g) of the Bill) are irrelevant or unworkable in a general insurance context. The Insurance Council therefore strongly supports the inclusion of subsection 961B(4), which limits the steps required to be taken to satisfy the BID in relation to general insurance products.

Similarly, it would be impossible for general insurers to provide advice when selling their products if 961J required them to give priority to the client's interests. Insurers can provide advice on their own products but they cannot be expected to advise on the products of a competitor. The Insurance Council therefore endorses the inclusion of 961J(3).

The addition of the prescriptive best interests' duty requirements in (d) to (g) of subsection 961B(2) and the 961J requirement to give priority to the client's interests will cause insurers to rethink business models and cost bases, ultimately reducing the likelihood of consumers receiving scaled personal advice on general insurance in the future.

As highlighted above, the FOFA reforms present an opportunity for the Government to facilitate the availability of personal advice in general insurance industry. We submit that the BID, as it is currently drafted and relates to general insurance products, will deliver the best outcome for both insurers and consumers.

Carve-outs from Conflicted Remuneration: Definition of General Insurance

We note that the ban on conflicted remuneration (in both monetary and non-monetary forms) does not apply to general insurance² and that the Bill is not intended to prohibit the payment of monetary commissions in the general insurance industry. The Insurance Council is strongly supportive of this approach and welcomes the acknowledgement that a one size fits all approach to financial services regulation is not suitable.

If you require any further information, please contact Mr Anning on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely

Robert Whelan
Executive Director & CEO

² Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 Explanatory Memorandum; p6