



Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
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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) greatly appreciates the opportunity to provide a supplementary 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) being undertaken by the Joint Committee on Corporations and Financial Services. This submission addresses issues about the proposed treatment of general insurance raised in the Joint Consumer Submission to the Committee's inquiry.

As explained in our initial submission of 21 December 2011 to the Committee, 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 which the FOFA initiatives are primarily 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.

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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 2011 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$35.1 billion per annum and has total assets of \$113.9 billion. The industry employs approx 60,000 people and on average pays out about \$104 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).

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 current *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 difficult 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 best interests duty 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 FOFA reforms were conceived in an environment marked by political and public concern at customer losses caused by inappropriate investment product advice. Given insurance products do not involve investment risk, the general insurance industry is fundamentally different to the investment and superannuation industries. This has been recognised in the insurance specific amendments made since the introduction of Chapter 7 of the Corporations Act.

The Insurance Council and its members consider that the sale and distribution of general insurance products does not create equivalent risks to those associated with more complex financial services, and the case has not be made for applying the full range of prescriptive provisions flowing from the proposed best interest duty obligation.

The Insurance Council and its members support in principle the introduction of a best interest's duty in relation to personal advice. 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.

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. The Insurance Council accepts the view put by Commonwealth Treasury in evidence given before this Committee 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 reflect the current requirements under section 945A of the Corporations Act.

However, we submit that 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 best interests duty 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 retention 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 would 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 in our initial submission, the FOFA reforms present an opportunity for the Government to facilitate the availability of personal advice in general insurance industry. We submit that the best interests duty, as it is currently drafted and relates to general insurance products, will deliver the best outcome for both insurers and consumers.

Conflicted Remuneration

Under the FOFA reforms, the ban on conflicted remuneration (in both monetary and non-monetary forms) does not apply to general insurance and that the Bill does not prohibit the payment of monetary commissions in the general insurance industry. We reiterate our support for this approach.

The Joint Consumer submission expressed concern with the decision to permit conflicted remuneration in relation to one general insurance product: consumer credit insurance (CCI). It cites the findings in ASIC Report 256 *Consumer credit insurance: A review of sales practices by authorised deposit-taking institutions* as evidence that this product is often mis-sold to consumers.

CCI offers a cost effective means to consumers of managing the risk that, due to particular events, they may not have sufficient money to meet their credit commitments. The appropriateness of the product depends, as with all insurance, on the personal circumstances of the consumer.

It is not appropriate to single out CCI for differential treatment on the basis of the ASIC report. The ASIC review of CCI was triggered by concerns with the process of selling CCI and Report 256 contains detailed recommendations that address the Regulator's concerns about CCI sales practices. The recommendations relate to dispute resolution practices, claims and product disclosure content such as formal sales scripts and the provision of separate quotes for CCI when sold with a credit product. The Insurance Council supported all of ASIC's recommendations made in the Report and even before the Report was released last year, its members had worked with the ADIs which handle their CCI products to ensure that, where ever necessary, changes were made which implemented the recommendations.

The ASIC review did not identify CCI remuneration practices as contributing to current sales practices and the report makes no recommendations in this regard. There is no basis within this report upon which to single out CCI for differential treatment in relation to conflicted remuneration.

Furthermore, the proposal by the Joint Consumer Submission to subject CCI to a ban on conflicted remuneration would create inconsistencies with other insurance products of comparable complexity, particularly since CCI (along with almost all general insurance products) is considered a Tier 2 product for training purposes under ASIC's Regulatory Guide 146.

We therefore submit that CCI should receive the same treatment under the FOFA reforms as that given to all other general insurance products.

If you require any further information, please contact Mr Anning

Yours sincerely

Robert Whelan
Executive Director & CEO