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Dear Mr Hope

REPORT 391: ASIC'S DEREGULATORY INITIATIVES

The Insurance Council of Australia (Insurance Council), the representative body of the general insurance industry in Australia, welcomes the opportunity to provide this submission on the Australian Securities and Investments Commission's (ASIC) Report 391, *ASIC's deregulatory initiatives* (the Report). The Insurance Council supports the Government's deregulation agenda, which not only has the potential to foster a more efficient environment for conducting business, but also enhance the effectiveness of regulation. From our perspective, the benefits of deregulation are not limited to the cutting back of unnecessary red-tape, but extend to more effective ways of meeting regulatory objectives.

The Insurance Council welcomes the ongoing and proposed deregulatory initiatives outlined in the Report. Our submission makes suggestions on ASIC's regulatory approach; outlines specific regulatory efficiency proposals for ASIC's consideration; and underline the industry's commitment to continue to work with ASIC and the Government to increase the effectiveness of the disclosure regime.

ASIC's Regulatory Approach

ASIC's Rule Making Role

The Insurance Council notes the recent release in April 2014 of the Government's statement of expectations about the role and responsibilities of ASIC, its relationship with the Government, issues of transparency and accountability and operational matters. The statement of expectations is an essential component of best practice corporate governance in relation to statutory authorities established by the Uhrig review¹, and we are encouraged that the review's recommendation for such statements to be updated from time to time has been taken up. We encourage ASIC to publish a statement of intent² in response to confirm the key regulatory priorities that ASIC will set in accordance with the items addressed in the Government's statement.

¹ Review of the Corporate Governance of Statutory Authorities and Office Holders, June 2003

² ASIC responded to the Government's statement of expectations (dated 20 February 2007) with a statement of intent (dated 27 June 2007)

The Government's statement of expectations reconfirms the appropriateness of current arrangements which provides ASIC with statutory independence to administer regulatory frameworks that implement government policies and priorities relating to financial and corporate regulation. The Insurance Council believes that it is important for the Government, through the Department of Treasury, to continue to lead work on policy development affecting financial services business. The importance of a whole-of-government approach to policy development that considers regulation within the broader lens of macro-economic objectives was confirmed in the OECD's recommendations on regulatory policy and governance³.

While we acknowledge that the line between policy development and rule making is not always clear-cut, we suggest that regulatory changes that have the potential to substantially impact on the business of regulated entities, including through the imposition of a significant regulatory burden, should be considered by Treasury through a rigorous whole-of-government balancing of the costs and benefits of regulation. We are encouraged by the Government's indication, in its statement of expectations, that it is overhauling the process for creating, implementing and reviewing new regulation to ensure that the costs of new regulations are offset. The Insurance Council is committed to assisting the Government and ASIC in enhancing the regulatory impact assessment process through a better assessment of costs to industry.

A Principles Based Regulatory Approach

The Insurance Council also supports the Government's stated preference for principles based regulation that identifies the desired outcomes rather than prescribing how to achieve them. While we acknowledge that the detailed nature of the *Corporations Act 2001 Cth* (the Corporations Act) can make it challenging for ASIC to always adhere to a principles based regulatory framework, an overly prescriptive approach has at times led to an unproductive focus by both industry and ASIC on compliance with rules rather than a cooperative dialogue to improve consumer outcomes. We suggest that a principles based approach could assist in developing innovative and better targeted solutions for identified problems, for example, in more effective consumer disclosure and education.

ASIC Reviews and Information Requests

The industry has supported ASIC in numerous reviews into insurance-specific regulatory matters over the past few years. We understand that these reviews are an essential aspect of ASIC's conduct and disclosure, and consumer protection mandate, and the Insurance Council will continue to support ASIC in its work program. Our experience is that well-scoped reviews that seek targeted information from the industry result in more timely access to information for ASIC and also reduce the associated compliance burden for industry participants. We suggest that ASIC should work more proactively with insurers to better focus its information requests on the matters under examination. In this regard, we note the current review on the sale of home building insurance took up significant resources for a number of members.

³ OECD, 2012, *Recommendations of the Council on Regulatory Policy and Governance*.

Specific Regulatory Efficiency Proposals

Bundled Products and Wholesale Clients

Currently, subsection 761G(5) of the Corporations Act provides that certain general insurance products, or services related to the products, will be taken to be provided to a retail client if the person is an individual or the insurance product is to be used in connection with a small business. This creates an issue for 'bundled' insurance products comprising different types of insurance cover that contain both retail and wholesale elements.

Consequently, at the moment, many business packaged insurance products are issued with a Product Disclosure Statement (PDS) because a small portion of customers seek cover for business assets which technically fall within one of the prescribed products in subsection 761G(5)(b), such as home building or motor. In addition to the costs associated with producing and issuing PDSs, the retail treatment of these products may also require the provision of Financial Services Guides (FSGs) in compliance with the personal or general advice requirements as well as compliance with the training requirements under Regulatory Guide 146.

We submit that in circumstances where a bundled insurance product is provided to a person predominantly as a wholesale client, with only a minor retail component, then the entire product should be considered to have been provided to a person as a wholesale client. We note that Treasury had previously considered a regulation to modify section 761G by stating that a provider may treat a client as a 'wholesale client' in respect of the provision of a bundled product if the product predominantly provides insurance cover to a person as a wholesale client⁴.

The Insurance Council submits that a regulation, consistent with that proposed, would diminish the regulatory burden for industry without any detrimental impact to consumer protection. We ask ASIC to consider supporting relevant changes to section 761G of the Act, as previously considered and proposed.

PDS Issues in Time Critical Situations

Currently, section 992A of the Corporations Act sets out the hawking prohibitions that apply to general insurance products. These provisions state that financial products must not be offered for issue or sale in the course of, or because of, an unsolicited meeting or telephone call. However, subsection 992A(3)(a)-(e) provides an exemption for unsolicited telephone calls if a number of requirements are met. One of these requirements is that the consumer is given a PDS before becoming bound to acquire the financial product (subsection 992A(3)(c)).

The effect of this requirement is that it makes unsolicited sales of general insurance products by telephone impossible, practically speaking, since it is not possible to deliver a PDS during a telephone call and thus not possible to complete a sale during the course of an unsolicited call. This makes unsolicited calls commercially unfeasible for insurers because they cannot generate sales. It also makes them unpalatable for consumers who generally expect to be

⁴ The Treasury, March 2007, *Draft Corporations Amendment Regulations and Commentary*, Corporate and Financial Services Regulation Review.

able to obtain immediate coverage and instead must be told that the insurer is prohibited from binding cover until a PDS can be delivered.

The law recognises that there are situations where the issue of a PDS prior to the sale of a product is not practical or efficient from a consumer perspective. Section 1012G provides that where a client expressly instructs a product issuer that they require the product to be issued immediately, or by a specified time, and it is not reasonably practicable while complying with these instructions to give the client the PDS as otherwise required, the PDS may be provided later. The Insurance Council submits that the policy basis of the section 1012G exemption is equally relevant in situations where clients request immediate issuance of a product during the course of an unsolicited call. Section 1012G requires the customer to expressly instruct that the product be issued immediately and this together with the existing statutory cooling-off period required under section 1019B of the Act ensures that there are safeguards for consumers should a client reverse their decision to acquire a product purchased through an unsolicited call.

ASIC had previously recognised the importance of general insurers being able to market their products to retail clients in an efficient and cost-effective way through relief provided on the PDS timing requirements for quotes issued through telephone calls (ASIC CO 11/842 *PDS requirements where a quote for a general insurance product is given*). However, the relief provided in this instrument is effective for solicited calls only. The Insurance Council requests that ASIC extend the scope of CO 11/842 to include unsolicited quotes and to provide appropriate relief from the hawking provisions to enable more effective interactions between general insurers and their clients.

Group Purchasing Bodies

General insurers may seek to issue a general insurance product to a contracting insured under which cover is expressed to be extended to a person that is not a party to the contract pursuant to section 48 of the *Insurance Contracts Act 1984 Cth* (Group Policy).

ASIC's view appears to be that the contracting insured purchasing insurance on behalf of others will be a "Group Purchasing Body" (GPB) and:

- have to comply with section 601ED of the Corporations Act in relation to the operation of a risk management scheme where money is charged and received by the GPB for a beneficiary's access to the benefit of the policy cover;
- be providing a custodial or depositary service by holding a risk management product on trust for or on behalf of a relevant beneficiary; and
- have to comply with part 7.7 or 7.8 of the Corporations Act where the GPB is an Australian Financial Services Licensee or an authorised representative of one.

ASIC has recognised the need for a proportionate regulatory approach to the treatment of GPBs through the provision of relief in CO 08/1 *Group purchasing bodies*. ASIC Regulatory Guide 195 acknowledged that GPBs are more akin to buyers than sellers of insurance products, and it would be inappropriate for their activities to be caught in the licensing, disclosure or managed investment scheme regimes.

However, the Insurance Council submits that the relief provided in CO 08/1 does not provide GPBs with the certainty or flexibility required. For example, in some cases a GPB may seek to provide cover to customers, under a Group Policy, which can reduce the insurer's administration requirements and could result in cheaper cover to customers. The offering of

such cover would usually be an incidental part of the GPB's business but, due to the limitations of the Class Order relief, the insurer cannot pay commission (the relief does not apply when the GPB makes a profit) and therefore cannot remunerate the GPB for the additional processes it has to undertake to sell the interest in the policy.

An assessment of whether relief, as set out in the class order, is available to a GPB is a complex exercise. GPBs are generally not financial services providers who are familiar with the Corporations Act requirements, and we are concerned that the complexity of the regime may provide a disincentive for a range of GPBs, such as community groups, to arrange or take out cost-effective insurance cover for the benefit of their customers or constituents.

We are aware of previous discussions between the National Insurance Brokers Association (NIBA), Treasury and ASIC on the need for a simpler solution to be implemented. We suggest a roundtable discussion between the Insurance Council, NIBA, Treasury and ASIC to initiate a dialogue on this matter.

Improving Disclosure

We note the initiatives that ASIC is considering removing barriers that inhibit innovation in disclosure as outlined in the Report. The Insurance Council acknowledges that there are shortcomings in the current disclosure regime and would like to flag our keen interest in participating in any longer-term project to apply innovative solutions to increase the effectiveness of disclosure.

The general insurance industry has supported the work undertaken by the Government in implementing a Key Facts Sheet (KFS) initiative to supplement disclosure for insurance products. However, we anticipate that the current Financial System Inquiry will engender greater discussion on a more comprehensive review and reform of disclosure. The Insurance Council is committed to proactively participate in this discussion.

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 (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely



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