

29 August 2014

Mr John Price  
Commissioner  
ASIC  
GPO Box 9827  
MELBOURNE VIC 3001

Dear Mr Price

### REPORT 391 - ASIC'S DEREGULATORY INITIATIVES

The Law Society of Western Australia responds to your request for suggestions to make compliance easier as part of ASIC's deregulatory initiative.

#### Electronic incorporation by reference to PDSs

The Society suggests a change to the law to facilitate electronic incorporation by reference in PDSs to enable updated information to be made available electronically without triggering the need for an updated PDS to be issued.

The Committee suggests that improvements in the law in this area could facilitate the provision of updated information by means of electronic incorporation by reference without compromising consumer interests. It would be of benefit to issuers of PDSs in the general insurance industry in particular to enable them flexibility to change their fee and pricing structures and respond quickly to changing business conditions and competitive pressures without the need to issue updated disclosure documents in hard copy.

Corporations Regulation 7.9.15DA currently provides that the issuer of a PDS is not required to include in the PDS a statement or information "mentioned in Part 7.9 of the Act" if certain procedures for incorporation by reference are followed.

The effect of Regulation 7.9.15DA is that if the relevant statement or information is in writing and publicly available in a document other than a PDS (including electronic sources such as the internet), the issuer can decide not to include the statement or information in the PDS. The Committee notes that some general insurance issuers are already including premium, fee and excess information in separate electronic documents incorporated by reference into their PDSs.

Certain minimum content disclosure requirements apply to the PDS where the incorporation by reference procedure is utilised. These are set out at sub-regulation 7.9.15DA(4).

They include a requirement that the PDS identify by a 'unique identifier' the document containing the incorporated information.

Uncertainty surrounds the practical ramifications of this requirement and many regard this requirement as detracting from the utility of the Regulation, since if properly complied with, the inclusion in the PDS of a 'unique identifier' means that the PDS will need to be updated to reflect any version changes in the document containing the incorporated information. Any advantages to business intended to be gained from the flexibility of the incorporation by reference regime are thereby lost.

The Society understands that there is a consumer protection need for an issuer to be able to identify with certainty what disclosures have been made to a consumer at any given time. However, the Society suggests this certainty could be achieved by alternative means (such as a modification to the PDS 'in-use' regime to provide for separate notification of updated material incorporated by reference). Cost savings in eliminating the need for replacement or supplementary PDSs to be issued by virtue of the "unique identifier" requirement could be achieved without compromising regulatory benefit to consumers.

#### **Linking business names with trademark and service mark registrations**

It is suggested that by linking similar registered names contained in the different database dealing with business names with those dealing with trademark and service mark registrations, such action could assist timely access to relevant and in some cases potentially overlapping name registrations. This would help business and its advisors avoid failing to identify commonalities or constraints posed by existing registrations. This would in turn help reduce inefficiencies imposed by the inherent duplications involved in inspecting separate databases.

Yours sincerely



Konrad de Kerloy  
**President**