

5 February 2020

Mr Andrew Fawcett
Senior Executive Leader, Strategic Policy
Australian Securities and Investments Commission
120 Collins Street
MELBOURNE VIC 3000

Dear Mr Fawcett

REGULATOR PERFORMANCE FRAMEWORK: ASIC SELF ASSESSMENT 2018-19

The Insurance Council of Australia¹ (Insurance Council) appreciates the opportunity to provide comments on the report of December 2019 setting out the Australian Securities and Investments Commission (ASIC)'s self-assessment of its performance against the six key performance indicators (KPI) for Australian Government regulators under the Regulator Performance Framework over the 2018-19 reporting period.

We broadly agree with ASIC's self-assessment.

In particular, it should be recognised that ASIC has undertaken significant organisational change following the 2018-19 Financial Services Royal Commission (FSRC). As noted in ASIC's self-assessment, this has included: significantly increasing and accelerating court based enforcement matters as part of ASIC's new enforcement strategy; using the full extent of ASIC's new penalties and powers through the operational discipline of "Why not litigate?"; embedding and expanding new supervisory approaches particularly through its Close and Continuous Monitoring program; a corporate governance review aimed at improving governance practices at the board level; and working towards new obligations and responsibilities in response to the Royal Commission including an expanded role as the primary conduct regulator in superannuation.

In relation to KPI 1 (Regulators do not unnecessarily impede the efficient operation of regulated entities) and KPI 4 (Compliance and monitoring approaches are streamlined and coordinated), we recognise that there are heightened community expectations following the FSRC for regulators to monitor developments in the financial services sector. The Insurance Council is keen to assist ASIC in this regard as we have most recently done in relation to the

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent about 95 per cent 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 2019 Australian Prudential Regulation Authority statistics show that the general insurance industry generates gross written premium of \$49.5 billion per annum and has total assets of \$128.3 billion. The industry employs about 60,000 people and on average pays out about \$155.1 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).

2019-20 Bushfires. We would appreciate ASIC continuing to take a pragmatic approach that allows industry to provide useful data but in a way that does not place unnecessary burdens on insurers in collecting and collating data (including through preliminary discussions on ways to draw on existing data). Subsequent feedback from ASIC about how the requested data was used would also be helpful.

In relation to KPI 2 (Communication with regulated entities) and KPI 5 (Regulators are open and transparent in their dealings with regulated entities), the Insurance Council appreciates the quarterly meetings with senior ASIC staff provide a valued forum for the Insurance Council and its members to discuss our respective priorities. We also appreciate the consultative approach taken to developing legislative instruments and Regulatory Guides including the draft Regulatory Guide of December 2019 on Design and Distribution Obligations.

In relation to KPI 6 (Regulators actively contribute to continuous improvement of regulatory frameworks), we recognise ASIC's contributions to post-FSRC law reform. It has the necessary expertise and experience to bring a pragmatic approach that facilitates implementation of the FSRC recommendations in a way which minimises unnecessary compliance burdens.

In relation to the laws which the Government has foreshadowed it will enact, we understand that ASIC intends to provide streamlined regulatory guidance through information sheets. We appreciate the competing demands on ASIC particularly given the need to provide guidance in time for legislation start dates. However, we note that a number of the new laws are likely to be highly complex and often drafted using a principles-based approach which needs to be fleshed out to provide clarity to the industry on compliance. In that context we would appreciate ASIC providing more detailed guidance through Regulatory Guides even if this requires several iterations.

Looking ahead, the Insurance Council and its members are keen for opportunities to openly exchange ideas with ASIC on how to address emerging regulatory issues. Both ASIC and the industry will continue to navigate through new and complex regulatory questions as the Government implements the FSRC recommendations in relation to general insurance over the next year. Our members are keen to be able to engage earlier with ASIC on such questions, even if this is on an informal and non-binding basis as part of an open exchange of ideas, to ensure that they are on the right track towards best practice compliance.

If you have any questions or comments in relation to our submission please contact Mr John Anning, the Insurance Council's Head of Policy, Regulation Directorate, on telephone: [REDACTED].

Yours sincerely



Robert Whelan
Executive Director & CEO