

23 July 2019

Mr. Ashley Brown
Senior Adviser, Strategic Policy
Australian Securities and Investments Commission
GRPO Box 9827
Brisbane QLD 4001
Sent by email to: product.regulation@asic.gov.au

Dear Mr Brown

ASIC CONSULTATION PAPER 313: PRODUCT INTERVENTION POWER

The Insurance Council of Australia¹ (Insurance Council) appreciates the opportunity to provide comments on *ASIC Consultation Paper 313: Product Intervention Power (Consultation Paper)*.

We continue to support the introduction of the product intervention power to enhance ASIC's regulatory toolkit. As noted in the Final Report of the Financial System Inquiry (*Financial System Inquiry*), the regulator should be able to be proactive in its supervision and enforcement, allowing for more timely and targeted intervention when there is a risk of significant consumer detriment.

In that light we make two proposals which we believe will help enhance the effectiveness of the product intervention power.

Confidential engagement ahead of public release

First, ASIC should engage confidentially with affected parties ahead of the public release of any proposed product intervention order, or a description of its content.

The Consultation Paper says that ASIC is taken to have complied with the requirement under the Corporations Act and the National Credit Act to consult affected persons if it makes the proposed product intervention order, or a description of its content, available on its website and invites the public to comment on the proposed order.

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. September 2013 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$40.4 billion per annum and has total assets of \$112.6 billion. The industry employs approximately 60,000 people and on average pays out about \$92.5 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).

Notwithstanding, there should also be meaningful confidential engagement with affected firms ahead of any public release of the proposed product intervention order or its contents. It will enhance the effectiveness and the fairness of the product intervention power – by allowing: material facts to be confirmed so that publications do not contain factual errors; and affected parties to clarify possible misunderstandings before such information goes public, potentially with large detrimental impact on their reputations.

Such an approach would be more consistent with the Financial System Inquiry which stated that, given the potential significant commercial impact of this power, the regulator should be held to a high level of accountability for its use. It recommended on that basis that ASIC should engage with potentially affected firms as well as consulting with other regulators including APRA before any use of the power.²

Commencement dates should reflect time needed to discontinue offerings

Second, commencement dates for a product intervention order should reflect the time needed to discontinue product offerings.

The Consultation Paper proposes to consider whether delayed commencement (and the length of any delay) is appropriate for a product intervention order on a case-by-case basis.

In determining the length of any delay, ASIC should consider time needed by the affected parties cease offering the given product. For example, there may be financial products offered online through digital channels. Complying with a product intervention order may require affected parties to extract such offerings from the digital channel, which could take time and may not be achieved immediately.

Contact

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 [REDACTED] or [REDACTED].

Yours sincerely



Robert Whelan
Executive Director and CEO

² Financial System Inquiry (2015), Final Report, page 211.