



Dr Kathleen Dermody  
Committee Secretary  
Senate Economics Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

30 April 2014

Dear Dr Dermody

### **Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014**

The Insurance Council of Australia<sup>1</sup> (Insurance Council) appreciates the opportunity to provide comments on the Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014 (FOFA Bill). The Insurance Council wishes to express its support for those parts of the FOFA Bill which relate to the sale of general insurance products.

In considering how best to achieve the objectives of promoting the provision of sound financial advice in the best interests of consumers, the Insurance Council position is determined by the characteristics of general insurance products. They are typically simple in nature, run for a set period of time, can generally be cancelled at any time and changed at renewal, have a cooling off period and do not involve any risk in terms of lost income or investments.

#### **Scaled Advice**

As outlined in submissions to Treasury during the development of the original FOFA legislation, the Insurance Council has had long standing concerns that there was insufficient clarity that express agreements to limit the scope of advice should not be disregarded by the regulator or dispute resolution bodies in order to promote, with the benefit of hindsight, better consumer outcomes. As a consequence, general insurers did not gain the certainty required to incorporate scaled advice into their business models. We therefore support the insertion of subsection 961B(4A) to reassure licensees that clients and advisers can agree on the scope of the advice to be provided.

---

<sup>1</sup> 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).



### **Best Interests Duty**

Almost all general insurance benefits from subsection 961B(4) which requires advisers advising on general insurance products to comply with only the first three steps in order to satisfy the best interests duty safe harbour. However, Consumer Credit Insurance (CCI), because it sometimes includes life insurance features, is currently subject to all steps in subsection 961B(2).

The Insurance Council considers that the 'catch-all' provision in paragraph 961B(2)(g) creates significant legal uncertainty and renders the safe harbour unworkable for financial service providers because of its open ended nature. As a result, we strongly support the deletion of paragraph 961B(2)(g).

Furthermore, the Insurance Council supports the clarification in subsection 961B(3) that an agent or employee of an ADI is not required to satisfy the steps in paragraphs 961B(2)(d) to (f) in relation to personal advice when the subject matter sought by the client relates to a CCI product (the exemption in relation to general insurance products already being clear).

We also support the clarification in subsection 961B(4) which spells the short form of the best interests duty applicable to general insurance products in the Corporations Act itself rather than in the subsidiary regulation.

### **Conflicted Remuneration**

The Insurance Council agrees that the existing basic banking exemption from the ban on conflicted remuneration should be expanded to include CCI products. The revised section 963D will provide consistency for simple Tier 2 products and aligns with the treatment of general insurance products in the FOFA legislation.

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

Yours sincerely

Robert Whelan  
Executive Director & CEO