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Via email: fleur.grey@asic.gov.au

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Dear Ms Grey

## **CONSULTATION PAPER 144: GIVING A PDS IN TELEPHONE SALES OF GENERAL INSURANCE PRODUCTS**

The Insurance Council of Australia Limited<sup>1</sup> (Insurance Council) refers to the recent release of Consultation Paper 144: Giving a PDS in Telephone Sales of General Insurance Products (CP144) as well as discussions with you on 1 December and 6 December 2010. We welcome the opportunity to provide feedback on the proposals contained in CP144.

CP144 poses a number of questions seeking feedback on how quotes are currently provided by general insurers during telephone calls. There are a range of different practices amongst our members with respect to how they provide quotes. Accordingly, we will leave this aspect to our members to provide detailed comments in their individual submissions. The Insurance Council in this submission will deal in broad terms with solicited calls: that is where a consumer contacts an insurer to obtain a quote. Member usage in relation to unsolicited calls varies so greatly that the Insurance Council takes no position on this aspect of CP 144, leaving it to individual members to take it up if they wish in their own submissions.

### **Solicited calls**

Following refinements made to the Financial Services Reform (FSR) regime as agreed between the industry, Treasury and ASIC in the early part of this decade, industry practice for providing Product Disclosure Statements (PDSs) in relation to telephone sales within the requirements of the Corporations Act has been settled. Consequently, the Insurance Council does not consider the form of relief proposed by CP144 desirable for solicited calls.

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<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. June 2010 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross premium revenue of \$33.2 billion per annum and has total assets of \$99.2 billion. The industry employs approx 60,000 people and on average pays out about \$95 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).

We do, however, consider that practical relief should be provided if judged necessary to allow continuation of existing practice that is consistent with consumer protection.

Our members advise that in most cases consumers generally shop around between several insurers to obtain a quote so that they can obtain the best possible price. That is, a consumer will ring up an insurer and obtain an indicative quote, and following that they can elect to proceed with a full quote and make an application, decline and/or continue to canvass alternative insurers.

In the scenario where the consumer declines, or is non-committal, and continues shopping around, they may at some future point in time contact the insurer of their choice to proceed with a full quote and then apply for the policy.

It is only at the stage where a consumer elects to proceed with a full quote (either in the first contact or subsequent contact) that an insurer will obtain the full contact details of the consumer and all of the information it requires to underwrite the policy. As indicated in our discussions with you, the existing National Privacy Principles (and yet to be enacted Australian Privacy Principles) provide that individuals must have the option of interacting anonymously with businesses.<sup>2</sup> Our members have put procedures in place to comply with these principles.

We are concerned that some statements in CP144 suggest that the mere provision of a quote, with or without an offer by the insurer<sup>3</sup>, will trigger a requirement to provide a PDS in cases where a consumer is non-committal about applying for a policy. This is at odds with the position where a PDS is not required (immediately) if a consumer elects to proceed with an application or declines to proceed with an application. We submit that the scenario where a consumer is non-committal and continues to 'shop around' without further contact with the insurer should not be treated differently to the scenario where a customer actively declines to make an application at that time.

Following are various scenarios in relation to solicited calls and our understanding of how the Act applies.

Where a quote only is provided [No PDS is required]

Where a quote only is provided without an offer to issue the product, a PDS is not required to be provided.

Our members consider that where an indicative quote is provided this does not amount to an 'offer to issue' that product as per s1010C(2)(a).

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<sup>2</sup> See National Privacy Principle 8 which states "Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with an organisation." See also Australian Privacy Principle 2 from the Exposure Draft of Australian Privacy Principles which provides that "Individuals must have the option of not identifying themselves, or of using a pseudonym, when dealing with an entity."

<sup>3</sup> Within the meaning of Section 1010C of the Corporations Act, i.e. a reference to offer includes a reference to inviting an application.

The provision of a quote is considered to be conveying the approximate price of the product, and is separate and distinct from the application process.

Other provisions in the Act, whilst not directly relevant here, demonstrate that it is not the intention of the Act to regulate the giving of mere quotes.<sup>4</sup>

Where a quote is provided, with an offer, and a customer subsequently elects to immediately purchase insurance [**PDS is required but can be sent within 5 days**]

When a consumer contacts an insurer, obtains an indicative quote, and subsequently elects to proceed to a full quote and then purchases cover immediately, an insurer is not required to provide a PDS immediately under s1012G of the Act (as modified by reg. 7.9.15H of the Corporations Regulations 2001). Instead, an insurer must provide the following specified oral information:

- the name and contact details of the insurer;
- information about the cooling off regime that applies in respect of the product;
- that the client should consider the information in the Product Disclosure Statement that will be provided to the client;
- any further information requested by the client in response to the insurer's question as to whether the client would like further information about the product.

The insurer must then give the PDS as soon as practicable after that time and no later than the end of the fifth business day after the day on which the financial product was issued or sold to the client.

However, we are concerned that paragraph 29 of CP144 could be taken to mean that where a quote is given it may constitute an invitation to apply and therefore the insurer cannot proceed to use the s1012G exemption. This would require the PDS to be provided to the customer before the insurer can bind cover. We do not believe that there is any legal basis for this view which would result in significant detriment to insurers and customers and would be inconsistent with the intent of the time critical exemption.

Where a quote is provided with an offer and a customer says they do not want product [**No PDS required**]

Where a consumer contacts an insurer, obtains a quote and an offer then subsequently decides not to proceed, an insurer is not required to provide a PDS.<sup>5</sup>

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<sup>4</sup> See s766(B)(6) which states:

“If:

- (a) in response to a request made by a person (the inquirer) to another person (the provider), the provider tells the inquirer the cost, or an estimate of the likely cost, of a financial product (for example, an insurance product); and
- (b) that cost or estimate is worked out, or said by the provider to be worked out, by reference to a valuation of an item (for example, a house or car to which an insurance policy would relate), being a valuation that the provider suggests or recommends to the inquirer;

The acts of telling the inquirer the cost, or estimated cost, and suggesting or recommending the valuation, do not, of themselves, constitute the making of a recommendation (or the provision of any other kind of financial product advice) relating to the financial product.”

<sup>5</sup> As per Regulation 7.9.07E of the Corporations Regulations 2001. This states:

For paragraph 1020G(1)(c) of the Act, section 1012D of the Act is modified by adding before subsection 1012D(1):

“(9J) In an issue or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement for a financial product if:

This also accords with the interpretation set out in CP144.

Where a quote is provided and a customer is non-committal [**No PDS required**]

It has long been understood (reflected in insurer practice in this area) that where a consumer has obtained a quote, with or without an offer, and they are non-committal, disclosure obligations are not triggered.

Our members understand that the policy behind the disclosure obligations in Chapter 7 was never intended to extend to the scenario where a consumer only wants an insurance quote for competitive purposes. See for example, the following statement from the Parliamentary Joint Statutory Committee on Corporations and Securities on *Report on the Financial Services Reform Bill 2001*:

6.32 The Committee concludes that the Bill causes unnecessary and costly problems for insurance providers in relation to quotes given by telephone. In particular, the Committee concludes that disclosure requirements provide no appreciable protection for the large numbers of telephone inquirers who only want a quote for competitive purposes. In any event, if the consumer accepts the quote then full disclosure documentation is provided. The Committee accepts evidence that the requirement will put pressure on call centres and rural branches and agencies, increasing the cost of each policy by 5-8 per cent. The Committee **recommends** that the Bill should exclude from disclosure requirements the provision of a quotation alone for a general insurance product.<sup>6</sup>

In addition, as pointed out above, it does not make sense that such a scenario would trigger the need for a PDS where:

- the requirement for it to be provided is delayed (s1012G) if a consumer elects to immediately proceed with an application; or
- is not required if the customer declines to proceed with an application.

Even if it were considered desirable, an insurer at this point would usually not have sufficient contact details for the consumer and so could not fulfil such an obligation. Also, to introduce such a requirement where a quote only is provided, would seem to be inconsistent with Section 1012D(9) which provides that a PDS is not required to be given to a client where the financial product is an interim contract of insurance.

Further, a consumer will most likely consider the receipt of several PDSs unwelcome.

Where a quote is provided by insurer and customer offers to buy product but insurer rejects that offer [**No PDS required**]

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- (a) the situation is an offer to issue or sell the financial product; and
  - (b) the client informs the regulated person, in the course of the contact during which the offer is made, that the client does not intend to acquire the financial product; and
  - (c) no issue or sale results from the offer.
- (9K) For paragraph (9J)(c), the client must inform the regulated person explicitly but may inform the regulated person orally or in any other way".  
[reg 7.9.07E insrt SR 282 of 2003 reg 3 and Sch 1 item 12, eff 13 Nov 2003]

<sup>6</sup> Australia, Parliamentary Joint Statutory Committee on Corporations and Securities, *Report on the Financial Services Reform Bill 2001*, August 2001, p92.

This scenario may occur if following a quote, the consumer subsequently provides further information which affects the insurer's decision to provide the cover.

In such a scenario it would not be logical to send a PDS detailing the policy if the insurer decides not to insure them.

We note however, that ASIC's view (as set out in CP144) is that in some of the above scenarios a PDS must be given to retail clients because a quote may be an invitation to apply for a particular general insurance product and therefore an offer to issue that product.

After careful consideration of CP144, we consider if that legal analysis is valid, that the industry would need to be provided with relief. However, not in the form proposed in CP 144 but rather designed to allow existing practice which already provides for consumer protection to continue. Our concerns with the proposed relief are outlined further below.

The difficulty with the position put forward by ASIC in CP144 is that it leads to unintended and undesirable consequences for both consumers and insurers. For example, if a consumer rings three different insurers to obtain a quote, there would be a requirement for three different PDSs to be provided before a consumer could be issued with one of those products. If, however, that consumer elects to contact a fourth insurer to obtain immediate cover they could use the time critical exception in 1012G and not have to receive a PDS immediately.

Clearly this is disadvantageous to a consumer as it leads to a situation where 'shopping around' for quotes is effectively being discouraged.

It should also be remembered that consumers benefit from a cooling off period which enables them to review the product and cancel if they are dissatisfied.

### **Relief proposed by ASIC**

Our members are especially concerned about the proposed relief requirements set out in Table 1 on page 14 of CP144. In particular, the relief and additional disclosure requirements/limitations appear to apply not only to unsolicited telephone calls, but also to solicited telephone calls where we do not believe relief is required. For example, section 1 of Table 1 states that:

"The general insurer or authorised representative orally communicates the following information to the retail client before the retail client is asked to provide information and details to enable the provision of an invitation in the form of a quote for the premium payable on a particular general insurance product:

- the name and contact details of the issuer of the general insurance product;
- in the case of an unsolicited telephone call, that the client will be asked to provide some detailed personal information for the purpose of preparing the quote, and the client can choose not to obtain a quote at the time of the telephone call and instead request that a PDS be given to them;
- *that by providing the information and details requested and receiving the quote, the client will not apply for or become bound by a legal obligation to acquire the general insurance product specified in the quote;*
- *that a PDS will be given to the client and the client should consider the information in the PDS before deciding whether to apply for the general insurance product referred to in the invitation; and*

- *unless the general insurer also offers an interim contract of insurance during the telephone call, that by providing the information and details requested and receiving the quote, the client will not apply for or be issued with an interim contract of insurance.*

The italicised requirements above are additional to the disclosures required under s 1012G and would create a significant compliance burden on insurers. In addition, the new requirements do not reflect existing industry practice, which members believe is efficient and consistent with the intention of the legislation.

Members are concerned that should such additional disclosure requirements be required for solicited quotations it will substantially increase the time it takes to provide a quote and will potentially drive up the cost of insurance. It may also lead to a lack of coverage for a consumer where they otherwise may have quickly compared quotes and obtained insurance protection. In our view, such a proposal would be to the significant detriment of consumers and does not offer consumers any additional benefit or protection given that they are already provided with a cooling-off period and the practice of obtaining multiple quotes from insurers is well understood and used by consumers. (For detailed analysis of Table 1, see Attachment A.)

Rather than the proposed relief in CP144, the Insurance Council considers that relief should be provided, if judged necessary, which would allow the well understood practice of 'shopping around' for quotes to continue.

We hope the above information will assist you in your deliberations on this issue. If you have any queries in relation to this submission please contact Mr John Anning, Insurance Council's General Manager Policy – Regulation at [janning@insurancecouncil.com.au](mailto:janning@insurancecouncil.com.au) .

Yours sincerely



Robert Whelan  
Executive Director & CEO

## ATTACHMENT A

As the customer is not bound in the circumstances the subject of the relief we believe the ASIC proposed disclosures in Table 1 unnecessarily complicate matters.

### **Point 1**

First bullet - Insurers and licensees are already required to provide their names to avoid misleading customers when dealing with them. Provision of contact details in solicited calls are unnecessary and in unsolicited calls will naturally be provided.

Second bullet - The need to tell someone that they will be asked for personal information in a quote situation is unwarranted as from the time the questions are asked this is obvious. The more words ASIC requires, the greater the length and cost of the call which customers ultimately bear. It will also lead to customer frustration with the increased length of the call.

Third bullet - Simply asking if the customer wants a "non binding" quote is sufficient. The rest will increase the call time and cost for no significant consumer benefit.

Fourth bullet - It is unclear why the consumer should be informed about the PDS at this point. It will only increase the call time and cost for no significant consumer benefit.

Fifth bullet - This is covered by asking if the customer wants a "non binding" quote. If interim cover is involved the customer will need to be told that this is what is proposed as is already required. This proposal would increase the call time and cost for no significant consumer benefit.

### **Point 2**

First bullet – There is no apparent reason to require a written non binding quote. It would increase the transaction cost for those insurers that do not wish to confirm indicative non binding quotes in writing not asked for by customers. There is no consumer loss or detriment if it is not provided in writing.

Second and third bullet - If interim cover is involved the customer will need to be told that this is what is proposed as is already required by current law. This proposal would increase the transaction costs. An insurer that seeks to allege interim cover has been issued without having clearly communicated this to the insured will not be able to enforce its rights in this regard. This is again overregulation in a process that should be kept as simple and cost effective and flexible as possible.