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Dear Ms Vroombout

## **FUTURE OF FINANCIAL ADVICE (FOFA)**

The Insurance Council of Australia<sup>1</sup> (Insurance Council) appreciates the opportunity to comment on the papers that were distributed for the FOFA Peak Consultation Group (PCG) meeting on 26 May 2011. We are grateful for the additional time given to provide input.

### **Best interests duty – client’s instructions/scope of advice**

The Insurance Council is concerned that the decision to make what is reasonable in the circumstances when judging an adviser’s compliance with the best interests duty commensurate and scalable to the client’s needs seems to be based on the adviser somehow obtaining a “helicopter” view of the client’s needs separate to the client’s instructions and the scope of the advice agreed between the adviser and the client.

This places an unreasonable burden on the adviser and could well undermine the potential for the FOFA reforms to encourage Insurance Council members to consider using scalability to provide limited personal financial services advice. The Insurance Council acknowledges that the draft formulation of the duty circulated to PCG members for the meeting on 26 May lists “client’s instructions and/or the scope of the advice” as the first element to be considered when assessing a client’s needs. However, this does not give Insurance Council members a high degree of confidence that detailed questioning of a client is not required before they give any level of personal advice.

Treasury would be well aware that any consideration of a client’s personal circumstances and objectives will trigger the Corporation Act’s personal advice obligations. Consequently, it is generally thought to be difficult for a general insurer to give simple advice on the appropriateness of a general insurance product without operating a fully developed personal advice business model. Regulation which ties assessment of a consumer’s needs to an

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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. December 2010 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$33.4 billion per annum and has total assets of \$101.7 billion. The industry employs approx 60,000 people and on average pays out about \$87 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).

overall, objective standard only partially influenced by the client's instructions will do little to alter this assessment.

***The Insurance Council recommends that the client's instructions and scope of the advice be given primacy in assessing the client's needs. If this is judged not to be appropriate because of other policy considerations, it will be even more imperative that ASIC's proposed guidance on how scalability works address the application of the best interests duty.***

#### **Best interests duty – interests of the providing entity**

It is proposed that a licensee needs to disclose to their representatives all interests of the licensee that are relevant to the provision of advice by the representative. This seems to make little sense where the representative is the employee of the providing entity. ***The Insurance Council therefore suggests it be clarified that this licensee obligation only applies where the representative providing advice is an external Authorised Representative.***

#### **Commissions**

Our reading of the Government's announcement on 28 April 2011 of its decisions on the key FOFA initiatives is that commissions are banned on the sales of all risk insurance (i.e. both life and general) within superannuation. However, subsequent to the announcement, we understand that in response to articles in the media, an explanation was given that commissions have ***not*** been banned on the sale of general insurance products ***to*** (our emphasis) superannuation funds.

***The Insurance Council would appreciate clarification of the exact extent to which the ban on commissions in relation to superannuation funds affects general insurance.*** A possible ban on commissions in relation to general insurance sold through superannuation funds had not been mooted during the FOFA consultations and the Insurance Council had no cause to consult members on its impact. It may be that the sole purpose test with which superannuation funds need to comply precludes the provision of general insurance through superannuation funds in any case. However, we would like to provide our members with certainty as to the Government's decision.

#### **Soft dollar**

There was some discussion at the PCG meeting on 26 May about the need to extend the ban on soft-dollar benefits to general insurance as well as life insurance outside superannuation. Treasury noted that the Government announced that the ban on soft dollar benefits applies to the same products as the ban on conflicted remuneration (principally commissions and volume based remuneration).

Treasury further explained in its message to PCG members of 27 May that extending the soft dollar ban to products not currently covered by the conflicted remuneration restrictions would raise complicated issues about which basket the payments fall under (for example, many soft dollar benefits could also be volume based benefits), and this approach would create further regulatory inconsistency. Treasury also raised the point that these types of payments that may be considered soft dollar are not only paid from third parties to individual advisers but also to licensees.

***However, the Insurance Council submits that the key argument for maintaining the Government's decision on this point is the lack of evidence of unmanaged conflicts of interest impacting adversely on general insurance consumers, whether due to commissions, volume based remuneration or soft dollar.***

If you require further information, please contact Mr John Anning, Insurance Council's General Manager Policy – Regulation Directorate at [janning@insurancecouncil.com.au](mailto:janning@insurancecouncil.com.au).

Yours sincerely



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