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Via email: policy.submission@asic.gov.au

10 November 2011

Dear Mr Leveritt

CP 167: ADVERTISING FINANCIAL PRODUCTS AND ADVICE SERVICES: GOOD PRACTICE GUIDANCE (CP 167 and draft Guidance)

The Insurance Council of Australia (Insurance Council)¹, the representative body of the general insurance industry in Australia, welcomes the opportunity to provide ASIC with a submission in relation to CP 167 and draft Guidance. We appreciate ASIC meeting with the Insurance Council and members on 11 October and the additional time offered to provide this submission. We note some of our members have since accepted ASIC's offer of a briefing for relevant staff on its proposed approach to advertising.

We support the broad principles of the draft Guidance which are intended to assist in preventing licensees from engaging in misleading or deceptive conduct in contravention of the Corporations and ASIC Acts. We have no issues to raise in relation to the general insurance examples provided, which are consistent with the letter that ASIC sent to the Insurance Council and members on 12 April 2011. However, as discussed at the meeting with members, there are a number of issues which we suggest need closer consideration.

Role of advertising in decision making

RG000.4 states: "The objective of our guidance is to help promoters and publishers present advertisements that are accurate, balanced and help consumers *make appropriate decisions*." (Our emphasis)

While the Insurance Council agrees advertising should present a balanced message, we submit advertising alone is not an appropriate mechanism for consumers to base a final purchase decision. We would prefer advertising to be regarded as an initial promotion for consumers to seek further detailed information about a relevant product, for example from a product disclosure statement (PDS). We suggest there is a consumer awareness of the limited nature of advertising and the usefulness of referring to other sources for more detailed information about an advertised product.

¹ The Insurance Council of Australia's 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).

The draft Guidance requires advertisements to be self contained and that consumers should not need to access a warning, disclaimer or qualification in another website (or other page of the website or document). The Insurance Council questions the practicality of condensing the advantages and disadvantages of a financial service into an advertisement. Successfully consolidating information into a limited space, such as an advertisement, is complex as illustrated by the work done to simplify superannuation PDSs and develop a one page key facts statement for house and home contents policies.² This is particularly the case with general insurance which by its very nature is often detailed in regards to what is covered and not covered by the policy.

As part of its work to improve the effectiveness of disclosure in general insurance, the Insurance Council in 2010 commissioned research on consumer information needs when buying insurance. In addition to advertising, the research found consumers canvass a variety of sources of information such as internet searches, family and friends 'word of mouth', previous experience of an insurer following a claim, comparison websites/surveys as well as the PDS. Television advertising and the internet were regarded as a good source of general information but consumers still relied on direct contact with an insurer (via the phone or in person) to answer more specific questions.

The Insurance Council therefore submits the draft Guidance should be reconsidered to position advertising as an initial promotion about a financial product and an invitation to seek more information, rather than as a final decision making tool. For example, ASIC could review RG 000.30 and 31 which refers to an assessment by the consumer of the merits of the financial product or service on the basis of the advertisement.

Where further information is sought by a consumer, we consider there should be flexibility in how it can be provided. In the case of an internet advertisement, for example, it would be useful to provide further information on a connecting web page.

Prefer principles based rather than prescriptive approach

There is a risk that the prescriptive elements of the draft Guidance have the potential to become outdated, discouraging the use of innovative technology, products, distribution and media channels as they develop. The Insurance Council suggests the Guidance should focus on principles-based guidance to address the evolving and changing nature of the insurance market

A broad range of advertising medium is captured by the draft Guidance and the usefulness of some is potentially severely limited. For instance, our members advise that a self-contained disclaimer in twitter or chatroom forums [RG 000.119] would be exceedingly difficult as conversations are held between groups of individuals rather than with the insurance advertiser. Similarly, the prescriptive approach adopted creates requirements that are outside of the licensee's control. For example, the proposal that internet advertisements should be printable [RG 000.120] is not currently required by legislation and is dependent on promoter/consumer computer systems. This proposal also inadvertently perpetuates the advertisement as a contractual document, rather than the PDS and is inconsistent with the treatment of television, radio or outdoor advertisements.

As discussed in our recent meeting, the draft Guidance promotes standards beyond current legal requirements for financial products and services to provide increased information to consumers. It is noted that as good corporate citizens, general insurers take compliance seriously and may

² This work has depended on rigorous selection of key matters and the use of techniques such as incorporation by reference and hyperlinks to deliver the necessary information.

implement the guidance with unintended consequences for consumers, in terms of additional costs in the product supply chain or the avoidance of certain advertising mediums, resulting in less information in the marketplace.

Specific issues

Some terminology could benefit from clarification:

- As noted above, we agree advertising should present a balanced message. However, we submit further consideration is required in the draft Guidance in relation to the terminology 'risks' [RG000.42]. A 'risk' for instance in the context of an insurance product might mean every exclusion and condition in the policy; whereas in the draft Guidance, the concept of 'risk' seems to be confined to risks in relation to investment based products. We consider the draft Guidance needs to better distinguish the context in which 'risk' is referred to avoid unintended consequences.
- 'Warnings, disclaimers and qualifications' must have 'sufficient prominence' [RG 000.48]: This may be difficult to achieve with large format outdoor advertising due to the size of key messaging and space restrictions.
- 'Consistency with disclosure documents' [RG 000.94-95]: We note at the 11 October ASIC confirmed our understanding an advertisement need not use exactly the same terminology as the relevant PDS. We also note that although PDSs are not permitted to refer to awards, advertising may promote awards.
- Internet search results: While recent case law confirms that "sponsored links" or other search engine marketing are advertisements, we would appreciate clarification in the draft Guidance that search engine 'results' are not relevant advertisements. As the host (such as Google, Yahoo or Bing) restricts the information which can be returned, there would be no space to include a disclaimer on search engines.
- Images: The draft Guidance states images should only be included where they are relevant to the product advertised [RG 000.100]. Our understanding is that not all images need be directly related to the product/service but they must not create a misleading impression which is contrary to the product or service being advertised.

If you have questions about any of the matters discussed in this submission, please contact Mr John Anning, Insurance Council's General Manager Policy – Regulation at email: janning@insurancecouncil.com.au or tel: 02 9253 5121.

Yours sincerely



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Executive Director & CEO