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Dear Ms Waller

CONSULTATION PAPER 164: ADDITIONAL GUIDANCE ON HOW TO SCALE ADVICE

The Insurance Council of Australia¹ (**Insurance Council**) welcomes the opportunity to provide this submission to the proposed guidance on how to scale advice in Consultation Paper 164. Given the time needed to discuss this issue and its interaction with the draft legislation on the Government's Future of Financial Advice initiatives, we appreciate the additional time allowed for us to make this submission.

Regulatory Guidance and the Future of Financial Advice (FOFA) Reforms

The Insurance Council acknowledges that guidance provided by ASIC plays an important role in enabling the general insurance industry to ensure compliance with legislative requirements.

In recent discussions with ASIC on the subject of scaled advice, Insurance Council members were asked what would be required in order for the industry to consider modifying their model and offering scaled personal advice. Currently, the general insurance industry is generally unwilling to provide personal advice on its products as there is uncertainty in relation to the boundary between personal advice and general advice and the means by which personal advice can be scaled. As a result of this uncertainty, the majority of general insurers operate a no advice or general advice only model, with the exception of some niche brands.

Whilst guidance on the distinction between general advice and personal advice would be of assistance now, the general insurance industry is unlikely to invest in the systems changes and training required to commence giving scaled personal advice whilst the outcome of the

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. March 2011 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$34.3 billion per annum and has total assets of \$110.8 billion. The industry employs approx 60,000 people and on average pays out about \$91 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).

FOFA reforms is unknown. We note ASIC has indicated it intends to release the new regulatory guidance on scaled advice in November 2011 and subsequently update it in 2012 if required as a result of the FOFA reforms whilst the exposure draft of the Corporations Amendment (Future of Financial Advice) Bill 2011 indicates Schedule 1 is intended to come into effect on 1 July 2012.

Although the Insurance Council acknowledges that discussion of the FOFA reforms is beyond the scope of Consultation Paper 164, we submit that ASIC should delay the release of guidance material on scaled advice until the final form of the FOFA reforms is known with certainty.

With regard to the proposed FOFA reforms, we reiterate that the addition of a prescriptive best interests' duty to the already restrictive Corporations Act 2001 requirements will cause insurers to rethink business models and cost bases, ultimately reducing the likelihood of consumers receiving scaled personal advice on general insurance in the future. As you are aware, the Insurance Council is taking up this issue directly with Treasury.

Provision of Advice in the General Insurance Industry

The general insurance industry is mostly unwilling to provide personal advice on its products as there is uncertainty in relation to the boundary between personal advice and general advice and the means by which personal advice can be scaled. The scalability of personal advice for general insurance has been an issue since the establishment of the Financial Services Reform regime in 2001. The industry remains uncertain of the application of scaled advice under the Corporations Act 2001. Furthermore, this uncertainty means that many insurers adopt a no advice model to avoid the risk that general advice may move into personal advice and trigger the additional compliance obligations. We recognise that ASIC has already provided generic guidance on scalability and advised that having knowledge of a consumer's personal circumstances does not necessarily make financial product advice personal.

It is 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. This is heavily influenced by the call centre environment in which the most retail insurance products are typically sold. A major part of the delivery to market cost in this area is call times. Consequently, minimising the call time helps the general insurer manage premium levels. The niche brands that do provide personal advice currently have built the extra cost into their pricing and systems.

As the definitions of personal advice and general advice take account of the consumer's perception of the advice being given, the core difference between the two models of distribution is often how information is presented by the adviser. In practice, this means that the focus of training for telephone consultants is on phrasing information so as to allow them to remain within the definition of the advice model they are operating under, rather than on delivering information that is of the most assistance to the customer's inquiry. The difficulty with managing this communication is a fundamental impediment to general insurers giving financial product advice.

Many broad risks are covered by retail general insurance policies and there may be exclusions attached to a number of them. It is not feasible in the cost effective distribution of general insurance to have extensive discussion on each of these risk exposures. In

particular, it would be prohibitively expensive to script call centres for such discussions and the level of training required as set out in RG146 to meet Tier 2 personal advice is one of the main administrative stumbling blocks due the time and cost involved. Ultimately, the lack of general or personal advice available can hinder the consumer's ability to make decisions on the most appropriate insurance policy for their needs.

Conscious of the change in practice in favour of giving limited personal advice encouraged in the superannuation industry by the advice examples provided in Regulatory Guide 200, the Insurance Council strongly supports the development of guidance material which would enable general insurers to provide information to consumers ranging from factual material to various levels of personal advice with confidence that the requirements of the Corporations Act 2001 are being met.

In developing regulatory guidance in relation to scaled advice, the Insurance Council recommends that ASIC provide a generous number of examples to clarify:

- the boundary between the provision of information and the provision of financial product advice;
- the boundary between general and personal financial product advice;
- the basis upon which personal advice can be scaled; and
- how the level of advice being provided can be explained clearly to consumers.

The Attachment to this submission contains a range of scenarios that the Insurance Council considers would provide a good basis for ASIC guidance specifically addressing general insurance issues. We would welcome the opportunity for Insurance Council members to work through these scenarios with ASIC officers.

The Limits of General Advice

When contacted by a customer or potential customer, insurers are often provided with information about the customer's personal circumstances, including their needs or financial limitations. In addition, customers will often seek the opinion of the insurer in relation to which product is most suitable for them. The examples provided in the Attachment aim to highlight some difficult situations commonly faced by insurers.

It would be helpful if the guidance being developed by ASIC would clearly demonstrated that both factual information and general advice can be tailored using the customer's personal circumstances without constituting personal advice.

Scaled Personal Advice

The findings outlined in ASIC Report 224 Access to financial advice in Australia, released in December 2010, indicate Australian consumers are increasingly interested in receiving scaled advice on a single issue or limited range of issues. It follows that guidance material issued by ASIC should seek to facilitate the provision of scaled advice by providing certainty to general insurers.

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Whilst the examples provided in CP164 are useful and the Insurance Council encourages ASIC to provide an even greater range of examples, industry would also benefit from the clear articulation of ways in which personal advice can be scaled. For example, CP164 already notes the requirement that personal advice must be suitable can be met whilst limiting inquiries to the agreed subject matter of the advice.

In relation to personal advice and scoping arrangements under s945A of the Corporations Act 2001, guidance material should clarify the following:

- that it is reasonable to hold personal information about a customer and to use that information to tailor factual information or general advice without triggering the personal advice provisions;
- how a limited scope of advice can be agreed with certainty; and
- that it is reasonable to limit the consideration and investigation of the subject matter to the products which the employee/agent is authorised to handle. We believe that few consumers would enter the office of an insurer or an insurer's agent or contact a call centre expecting advice canvassing the broad market.

If you require any further information, please contact the Insurance Council's General Manager Regulation Mr John Anning on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
Executive Director & CEO

General Insurance Scenario 1A

Individual M contacts an insurer's call centre and requests a quote for comprehensive car insurance. Noting that M's car is old and of low value, the call centre operator mentions the possibility of third party property damage and explains the difference between it and comprehensive cover. At M's request, the call centre operator provides a quote for the annual premiums for each product. The operator does not tell the customer that they have considered their objectives, financial situation or needs. M purchases the third party property policy.

Although the insurer has been provided with some information in relation to M's personal circumstances and using this information, has made M aware of an alternative product, the insurer has only provided factual information to M in the form of quotes and an explanation of the two products.

General Insurance Scenario 1B

Individual M contacts an insurer's call centre and requests a quote for the best value comprehensive car insurance. Noting that M's car is old and of low value, the call centre operator mentions the possibility of third party property damage and explains the difference between it and comprehensive cover. M asks the call centre operator which policy would be best for him. The call centre operator advises M that generally third party property damage policies are a popular choice amongst people with older cars. At M's request, the call centre operator provides a quote for the annual premiums for each product. M purchases for the third party property policy.

The insurer has been provided with some information in relation to M's personal circumstances and using this information, has made M aware of an alternative product. In this scenario, the insurer has provided general advice to M.

General Insurance Scenario 1C

Individual M contacts an insurer's call centre and requests a quote for the best value comprehensive car insurance. Noting that M's car is old and of low value, the call centre operator mentions the possibility of third party property damage and explains the difference between it and comprehensive cover. M asks the call centre operator which policy would be best for him. The call centre operator advises M that generally third party property damage is a popular choice amongst people with older cars. The call centre operator states that the main point most people consider is would not having your car repaired or a cash payout in the event of a total loss be a major issue for M.

At M's request, the call centre operator provides a quote for the annual premiums for each product. M purchases for the third party property policy.

Although the insurer has been provided with some information in relation to M's personal circumstances and using this information, has made M aware of one of the main issues related to third party only insurance, only general advice has been given.

General Insurance Scenario 2A

Individual L is seeking home and contents cover and contacts an insurer's call centre. In providing information about the policy the insurer's staff member says "This policy does not cover flood damage. You should consider whether you need flood cover."

The staff member's statements are the provision of factual information only and not general or personal advice.

General Insurance Scenario 3A

Individual Q approaches an authorised representative of three general insurers. Q requests information on home insurance and the representative, Z, provides a financial services guide that lists the insurers and the limit of Z's authority. Z proceeds to question Q on their requirements for home and contents insurance, as well as asking whether Q has any cars, boats or other property that is either insured or may be in need of insurance.

Z reviews whether any discounts are available to Q for placing more than one policy with a single insurer and presents Q with a range of options and premiums, explaining the difference between each one. Z makes no recommendation about any of the insurers.

Although the discussions were extensive, Z has only provided factual information.

General Insurance Scenario 4

S, a doctor, approaches an insurer for professional indemnity insurance. The insurer becomes aware that S has practised as a doctor for some years and advises S consider retroactive cover under a PI policy. The insurer helps S determine the relevant date e.g. whether that is the date they commenced practice or the date they last had claims incurred cover.

This scenario should be treated as the insurer providing factual information.

General Insurance Scenario 5

Individual E inquires about a home and contents policy. The insurer offers home and contents policy with varying levels of excess depending on the premium. These are explained to E who takes out a policy with the largest possible excess.

The insurer should be seen as providing general advice at most. There should be no obligation to enquire whether E's choice of excess was realistic in relation to their financial situation.

General Insurance Scenario 6A

Individual D contacts an insurer seeking a quote for travel insurance to cover a 2 week holiday to the USA. The insurer asks D about the period of travel and any other intended destinations. The insurer advises D that D has a duty to disclose any pre-existing medical conditions in order to obtain a quote.

The insurer provides D with two quotes, one where the pre-existing condition is not covered and a higher quote which provides cover. D accepts the lower quote.

The insurer has only provided factual information

General Insurance Scenario 6B

Individual D contacts an insurer seeking a quote for travel insurance to cover a 2 week holiday to the USA. The insurer asks D about the period of travel and any other intended destinations. The insurer advises D that D has a duty to disclose any pre-existing medical conditions in order to obtain a quote.

D discloses that he has diabetes but it is managed with medication. The insurer provides D with two quotes, one where the pre-existing condition is not covered and a higher quote which provides cover. D asks which policy is better for him. The insurer says that they can't advise on what is right for D and declines to express an opinion but states that medical costs in the U.S.A. can be high and by disclosing the EMC details cover will be provided for D.

The insurer has obtained some personal information and has raised a main disclosure area, but only general advice has been provided.

General Insurance Scenario 7

Individual C phones an insurer to seek a quote for comprehensive car insurance on a new vehicle and indicates that he, his wife and adult children will all use the vehicle. The insurer provides a quote. C indicates the premium is more than he would like to pay and asks for advice on how to reduce the premium. The insurer outlines that some people elect to reduce their premium by increasing the basic excess payable and C opts to take up this option.

The insurer did not inform C of the option to reduce the premium by restricting the age of drivers for the vehicle as C has stated that adult children under 25 years of age will be driving the vehicle.

Although C's personal circumstances have influenced the advice provided by the insurer, this should still be considered general advice at most.

General Insurance Scenario 8

Individual N phones an insurer to inquire about comprehensive car insurance for a new vehicle which has modifications. The insurer asks N whether she would like to insure the vehicle for an agreed or market value and explains the meaning of each option. N asks the insurer which option is better for her. The insurer informs N that they cannot advise customers on what is right for them, but notes new cars depreciate most rapidly in the first few years after purchase and that many owners of new cars opt for the agreed value option. N chooses a policy with an agreed value.

The insurer has provided general advice only.

General Insurance Scenario 9

G, an individual inquires about a home and contents policy. In discussing the cover needed, the insurer becomes aware that G has a high value property with many expensive items that under the product nominated by G would be subject to claims limits. As the insurer has a premium product which, although more expensive would be better suited G's needs, the insurer notes that they cannot advise customers on what is right for them, but suggests that G should consider the premium product.

The insurer should be seen as providing general advice.

General Insurance Scenario 10

Individual M calls an insurer regarding her renewal and requests advice on what she can do to reduce her premium. The consultant taking the call notices that M has had top of the range policy for several years but has not made any claims against the policy. The insurer explains the key differences between her current policy and a cheaper standard policy. M understands the information but is reluctant to make a decision as in the past her husband made all of the financial decisions. M asks the consultant to help her make a decision as what is best for her.

It is clear to the operator that given M has not claimed at all for several years, and has said she doesn't intend to use the key features of the top of the range product that M would be better off on the Standard policy. The insurer informs M that she has not made any claims against the policy and she should consider the probability that she will make a claim in the future when deciding which policy is best for her.

The insurer should be seen as providing general advice.

General Insurance Scenario 10

Individual B calls an insurer to obtain insurance for his new car. B mentions he is proud of his new purchase and will heavily rely upon the car in his new job. After a brief discussion on the differences between Comprehensive and TPPDO B chooses TPPDO as it is significantly cheaper than Comprehensive. The consultant call notes that B has a valuable car that he relies upon for work and that given B has recently had a claim he is 70% more likely to claim on his policy than the average driver. Based on this information the consultant feels that B should reconsider his choice of TPPDO and perhaps read through the PDS before making a final decision.

In the situation where B has already made a decision and will be reluctant to reconsider unless the consultant can give him real cause to do so, how could the consultant educate Bill on this information without providing personal advice?

General Insurance Scenario 11

Individual X calls an insurer A, stating his comprehensive car insurance policy with insurer B is due for renewal and he is seeking quotes to get the best price. Insurer A asks G a series of questions and gives G a quote on the basis of the answers provided. As the quote is more competitive than Insurer B, G chooses to take out a policy with Insurer A.

The insurer has only provided factual information and has not advised the customer to take insurer A's product or to switch from insurer B.

General Insurance Scenario 12

Individual X calls an insurer A, stating his comprehensive car insurance policy with insurer B is due for renewal and he is seeking quotes to get the best price. Insurer A asks G a series of questions and gives G a quote on the basis of the answers provided. The quoted price is similar to the price offered by insurer B. X asks insurer A if that is the best price and if there is any way to make it less costly. Insurer A outlines a number of ways X could reduce the premium payable, such as choosing a higher excess. X asks for and is provided with a

quote based on a higher excess. As the quote is less expensive than Insurer B, G chooses to take out a policy with Insurer A.

The insurer has only provided factual information and has not advised the customer to switch from insurer B.