

24 October 2011

Ms Sue Vroombout
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Dear Ms Vroombout

CORPORATIONS AMENDMENT (FURTHER FUTURE OF FINANCIAL ADVICE MEASURES) BILL 2011

The Insurance Council of Australia (*Insurance Council*), the representative body of the general insurance industry in Australia, welcomes the opportunity to provide this submission on the draft Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 (the Further FOFA Bill).

The Insurance Council appreciates the exemptions provided to general insurance in the Further FOFA Bill from the provisions applying to conflicted remuneration. However, we have some concerns that the drafting of the exemptions does not match the breadth of the Government's policy intentions.

Carve-outs from Conflicted Remuneration: Definition of General Insurance

We note that the ban on conflicted remuneration (in both monetary and non-monetary forms) is not intended to apply to general insurance¹ and that the Bill is not intended to prohibit the payment of monetary commissions in the general insurance industry. The Insurance Council is strongly supportive of this approach and welcomes the acknowledgement that a one size fits all approach to financial services regulation is not suitable. However, we submit that the language in the draft Bill does not cover all general insurers operating in the Australian market. Some general insurers are potentially excluded via the reference to the definition of general insurer in the *Insurance Act 1973*.

In sections 963A, 963B and 964, a general insurer is defined with reference to the *Insurance Act 1973*, which relevantly states:

INSURANCE ACT 1973 - SECT 11

Meaning of general insurer

A general insurer is a body corporate that is authorised under section 12 to carry on insurance business in Australia.

Note: General insurer includes a foreign general insurer (see the definition of foreign general insurer in subsection 3(1)).

¹ Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 Explanatory Memorandum; p6

This definition covers authorised Australian and foreign general insurers but will exclude Lloyd's underwriters (who are currently authorised under s.93 Insurance Act 1973) and any unauthorised foreign insurer from utilising the exclusion from conflicted remuneration given in relation to general insurance products. This is contrary to the stated intention of the legislation. Accordingly, the Further FoFA Bill should be amended to replace the current carve-out for a benefit given "by a general insurer (within the meaning of the *Insurance Act 1973*) in relation to a general insurance product" in sections 963A(1)(a), 963B(a) and 964(2)(c) with the wording "the benefit is given in relation to a general insurance product".

Treatment of Benefits from Financial Product Issuers

Under section 964, an issuer or seller of a financial product must not give any monetary or non-monetary benefit to a financial services licensee or representative of a financial services licensee who provides financial product advice to retail clients. Paragraph 2(c) excludes application of the prohibition to a benefit given to the licensee or representative by a general insurer in relation to general insurance products.

The Insurance Council supports this measure, subject to the definitional modifications outlined above. However, there is also another issue that we wish to raise.

A general insurer may provide a benefit to a financial services licensee, who then passes the benefit on to their advisors. Whilst the benefit passed from general insurer to licensee would not be considered conflicted remuneration, the subsequent passing of the benefit from licensee to advisor would be, despite the benefit being in relation to a general insurance product. This is inconsistent with the Explanatory Memorandum, which states that the ban on conflicted remuneration (both monetary and non-monetary) does not apply to general insurance.

The changes proposed above to sections 963A(1)(a), 963B(a) and 964(2)(c) would also serve to rectify this issue.

Volume based shelf space fees

Proposed section 964C in subdivision B prohibits a financial services licensee from accepting a "volume based shelf space fee" in circumstances where:

- (a) a monetary or non-monetary benefit is given by a financial services licensee or an RSE licensee (the funds manager) to a financial services licensee or an RSE licensee (the platform operator); and*
- (b) the platform operator offers:*
 - (i) a facility through which financial services licensees and their representatives can obtain information about financial products; or*
 - (ii) a facility through which financial products are issued; and*
- (c) either:*
 - (i) that facility includes information about financial products in which the funds manager deals (the funds manager's financial products); or*
 - (ii) financial products in which the funds manager deals (also the funds manager's financial products) are issued through that facility.*

Proposed section 964B defines a volume-based shelf-space fee as follows:

(1) The benefit is a volume-based shelf-space fee if:

(a) access to the benefit, or the value of benefit, is dependent on the total number or value of the funds manager's financial products of a particular kind, or particular kinds, about which information is included on the facility or which are issued through the facility; and

(b) the benefit is not a discount on an amount payable, or a rebate of an amount paid, by the platform operator to the funds manager for services provided by the funds manager to the platform operator (see subsection (2)).

(2) The benefit is also a volume-based shelf-space fee if:

(a) the benefit is a discount on an amount payable, or a rebate of an amount paid, by the platform operator to the funds manager for services provided by the funds manager to the platform operator; and

(b) the value of the benefit exceeds the reasonable value of scale efficiencies obtained by the funds manager because of the number or value of financial products in relation to which the funds manager provides those services.

The ban is intended to prohibit the receipt of the benefit by the platform operator (see Explanatory Memorandum paragraph 1.45) from product issuers or funds managers to purchase shelf space or preferential positions on administration platforms.

However, given the broad definition of "volume based shelf space fee", it could catch a licensed insurance broker or other licensed entity in the general insurance industry that operates a facility through which financial services licensees and their representatives (e.g. insurance brokers) can obtain information about financial products.

This ban was not intended to operate in relation to general insurance and this provision needs to exclude general insurance in the same way as proposed above in relation to conflicted remuneration.

If you require any further information, please contact Mr Anning on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
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