

22 October 2019

Mr Nick O’Kane  
Northern Australia Insurance Inquiry  
Australian Competition and Consumer Commission  
GPO Box 520  
Melbourne VIC 3001

Sent by email to: Nick.O’Kane@acc.gov.au

Dear Mr O’Kane

### **ACC NORTHERN AUSTRALIA INSURANCE INQUIRY: REQUEST FOR INPUT**

The Insurance Council of Australia<sup>1</sup> (Insurance Council) appreciates your invitation by email correspondence of 9 October 2019 to provide input on progress that has been made by the general insurance industry on Recommendations 8, 12, 13, 14 as outlined in the Second Update Report of 30 July 2019. We understand that our input will be considered as part of your second interim report to the Treasurer by 30 November which will provide an update on what progress has occurred on the 28 recommendations that the inquiry has made to date.

#### **Recommendation 8: Better understand information within ‘general financial advice’**

The Insurance Council and its members have consistently argued since the introduction of the current financial services regulatory regime that the definitions of personal and general financial advice in the Corporations Act impede insurers from having worthwhile and informative conversations with policyholders about their insurance needs. The industry has had extensive discussions with ASIC as to what can and cannot be said. However, due to the nature of the Corporations Act definitions and the one size fits all nature of the regulatory regime, ASIC has been reluctant to be definitive in its guidance on the difference between general and personal financial advice in the general insurance context.

For example, RG244 “Giving information, general advice and scaled advice” states:

**RG244.47**

“You can use personal information about a client to give general advice that is more relevant to a client. However, you must ensure that you do not, in fact, consider the client’s relevant

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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 about 95 per cent 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 2019 Australian Prudential Regulation Authority statistics show the general insurance industry generates gross written premium of \$47.8 billion a year and has total assets of \$125.8 billion. The industry employs about 60,000 people and on average pays out \$147.5 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).

circumstances when you prepare and give the general advice. You cannot avoid this by giving a general advice warning to the client.”

and

**RG244.48**

“We will not take action where you give personal advice merely because you give general advice using personal information about a client’s relevant circumstances to choose general advice that is relevant and useful to them.”

Given the above, the Insurance Council has supported recommendations made for example by the Financial Systems Inquiry and the Productivity Commission in its review of Competition in Financial Services for the advice definitions to be reviewed while expressing reservations that the simple replacement of “general advice” by “general information” would be satisfactory outcome all round.

The Insurance Council advocates that, regardless of what else is amended, the Corporations Act should make it clear that general insurers can discuss with individual consumers key questions such as the most appropriate level of sum insured for them.

**Disclosure Action Plan**

In your email of 9 October, you asked for an overview of our Disclosure Action Plan. With both the Commonwealth Government and industry focused on developing legislation to implement the Financial Services Royal Commission’s recommendations, the Insurance Council has had difficulty in devoting resources to its Effective Disclosure project. However, we are continuing work and the following summarises the current situation:

*For industry*

**1. *Inclusion of year on year premium comparisons in renewal notices for home and contents and motor vehicle policies.***

This has been completed in relation to NSW and will be a national obligation under the revised GI Code of Practice which will commence in January 2020 with a 12 month transition period.

**2. *Contribute detailed consumer research on value of a core package of covers for home and contents insurance to standard cover regime review.***

Qualitative and quantitative consumer interest has been completed demonstrating strong consumer interest in the concept and identifying six potential “core” covers. Insurance Council members will now compare these covers to their own data on the prime causes of policyholder claims and dissatisfaction. In order to promote consideration of such an initiative, Insurance Council has been advocating for a Government commissioned review of the standard cover provisions in the Insurance Contracts Act. However, this is unlikely to happen until after the Royal Commission’s recommendations relating to general insurance have been legislated.

**3. *Develop a common definition for “actions of the sea” and work with stakeholders to determine the need for other common definitions.***

The Insurance Council has discussed with regulators and consumer advocates the possibility of an industry led review of problematic definitions and received supportive responses. We are awaiting an opportunity to commence this work.

**4. *PDSs and KFSs to be published prominently online.***

The Insurance Council has undertaken its own in-house review of the accessibility of these documents with a view to highlighting the scope for improvements in insurer practice.

**5. *Insurance brands to be published on the insurer’s website and on ASIC’s website.***

The Insurance Council has begun an internal survey of insurer practice in relation to publishing brands with a view to developing suggestions for improvements.

*For Government*

**6. *Amend the Corporations Act to make it clear that general insurers can discuss with individual consumers the most appropriate level of sum insured for them.***

As explained in relation to ACCC Recommendation 8, this requires legislative clarification of the current concept of general advice.

**7. *Amend the Insurance Contracts Act to facilitate electronic disclosure of insurance documents.***

This has received in-principle support from the Government but implementation will require an opportunity in the Government’s busy legislative agenda.

**8. *Review the usefulness of the concept of a key facts sheet and consider how it could be made more useful in practice.***

The Insurance Council will be considering this action plan point in light of the recently released ASIC report on the innate shortcomings of product disclosure, no matter how concise.

**9. *Legislate to apply protections from unfair contract terms to insurance contracts.***

The Insurance Council is contributing to the development of legislation which is expected to be introduced into Parliament before the end of 2019.

**Recommendation 12: Better information for consumers lodging a claim**

The Insurance Council has been in the process of updating the General Insurance Code of Practice (the Code) and will be providing the Code to the Board for final approval. Subject to Board approval, the revised Code will contain the amendments referenced below.

The ACCC has recommended that the Code should be amended to require that at the time a consumer lodges a claim, an insurer or its agent must clearly inform the consumer of the insurer's claims handling policy. The revised Code has been updated with the following:

If you make a claim, then we will tell you:

- a) about our claims process;
- b) about any excess amounts you have to cover or pay in relation to your claim;
- c) about any waiting or no cover periods that need to finish before we start paying you under the policy; and
- d) how to contact us regarding your claim.

In addition, the ACCC recommended that the Code expressly refer to a number of matters. We have addressed each in turn below.

#### *On how the insurer will assess the validity of the consumer's claim*

As previously noted, the Code has been updated to ensure that consumers receive information about the claim's handling process. With regards to information on the assessment process, it is the practice among some insurers to automatically accept and pay claims that are under a certain amount. A requirement that before a claim is paid the insurer must explain how the claim will be assessed and validated may not be appropriate in circumstances when the insurer is able to pay small claims quickly or immediately.

The Code requires that if a consumer makes a claim and the insurer requires further information then, within 10 Business Days of receiving the claim, the insurer will provide an estimate of the likely timeframe and process for making a decision about the claim. The Insurance Council considers that this is appropriate for more complex claims where further information may be required. Under such circumstances the insurer's claim's decision process will be explained to the consumer.

#### *On the insurer's preferred repairer policy and in what circumstances a consumer can use their preferred repairer*

The revised Code has not been updated with this level of detail. For motor insurance there is a code of practice between the smash repair industry and insurers. The Code does however require that the insurer accepts responsibility for the quality of repairs carried out by the insurer's authorised repairer and that any complaints about the insurer's selected repairer will be handled under the Code's complaint process.

#### *On how decisions are made on cash settlements*

The Code has been updated to require insurers to provide consumers with information to help them understand how cash settlements work and how decisions are made on cash settlements. During the Code transition period the Insurance Council will be working with insurers and consumer representatives to develop a factsheet that will assist insurers with meeting this code obligation.

#### *On who will be managing the claim*

The Code has been updated to require insurers to provide consumers with information on how to contact them regarding their claims.

*On the fact that the loss adjuster is acting on behalf of the insurer and not the consumer*

The Code requires that when an insurer's Service Supplier is providing a service to a customer, the Service Supplier must tell the consumer that they are acting on the insurer's behalf. A Service Supplier includes a loss assessor or loss adjustor.

*On the consumer's right to make a complaint to the insurer and the Australian Financial Complaints Authority*

The Code specifies that if a consumer has a complaint about anything to do with how the insurer has handled the claim then the consumer may make a complaint through the Code's complaint process. Information about the complaints process is also provided to the consumer if the claim does not meet the Code's claim timeframes and if a claim is denied or not paid in full. The Code's complaint process requires that when a decision is made about a complaint the reasons must be provided to the consumer along with details of the Australian Financial Complaints Authority.

**Recommendation 13: ASIC approval for the General Insurance Code of Practice**

It remains the Insurance Council's intention to work with ASIC to obtain ASIC approval of the Code. The Insurance Council has provided the Code to the Board for their review and approval at the next Board meeting on 31 October. The Insurance Council will be seeking Board approval for a revised Code dated 1 January 2020 with a 12 month transition period except the requirement for Code subscribers to have a publically available policy on how they will support someone affected by family violence, which will have a 6 month transition period.

According to the Government's Royal Commission Implementation Roadmap, the required legislation for enforceable code provisions should be consulted on and introduced by 30 June 2020. The Government has advised that they expect the Insurance Council to work co-operatively with ASIC to have the relevant provisions of codes approved as 'enforceable code provisions' as soon as practicable after the legislation has been enacted. The Insurance Council will therefore seek approval of the Code under the new enforceability regime and will work closely with ASIC in this regard.

**Recommendation 14: Public mitigation works and expected premium reductions**

The Insurance Council's Risk Directorate will respond directly to you on this issue.

If you have any questions or comments in relation to our submission please me on telephone: 02 9253 5121 or email: [janning@insurancecouncil.com.au](mailto:janning@insurancecouncil.com.au).

Yours sincerely



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