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Dear Ms Leeds-Heath

Treasury consultation on Quality of Advice Review – Tranche 1 proposed amendments bill

The Insurance Council of Australia (Insurance Council) welcomes the opportunity to comment on the Exposure Draft: *Treasury Laws Amendment (2024 Measures No.1) Bill 2024: Quality of Advice Tranche 1* (the Draft Bill).

The Insurance Council has previously expressed support of the overall recommendations from the Quality of Advice Review Final Report (Final Report). In relation to Recommendation 13.8 which introduces a requirement to obtain client-informed consent prior to accepting commissions. Review of the draft legislation and explanatory materials (draft EM) has identified two issues with the proposed drafting to implement this reform. Those issues and a proposed solution are set out below.

1. Conflicted Remuneration – Consent to insurance commissions

The Insurance Council and its members have identified two issues regarding the draft legislation to implement Recommendation 13.8, relating to product issuer liability and application to general advice scenarios. For both issues, the proposed amendments do not appear to reflect the policy intent set out in the Final Report and the draft EM.

Product issuer liability

The Final Report states explicitly that: “Consent is not required to be provided to, or checked by an insurer. It is the responsibility of the advice provider to obtain consent and to retain a record of the client’s consent.”¹

Despite this, the approach adopted in the Draft Bill, at Part 5 Schedule 1, Items 40-43 (relating to *Corporations Act 2001* Paragraphs 963B(1)(a), (b) and (ba)), introduces the consent requirement as a condition to the broader exemption for conflicted remuneration that applies for general insurance products. This is significant because it results in the consent requirements becoming a condition of an exemption, and any failure to comply eliminates the exemption in its entirety.

In this scenario, any remuneration paid is unlawful which exposes the recipient, their employer, and the product issuer to civil penalties.²

The proposed approach places product issuers at risk of civil penalties if an intermediary does not satisfy the proposed consent requirements. This does not appear consistent with the approach

¹ The Treasury 2023 [Quality of Advice Review Final Report](#)

² In relation to product issuers, see *Corporations Act* section 963K.

recommended in the Final Report, which clearly indicates that the consent process is between the client and the intermediary, and that the product issuer does not need to have visibility over (let alone be involved in) the consent process. We do not consider that it would be a good public policy outcome for this reform to result in a scenario where an insurer is at risk of breaching the law, and exposed to civil penalties, regarding potential non-compliance with a process that they are not required to be involved in, or even aware of. We also note the draft EM is silent on this issue.

While this amendment only applies to personal advice provided to retail clients at this stage (and will therefore cover some, but not all insurance lines), the potential impact of this reform would be much more significant if the government expanded the definition of personal advice, as recommended in the Final Report. The combination of those reforms would have a much broader impact on the provision of insurance through intermediated distribution channels, which the Final Report recognised are important to ensuring consumer choice and competition in the market.³

Application to general advice scenarios

Additionally, the Bill is intended to introduce a new consent requirement for providers of “personal advice” to retail clients. The targeted scope of the proposed consent requirement to personal advice (and not general advice) was explicit in the Final Report recommendation and referenced in the EM as the intent behind the changes.⁴

However, because the proposed new s.963BB is:

- a) not limited to circumstances where personal advice is provided, and
- b) to be inserted as a condition of the exemption set out in s963B,

the consent requirement becomes a condition for the exemption to apply in all circumstances where a benefit is paid and there is “financial product advice” – which includes both “general advice” and “personal advice”.

In other words, the effect of the proposed amendment would be to apply the new consent requirement to general advice and personal advice scenarios, not only to personal advice as intended.

Application to insurer intermediaries

As advised in our previous submission dated 14 November 2022 to the Quality of Advice Review, we maintain our view that the consent requirements should not apply to underwriting agents of insurers. Where, for example, an underwriting agent is acting on behalf of a single insurer, the underwriting agent is similar in nature to sales staff of an insurer. This is even more so when the insurer owns, or partly owns, the underwriting agent. The underwriting agent will be remunerated by the insurer for the agency and distribution services and benefits they provide to the insurer, such as specialist product expertise, geographical reach and technological innovation. This remuneration represents a form of acquisition costs for the insurer, whereas a direct insurer may incur these costs in the form of marketing and advertising, call centres and IT systems for instance. The underwriting agent may separately charge a fee to customers for any advice services they provide to the customer.

The application of consent provisions on underwriting agents acting exclusively for a single insurer could introduce an additional burden where not necessarily warranted.

Suggested solution – standalone consent requirement

The Insurance Council suggests that an alternative approach that would reflect the policy intent set out in the Final Report and the draft EM would be to create a standalone provision requiring

³ Final Report, p170.

⁴ Final Report, p172; Explanatory Materials, p46, s.1.197.

intermediaries to obtain consent to benefits, with a corresponding breach or offence penalty in the event of their non-compliance. This should be removed from other conflicted remuneration provisions to avoid further adverse impacts for non-compliance. The Insurance Council further suggests the Government consider whether any proposed provisions relating to conflicted remuneration be aligned to the provision of good advice recommendations being addressed in later tranches.

Further, these provisions should exclude application to underwriting agents acting exclusively for a single insurer.

2. Financial Services Guide (FSG) reforms

In relation to the removal of the FSG requirement in certain circumstances, the Insurance Council notes there may be limited benefit from this reform due to the ongoing need to prepare and maintain FSGs to provide to customers on request.

Given the relationship of this reform to the provision of personal advice, the potential benefits or impacts of this reform will also need to be considered once the Government has determined its approach to other Recommendations from the Final Review (namely, the Recommendation to broaden the definition of personal advice).

Given the significance of impacts to insurance in the current Draft Bill, the Insurance Council would greatly appreciate ongoing discussion of revised drafting to address the concerns outlined above, prior to any legislation being introduced into Parliament.

We trust that our initial observations are of assistance and look further to further engagement with Treasury on this topic. If you have any questions or comments in relation to our submission, please contact Mr Luke Whitcher, Senior Policy Advisor, Regulatory & Consumer Policy, at lwhitcher@insurancecouncil.com.au or 0481 008 730.

Kind regards



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