



Insurance Council
of Australia

26 April 2024

Mr Alan Raine
Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Raine,

Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024

The Insurance Council of Australia (Insurance Council) welcomes the opportunity to provide a submission to the Senate Economics Legislation Committee inquiry into the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024* (Bill).

The Insurance Council confirms support of the overall recommendations from the Quality of Advice Review Final Report (Final Report). We support the introduction of the new consent provisions for personal advice commissions for life risk, general and consumer credit commissions however we have identified an unintentional issue in the way that consent provisions (s963BB of the Bill) have been drafted as outlined in the conflicted remuneration consent provisions below.

AFS Licensee and Authorised Representative obligation to obtain client consent

When the Exposure Draft of the Bill was released for consultation in late 2023, the Insurance Council made a submission to Treasury noting that the proposed drafting exposed product issuers to potential liability for non-compliance with the consent process, in circumstances where the product issuer is not required to be involved in (or aware of) the consent process.¹ The Quality of Advice Review Final Report seeks to appoint responsibility for client consent on the advice provider.

We are pleased to see that this drafting issue has been addressed in Part 5 of Schedule 1 which amends section 963K of the Bill. We also welcome confirmation in paragraph 1.303 of the Explanatory Memorandum (EM) that the issuer or seller of the insurance product is not liable for ensuring or checking that the AFS licensee or authorised representatives has received informed consent from the client and is not deemed to have provided conflicted remuneration if the AFS licensee or authorised representative has failed to obtain client consent.

Conflicted Remuneration – informed consent for personal advice provided for certain insurance commissions

Review of the Bill has identified issues with the way the new consent requirements for personal advice provided to a retail client about a life risk insurance, general insurance or consumer credit insurance

¹ [Treasury consultation on Quality of Advice Review – Tranche 1 proposed amendments bill \(insurancecouncil.com.au\)](https://www.insurancecouncil.com.au/treasury-consultation-on-quality-of-advice-review-tranche-1-proposed-amendments-bill)

product (certain insurance products) have been drafted. The new consent provisions are included in Schedule 1, items 93-96, subsection 963B(1) and section 963BB of the Bill.

Whilst the intent, outlined in paragraph 1.287 of the EM, is to introduce new informed consent requirements in relation to certain insurance products only where personal advice is provided, the effect of the drafting in s963BB is that it unintentionally removes the operation of the conflicted remuneration exemptions for persons not providing personal advice.² This is because the reference to personal advice has been included in proposed 933B(1)(a) – after the use of ‘unless’, therefore making the presence of personal advice a condition of the broader exemption from the ban on conflicted remuneration. We note the government’s statement that is not the intent.

To address the issue, it is important to amend the way in which s963BB has been drafted to ensure the new consent requirements only apply to circumstances involving personal advice.

We have been advised that options to address this issue are being explored.

A second concern raised with s963BB drafting is the reference to ‘relevant product’³. This could cause confusion with ‘relevant financial product’ which is defined in s910A. Using language other than ‘relevant’, such as ‘related’, ‘applicable’ or ‘associated’ will reduce the potential for misunderstanding.

We will raise these matters and provide alternative drafting solutions to the Treasury, whom we are engaging with.

If you have any questions or comments in relation to our submission, please contact Mrs Bianca Richardson, Senior Policy Advisor, Regulatory & Consumer Policy, at brichardson@insurancecouncil.com.au.

Kind regards,



Andrew Hall
Executive Director & CEO

² We note that the objective in the EM is consistent with Recommendation 13.8 of the Quality of Advice Review Final Report, which proposes that a person provision personal advice to retail clients in relation to a general insurance product, obtains client consent when accepting a commission.

³ Section 963BB states “...with the issue or sale to a retail client of a financial product (the **relevant product**) that is a general insurance product, a life risk insurance product, or consumer credit insurance unless...”