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Dear Ms Philp

**Authorisation Application A91086: Response to Draft
Determination**

Please see attached.

Attach
Our Ref 205866281:205866281

cuas A0110763327v5 205866281 25.7.2008

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Dear Ms Philp

Authorisation Application A91086: Response to Draft Determination

The following is the Insurance Council of Australia's (*Insurance Council*) written submission in response to the ACCC's Draft Determination of 3 July 2008 in relation to the above authorisation application.

1. Condition 1

The ACCC proposes that the Insurance Council undertake a comprehensive and effective consumer education campaign to improve consumer awareness of flood insurance and provide to the ACCC a bi-annual report on the educational activities undertaken and their effectiveness for inclusion on the ACCC's public register.

The Insurance Council understands the need to raise consumer awareness regarding the voluntary common definition. The proposed consumer information materials outlined in the Insurance Council's 26 June 2008 supplementary submission have been developed with this aim in mind. However, it is very important to know and understand that each and every consumer will have different general insurance needs (for example, dependent on the location of their property, the design and construction of any built environment, the individual's or business's appetite for risk), and each and every consumer is responsible for ensuring that the insurance product they purchase meets their needs. Insurers can assist in providing accurate information to consumers about their product, particularly at the point of sale, however it is ultimately up to the individual consumer as to the actions they take in response to the information provided.

As the Insurance Council has previously indicated, its proposed communications campaign involves the delivery of several key messages in the following ways:

- The establishment of a dedicated web-page on the Insurance Council website addressing the key messages relevant to the voluntary common definition, to which individual member companies may provide links from their own websites. The web-page will be in a text format allowing automatic cataloguing by search engines

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and therefore increasing the opportunities for consumers using engines such as Google to discover information regarding flood insurance in the Australian context.

- A three minute video explaining the voluntary common definition and highlighting the relevant key messages will be available via the Insurance Council website, will be able to be linked to member company websites, and may be used by member companies.
- The video will also be employed at community briefing sessions with local governments and communities and will be seeded to popular social networking sites to allow for exposure to as many potential community members as possible.
- A media release will be issued if the ACCC authorisation application is approved.
- Member companies may also choose to provide additional information on their individual insurance products.

The ACCC (at [6.38] and [6.54]) raised some concerns that the Insurance Council's proposed communications campaign did not 'proactively' inform consumers through 'a broader range of direct marketing techniques in partnership with participating members'. The Insurance Council submits that it is not possible to adopt a single approach in circumstances where members of the Insurance Council continue to compete vigorously against each other in the marketplace. Direct marketing campaigns will be considered by individual members but most companies want to retain their own individual approach to marketing.

Because many people interact with the web, and increasingly choose to browse for insurance products online, the Insurance Council submits that web-based delivery of part of the communications campaign is a logical and reasonable approach. In addition, the use of an explanatory video in community briefings around the country will capture consumers in more remote parts of Australia.

However, in light of the ACCC's comments, the Insurance Council will also develop and release a flyer on the proposed flood definition and its application that will be made available to member companies to use as part of any direct marketing campaign they choose to adopt. For individual insurers their direct marketing in relation to the proposed flood definition may occur at the time of insurance renewal or if launching a relevant new product, depending on the approach the particular company adopts.

The Insurance Council believes that the campaign outlined above will meet the requirements of a comprehensive and effect consumer education campaign.

The Insurance Council is prepared to provide bi-annual reporting to the ACCC on the roll-out of its communications campaign.

2. Condition 2

The ACCC proposes that the Insurance Council provide a bi-annual report to the ACCC for inclusion on its public register detailing the adoption of the common definition by members, including the number of insurance policies written by members containing the common definition as a term of the contract.

It is important to recall that the main benefit and intended purpose of the common definition is that it provides a benchmark that consumers can use to differentiate between different general insurance products in circumstances where no such benchmark currently exists. In light of this, the Insurance Council submits that if it is to provide progress reports to the ACCC, in addition to reporting on adoption of the common definition as a contractual term, reporting on the numbers of policies *making reference to* the common definition would be useful in order to provide a true indication of the presence of the common definition.

The Insurance Council submits that annual rather than bi-annual reporting by insurers on this issue is more appropriate given that insurers only report gross written premium statistics annually to regulators. Bi-annual reporting would introduce additional costs to the underwriting process and is unlikely to be as meaningful as annual statistics, which can be read in the context of the other mandatory items reported to regulators. The Insurance Council notes that the government has an aim to reduce red tape and unnecessary business reporting, including 'aligning government reporting with natural business processes'¹, and so submits that in the general insurance context an annual report would be more appropriate.

Apart from this, the Insurance Council is concerned that the bi-annual reporting requirements are unreasonable due to the commercial timing considerations outlined further in section 5 of this submission. Given the lead-time required for insurers to incorporate reference to the common definition in policies before they can be marketed to consumers, reported numbers are likely to be nil for at least the first 12 to 18 months, making 6 monthly reporting a largely fruitless exercise.

Any reporting carried out under this condition would be based upon aggregated reporting to the Insurance Council and would not by its nature identify any individual member company.

The Insurance Council suggests that if Condition 2 is to be imposed it should be amended to read:

The Insurance Council provide an annual report to the ACCC for inclusion on its public register detailing the extent to which new flood policies have been offered to the community and the number of new policies written by members that adopt or refer to the common definition of inland flood within policy documents.

3. Condition 3

The ACCC proposes that the members of the Insurance Council adopting the common definition clearly and prominently disclose this to insureds and prospective insureds.

While the Insurance Council supports the clear and prominent disclosure by insurers to insureds of all relevant information in their Product Disclosure Statements (*PDSs*), the Insurance Council notes that it is already a requirement of the general insurance industry that all policy terms and conditions offered to consumers are clearly disclosed in PDSs.

¹ See Treasurer of the Commonwealth of Australia, Joint Media Release with The Hon Lindsay Tanner MP Minister for Finance and Deregulation, "COAG Agrees to New Way Forward to Reduce Red Tape" (3 July 2008) <http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/080.htm&pageID=003&min=wms&Year=&DocType>

This feature of the insurance industry is regulated by Australian Securities and Investments Commission's (**ASIC**) financial services regulations, particularly "Regulatory Guide 168: Disclosure: Product Disclosure Statements (and other disclosure obligations)" and will continue to do so following authorisation.

Given the presence of significant regulation in this area, the Insurance Council is concerned that Condition 3 might be seeking to impose a requirement that would be unnecessary and impose an additional regulatory burden, given that insurers are already subject to this type of regulation. The Insurance Council is therefore most concerned that a duplicated requirement is likely to deter members from using the definition due to the added regulatory burden imposed.

The Insurance Council asks the ACCC to reconsider the necessity of imposing Condition 3 in circumstances where such obligations exist and are effectively regulated by government.

4. Condition 4

The ACCC proposes **that members of the Insurance Council adopting the common definition in accordance with this authorisation not be permitted to modify the common definition.**

The Insurance Council is comfortable with the requirement that if an insurer uses the common definition as a term, it is not to be modified. However, the Insurance Council is unclear as to the extent of the prohibition contained in Condition 4. Specifically, given the common definition's intended role as an industry benchmark, it may be the case that some aspects of the common definition will be used by insurers offering flood insurance in circumstances where they choose not to adopt the common definition as a term. The Insurance Council anticipates that this may occur, particularly in the commercial and ISR sections of the market, which offer policies substantially different to those catering for domestic households. The Insurance Council trusts that the requirement not to modify the definition is not intended in practice to prevent insurers from using aspects of the definition in their policies, while making reference to the common definition in order to highlight any relevant differences.

The Insurance Council reiterates that the intent behind the development of the common definition is to provide a benchmark for consumer understanding and product comparison. If an insurer, individually assessing the risk associated with each application for insurance, chooses to use different wording than that in the common definition (to meet the precise nature of the risk in that location), then the consumer will be in a better position than they presently are because the consumer will be able to draw comparisons between the offered product and the common form of words used in the industry for defining flood.

The fact that individual insurers maintain alternative definitions to the proposed common definition is unlikely to diminish the effectiveness of having a voluntary common definition in place as a consumer will be able (and encouraged) to compare the offered terms and conditions against the definition as an industry benchmark. Consumers will therefore be in a better informed position to determine if the cover offered is best suited to their individual risks.

Adoption or otherwise of the common definition is a matter for individual member companies in a competitive market. The Insurance Council will not be offering guidance to members on use of the common definition as either an inclusion or exclusion. However, the Insurance Council notes that the working group of member companies who drafted the wording constructed it as an inclusionary statement.

The Insurance Council is prepared to accept the ACCC's condition that insurers adopting the common definition **as a term** not be able to modify it. However the Insurance Council is firmly of the view that it should be made clear that this does not prevent insurers referring to the definition as a means of benchmarking or using aspects of the definition in policies that do not adopt the common definition as a term.

5. Length of authorisation

The ACCC has indicated that, on the basis of the materials before it, and the proposed reporting functions, a grant of authorisation for two years would be appropriate.

We refer to our telephone call with Ms Philp of 9 July 2008 in which we raised the Insurance Council's concerns about the proposed length of the authorisation period, given the lead time necessary for insurers to adapt their policies to take account of the proposed voluntary common definition. We now appreciate that this is information that the ACCC did not have before it at the time it proposed the two year limitation. As discussed, the Insurance Council is very concerned that the net consequence of the ACCC's decision to grant conditional two year authorisation will be little or no adoption of, or reference made to, the voluntary common definition by insurers.

We are informed that there are a number of steps that an insurer must take before the flood insurance product can be offered to insurers. Before an insurance product can 'go live' to the market, insurers must first take several practical steps. For example, insurers must establish a risk rating system to measure individual property flood risks. They must then develop an individual pricing algorithm for those risks in order to produce a commercially viable insurance product (often in association with market testing). Obviously the appropriate market rates to set for flood insurance will vary from insurer to insurer and in some case properties will need to be individually risk rated.

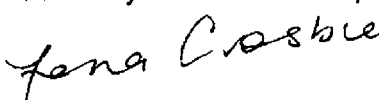
Apart from this, insurers will need to ensure they have sufficiently covered reserving and capitalisation issues and associated reinsurance to ensure they have sufficient reserves to write the premiums. Finally, they will need to rewrite marketing materials and PDSs. We understand this whole process would take some time – at least 12, and in some cases, 18 months. The Insurance Council is very concerned that insurers may be discouraged from adopting reference to the voluntary common definition in circumstances where the authorisation may expire within a mere 6 to 12 months of the product being available to consumers. In these circumstances, the cost benefit to the insurer of offering the insurance would strongly weigh against making the changes. This lack of certainty poses considerable risk to insurers, given the cost and effort of making such changes. There is also potential to confuse the market should it be necessary to change back within a short period.

For the reasons listed above, the Insurance Council believes that a five (5) year authorisation period is required in order to encourage widespread adoption of, or reference to, the voluntary common definition by insurance providers, and to avoid undermining the authorisation. The regular reporting requirements imposed under a conditional authorisation will allow the ACCC to be informed of the progress of the authorisation, while retaining commercial certainty for the individual insurers.

6. Conclusion

As a result of the broader Insurance Council flood insurance project, designed to create an environment where underwriting of the risks by individual companies becomes likely, momentum towards greater availability of flood products has already begun. As this pool of 'new insurance' grows, it is highly desirable that consumers have a common point of reference by which to measure the different insurance offerings of insurers. Again, this is what the voluntary common definition proposes to do.

Yours sincerely



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