



Ref: C2008/483

19 August 2008

Attention: *Richard Chadwick*
General Manager - Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

By email and by facsimile to (02) 6243 1199

Dear Richard,

Re: Application for Authorisation A91086 by Insurance Council of Australia

I refer to the videoconference held on 4 August 2008 in relation to the above application for authorisation by the Insurance Council of Australia (ICA), and attended by Christian Mikula on behalf of ASIC.

Our thinking on the operation of some of the draft conditions proposed by the ACCC has been refined. Accordingly, this letter makes some additional comments as to how those conditions may be recast, if the ACCC is so minded, consistent with the observations of Mr Mikula at the videoconference.

1. Condition 1 requires the ICA to undertake a comprehensive and effective consumer education campaign.

The ICA's initial proposal focussed primarily on the web-based delivery of educational messages. In response to concerns by the ACCC about the limited nature of this medium the ICA has further proposed developing a flyer for use by its members. I also note that consumer groups raised concerns about limitations on access to the internet, particularly by the elderly and low-income groups.

ASIC has an ongoing role in financial literacy. Our view is that the effectiveness of educational messages will be increased the more they can be appropriately targeted and, if possible, personalised. A campaign that requires consumers to take the initiative to seek further information from the ICA website does not satisfy these criteria compared to, for example, messages directed to consumers in flood prone areas (for example, sending out the proposed flyer with rates notices). ASIC has experience in running low cost campaigns of this type that it would be prepared to share with the ICA.

The ICA campaign, as set out in the letter from Allens Arthur Robinson of 26 June 2008, will provide examples of which types of flood activity the common definition covers. It would assist consumers further if the campaign also provided examples of flood activity falling outside the scope of the common definition.

Finally, to the extent that the contention by consumer groups is correct, that the common definition is novel and its application uncertain, it may be inappropriate to make definitive statements about its operation in any consumer education campaign.

2. Condition 2 requires the ICA to provide regular reports on the adoption of the common definition by its members, with the ACCC making these reports publicly available on its website.

It is generally accepted that the common definition is broader than most current definitions. It follows that where the common definition is used to exclude claims then consumers will obtain less cover than previously (with some examples of how this may



ASIC

Australian Securities & Investments Commission

5th Floor, 15 London Circuit, Canberra
GPO Box 9627 Canberra ACT 2601
DX 5696 Canberra

Telephone: (02) 6250 3800
Facsimile: (02) 6250 3611

work in practice raised in the teleconference). A greater level of detail in the proposed reporting would enhance the capacity of consumers to identify and take out policies that provide greater cover, and result in greater transparency in the market place. The ICA could be additionally required to:

- a. Identify by name those insurers who have adopted the common definition to cover claims, and whether they have done so universally (or whether, for example, the common definition may not apply to insureds in certain locations).
 - b. Identify by name, or at least specify the number of insurers who have adopted the common definition to exclude claims, and whether they have done so universally (or whether the common definition may not apply to insureds in certain locations).
 - c. The number of policies written using the common definition to cover and to exclude claims should be separately provided, and broken down by insurers (even if not publicly named). This will enable the ACCC to accurately monitor the public benefit both during and at the end of the authorisation term.
 - d. It is also possible that there will be a public benefit in that individual members of the ICA may increase the extent to which they cover flood during the term of the authorisation, relative to the definitions they currently use (and notwithstanding that they do not use the common definition). This would be a significant public benefit. A more far reaching proposal to monitor this would require the ICA to report on the flood definition used by all members during the period of authorisation, and whether it is used to include cover or as an exclusion to cover.
3. Condition 3 requires members adopting the common definition to clearly and prominently disclose this to insureds and prospective insureds.

I note that members are under existing and similar obligations under both the Corporations Act and the Insurance Contracts Act. The obligation is most relevant where members may use the common definition to exclude claims, and therefore the member, on renewal of the policy, is reducing the level of cover offered to the insured.

Should you require any further information in respect of this issue please contact Christian Mikula on (02) 6250 3858.

Yours Faithfully,



Delia Rickard
Acting Executive Director, Consumer Protection and International, Regional Commissioner,
ACT