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Dear Ms Philp

Authorisation Application A91086: Response to further written submissions

We act for the Insurance Council of Australia (*Insurance Council*).

We refer to the further submissions provided to the Australian Competition and Consumer Commission (**ACCC**) by interested parties in respect of the above authorisation application. The Insurance Council has considered the submissions of the following interested parties:

- The submission provided by the Consumer Action Law Centre (also on behalf of the West Heidelberg Community Legal Service, Legal Aid Queensland, Consumers' Federation of Australia, Insurance Law Service and Legal Aid Commission NSW) (*the Joint Consumer Submission*); and
- Townsville Community Legal Service (endorsing the Joint Consumer Submission).

The Insurance Council makes the following points in response to the above submissions:

1. Use of the definition

The Joint Consumer Submission states that 'the only reasonable conclusion that can be drawn is that the common definition will be used as an exclusion clause' with the effect that there will be a reduction in coverage for flood damage.

The Insurance Council disagrees with this statement. The voluntary common definition was not designed and/or drafted as an exclusionary term but rather as a definition that could be used by insurers to suit their individual risk appetite. As was stated in section 4.1 of its application:

Being voluntary in nature, insurance groups will be free to modify coverage by reference to the common definition to suit their risk appetite, for example, by excluding certain types of flood damage in order to

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provide consumers with a level of flood cover below the common definition, or by including additional types of flood damage in order to provide high risk consumers with a higher level of cover. The common definition will act as a guide for the industry and will assist consumers in comparing the different types of flood cover offered by insurers.

The Insurance Council wishes to emphasise that the common definition is designed to serve as a definition rather than a term. In this respect, the Insurance Council refers to section 4.1 of its Authorisation Application which states:

The common definition is not an agreement as to risk acceptance. It does not have the purpose or effect of setting a minimum standard for insurance cover. It is purely a definition to be used as common terminology across policies.

Importantly, the Insurance Council restates that the primary purpose of the common definition is not to limit risk but to serve as a benchmark and a common point of reference that can be used by consumers to compare the different types of flood cover available, and which is projected to become available, from a common standpoint.

The Insurance Council submits that without a common definition consumers are left to compare individual policies without a common reference.

As mentioned in the Insurance Council's earlier submissions, the application is part of a wider general insurance industry project designed to facilitate greater availability of flood cover to consumers. The effect of this wider project is demonstrated by recent Insurance Council analysis that shows that, since the implementation of the Insurance Council's wider flood insurance project in late 2006, residential insurance policies offered by Insurance Council member companies that include flood cover¹ have grown from an approximate 8% (at the time of the project's implementation) to approximately 32% (at the present time). The growing availability of cover is a positive trend that the industry anticipates will continue with increasing competition around flood insurance offerings, however it highlights the need for the benchmark common definition to assist consumers in comparing the growing number of different types of flood cover offered by insurers in the marketplace.

2. Impact on Consumers

The Joint Consumer Submission states the definition is likely to be 'disproportionately detrimental to low-income and otherwise disadvantaged consumers' who are likely to purchase low-cost policies that may well use the proposed definition to exclude flood cover.

As has been outlined above, the common definition is not an agreement as to risk acceptance. It is designed to serve as a benchmark and a common point of reference that can be used by every consumer to compare the different types of flood cover available.

As stated in the Insurance Council's previous submissions, the setting of insurance premiums and excess conditions is an issue for individual insurers that is at the heart of maintaining a competitive market. Competitive forces will continue to influence the price and quality of insurance premiums in the Australian marketplace, from budget insurance upwards.

¹ Insurers will assess individual risks and may vary the products offered to suit individual geographic areas or particular needs and their underwriting risk appetites.

The Joint Consumer Submission acknowledges that 'many (arguably most) consumers' do not read insurance policies in detail at the time of purchase. Such a criticism is not confined to insurance documents. The federal Labour Government has recently established a Financial Services Working Group that is focussing on disclosure documentation, noting that reading by consumers is a potential issue for all financial services documents required by the Corporations Act.

The Insurance Council submits that the widely acknowledged failure of consumers to read policy statements in detail further highlights the need for a common point of reference, combined with effective and alternative communications methods, to assist with effective product comparison and understanding of the risks that are covered by a policy – This is manifestly the purpose of the voluntary common definition. Importantly, even with the proposed common definition in place, consumers will still need to carefully read their product disclosure statements and to take responsibility for their purchasing decision.

The Joint Consumer Submission also states that the general insurance industry does not have a good track record when it comes to addressing communications to consumers and points to an ASIC report on underinsurance from 2005.

Unfortunately, the authors of the consumer submission have omitted acknowledging the latest 2007 report from ASIC, on the same issue, where it is made clear that the general insurance industry has undertaken great efforts to communicate with consumers. This report is available at www.asic.gov.au for reference as required.

The Joint Consumer Submission also highlights that the Insurance Council website contains no consumer information regarding flood suitable for consumers to understand the definition. Previous submissions from the Insurance Council have flagged that if the application is approved then a communications campaign is planned. As part of this an upgrade to the Insurance Council website is to be undertaken to facilitate delivery of consumer information on flood, including access to online video explanations of the definition and information about broader issues such as flood mapping and links to preparatory guides for consumers facing imminent flood risks.

3. Certainty

The Joint Consumer Submission also states that the definition introduces 'new and uncertain legal concepts into the insurance law field' and queries how courts will define certain terminology within the definition.

The Insurance Council submits that there is a degree of uncertainty inherent in any new definition, but that this is an issue inherent in any change to policy terms and not a sufficient reason to refrain from implementing a benchmark definition.

4. Insurance Contracts Act

The Joint Consumer Submission states that the Insurance Council's proposal is 'a "backdoor" attempt to avoid the operation of the statutory standard protection provisions [in s35 of the *Insurance Contracts Act 1984 (the Act)*]']. The Insurance Council rejects this suggestion and submits that the development of a voluntary common definition has no

impact on the operation of s35 and does not seek to alter insurers' obligations under the Act.

Section 35 of the Act provides that insurance contracts must include flood cover unless the insurer clearly informs the insured in writing (that is, within the product disclosure statement) that it will be excluded. The Insurance Council notes that until recently the general practice in the industry was to exclude flood cover. Presently, insurers that include flood cover make it clear that there is no general inclusion but rather a limited inclusion with different coverage depending on the individual insurer. The strong trend towards providing flood cover emphasises the need for a common reference point from which consumers can compare products offered in terms of both inclusions and exclusions.

The Insurance Council's aim in developing the voluntary common definition has therefore been to establish a benchmark by which consumers can compare different insurance policies. It is not an attempt to avoid the statutory standard protection provisions, and in practice will not operate in this way.

5. Consultation with consumer representatives

The Joint Consumer Submission and the submission of the Townsville Community Legal Service state that 'there has been no consultation with consumer representatives on the current proposal'.

Several authors of the Joint Consumer Submission have been long standing members of the Insurance Council's Consumer Consultative Committee (CCC), which has been in operation since 1999.

The purpose of the CCC is consultation. That is, it provides a forum for consumer representatives and the general insurance industry to come together to communicate information - it also provides a forum for consumer representatives to raise any issues of concern directly with the general insurance industry². Members (both general insurance industry and consumer representatives) of the CCC also act as conduits to disseminate information within their organisations, obtain feedback, and bring them back to the CCC. The CCC meets quarterly.

The issue of a common definition of flood to be adopted on a voluntary basis has been discussed and minuted several times at CCC meetings, including several authors of the Joint Consumer Submission, starting in June 2007. Subsequent concerns, if any, and further dialogue have not been pursued by these consumer representatives at any time through the CCC or directly with the Insurance Council.

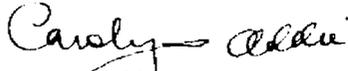
The CCC will continue to be a forum valued by the Insurance Council as a means of engaging with consumer representatives.

² The CCC is a powerful tool for the general insurance industry to use in engaging consumer groups. However, it is critical that consumer groups using the CCC forum take note of proceedings and raise concerns, ask questions, and engage in discussion when issues arise that the industry brings to their attention seeking their commentary.

6. Conclusion

The Insurance Council submits that in the context of the growing availability of flood cover in Australia, the voluntary common definition will benefit consumers by serving as a common benchmark for product comparison.

Yours sincerely



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