



SUBMISSION ON THE

PROPOSED INDUSTRY FUNDING MODEL

FOR THE

AUSTRALIAN SECURITIES AND INVESTMENTS

COMMISSION

NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA

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INTRODUCTION

The National Insurance Brokers Association of Australia (NIBA) welcomes the opportunity to provide this Submission in response to the Consultation Paper outlining a Proposed Industry Funding Model for the Australian Securities and Investments Commission.

EXECUTIVE SUMMARY

NIBA respectfully makes the following submissions in response to the ASIC proposed industry funding Consultation Paper.

The Financial Services Industry in Australia

The Financial Services Industry includes a number of key sectors – capital markets, wealth management and related services, banking, payment services and last but by no means least, risk insurance.

Each of these sectors is different. The nature of the products and services are different. The goals and objectives of the client/customer/consumer are different. The risks to the client/customer/consumer in relation to the purchasing decisions they make are different. The conversation between the product supplier and/or adviser and the customer in each of these sectors is different.

Industry Funding

NIBA accepts that in future insurance brokers should pay something towards their regulation by ASIC. However, as set out in this submission, this cost should not be totally funded by industry and the industry share paid by insurance brokers should recognise that their supervision historically takes little of ASIC's time compared to other sectors of the financial services industry.

NIBA also submits that any additional costs imposed on insurance brokers as a result of industry funding should be offset by savings and efficiencies in the cost and complexity of compliance with regulatory and licence requirements.

Current ASIC Fees

Insurance brokers already pay fees to apply for or vary an Australian Financial Services Licence.

Many insurance brokers operate as a company. This involves further ASIC fees for annual company statements and changes to company details. NIBA notes this registration function of ASIC may be sold or outsourced. It is not yet clear whether new operators would have the power to change and increase fees.

NIBA submits the Government should consider all ASIC related fees before finalising its views so that the overall charges borne by the financial services industry are fair and reasonable, by being proportionate and targeted.

ASIC Investigation Costs

ASIC announced on 29 July 2015 that it will now use its powers to recover the expenses of its investigations.

ASIC noted that it generally must pay the expenses of investigations it conducts. However, ASIC may make an order to recover expenses and costs where that investigation has led to a successful prosecution or civil proceedings against a person.

So far, ASIC has rarely recovered its investigation expenses.

NIBA supports ASIC recovering its costs in this way. This recovery is like user pays, which NIBA believes is reasonable as the particular entity the subject of investigation is bearing the expense, not those in the industry which are complying with the law.

Investigation is different from supervision. The industry overall receives benefit from the latter as regulation should increase consumer confidence in dealing with the industry.

Since ASIC plans to recover, its budget for investigations costs should decrease and not be part of the proposed industry funding, otherwise there will be double recovery.

These points again reflect the principle above that ASIC charges should be fair by being proportionate and targeted.

Proposed ASIC Funding Model

As noted in this submission, NIBA believes there are many issues and concerns in relation to the proposed funding model, and that further analysis and consultation is required in order to develop a model that is proportionate and targeted, and truly reflects the level and intensity of ASIC activity in relation to insurance broking, and across the various sectors of the financial services industry.

As noted above, the proposed model makes little or no allowance for the differing levels of regulatory attention and effort within the broad category of “Financial Advice Providers”. NIBA therefore does not support the funding model in its current form, but is willing to work with the Government to develop a more appropriate model which recognises and reflects the relatively limited amount of regulatory activity currently applied to the insurance broking sector.

Proposed ASIC Fees

NIBA strongly opposes the proposed fee for applying for an AFS licence. NIBA believes the proposed fee is well in excess of the likely cost of processing an AFS licence application from an insurance broker. NIBA believes the proposed fee will operate as a major barrier to entry, and will cause the unintended consequence of encouraging insurance brokers to operate as authorised representatives rather than as AFS licence holders.

Best Practice Regulation

NIBA strongly urges the application of procedures for the development of any amended or new regulations as set out by the Office of Best Practice Regulation.

The proposed industry funding model will add new costs to the operations of AFS licence holders, while providing no benefit to those business owners.

In particular, the proposed fees should not be introduced unless and until proposals have been developed to offset the cost of the fee by a reduction in the cost and complexity of complying with regulatory and licensing obligations.

ABOUT NIBA

NIBA is the peak industry body for the insurance broking profession in Australia. NIBA represents around 360 member firms, and over 3,000 Qualified Practising Insurance Brokers (QPIBs) throughout Australia. In total, NIBA represents an estimated 90% of all insurance brokers in Australia.

NIBA –

- represents and speaks on behalf of its members to governments, Members of Parliament, regulators, the media and other interested stakeholders;
- promotes the professionalism of insurance broking through industry-based training and professional qualifications (NIBA College) and through a strong, independently administered and monitored Code of Practice for members;
- communicates the importance of insurance and the role of insurance brokers to the community;
- provides a number of services to its members, including member communications and an annual industry Convention; and
- liaises with equivalent foreign associations through its membership of the World Federation of Insurance Intermediaries in order to help maintain high standards for its members on an international basis.

The 360 member firms all hold an Australian financial services (AFS) licence, issued by the Australian Securities and Investments Commission (ASIC) under the Corporations Act, which enables them to deal in and/or advise on risk insurance products and other facilities through which people may manage financial risk.

NIBA Members include large multinational insurance brokers, large Australian-owned insurance brokers, and around 350 small to medium sized insurance broker businesses located in the cities, towns and regions across Australia.

ABOUT INSURANCE BROKERS

The role of insurance brokers

The primary role of insurance brokers is to:

- assist customers to understand, assess and manage their risks;
- provide advice on what risk management activities and in particular insurance is appropriate for the customer's personal or business needs;
- assist customers to arrange and acquire insurance where required;
- assist the customer in relation to any claim that may be made by them under their insurance program; and
- review and advise on the customer's ongoing risk needs.

In doing the above the insurance broker acts for and on behalf of the customer as their representative or agent. Insurance brokers offer many benefits to their customers, including:

- assistance in identifying risk requirements;
- assistance with selecting and arranging appropriate, tailored insurance policies and packages;
- detailed technical expertise, including knowledge of prices, terms and conditions, benefits and pitfalls of the wide range of insurance policies on the market;
- assistance in interpreting, arranging and completing insurance documentation;
- experience in predicting, managing and reducing risks;
- assistance with claims and the resolution of claims; and
- assistance with the ongoing management of their risks.

In limited cases, insurance brokers may act as agent of the insurer (not the insured), but where such a relationship exists the customer is clearly advised up front.

For larger corporations, public sector agencies, governments and other sophisticated purchasers of insurance services, insurance brokers play a key role in assisting with identifying and managing risks, and with assisting the organisation to finance risks via self-insurance, national and international insurance and reinsurance programs, or other risk financing mechanisms.

Insurance brokers handle around 90% of the commercial insurance transacted in Australia, and play a major role in risk assessment, risk financing and insurance distribution, handling over \$18.1 billion in premiums in the 12 months to 30 June 2015¹, and placing around half of Australia's total

¹ Source: Australian Prudential Regulation Authority, *Intermediated General Insurance Statistics*, June 2015, issued 2 September 2015, available at www.apra.gov.au

insurance business. Insurance brokers place most insurance business with Australian authorised insurers and with Lloyd’s, but also place substantial insurance business into Singapore, London and other overseas markets for large and special risks where the local markets are either unable to provide such insurance or provide it on unsatisfactory terms.

Insurance brokers perform another critical function as part of the insurance process: they provide the distribution mechanism for intermediated insurance companies, and in the course of doing so, they constitute and operate the “market” for intermediated insurance in Australia. This occurs because insurance brokers on behalf of their clients can and do access the range of available insurance products and services provided by intermediated insurance companies.

This dual role played by insurance brokers – advising and assisting the client on risk and insurance issues, and providing a distribution mechanism for intermediated insurance companies – may give the appearance of potential conflict, but in fact this model has operated successfully in Australia and internationally for over 200 years². **The key reason for this is the fact that when acting for and on behalf of their client, the insurance broker owes contractual, fiduciary and other duties to the client, and must act in the client’s best interests at all times.**

As noted above, all insurance brokers in Australia must hold an AFS licence, issued by ASIC under the Corporations Act, which enables them to deal in and/or advise on risk insurance products.

² Benjamin, R, 1988, A History of Insurance Broking in Australia, Craftsman Publishing, Melbourne.

THE FINANCING OF RISK

Very little growth and prosperity occurs unless the owners and financiers of that activity are able to obtain insurance, or insurance like products and services, on competitive terms. The insurance industry in Australia helps provide the security that allows individuals, businesses, large and multinational corporations and governments to undertake their normal day to day activities. This was clearly demonstrated by the resulting fallout from the failure of HIH Insurance in 2001.

Risk is faced by individuals in relation to the property they own, the liabilities they incur to others, and their financial security in being able to earn income, support their family, fund their lifestyle and fund their retirement.

Businesses face risk in their daily operations, whether it be the risk of property loss, business interruption, product liability, public liability, employer liability, directors' and officers' liability, and so on. New and challenging risks are emerging at the present time, associated with developments in climate change and the digital economy.

Communities face risk through their exposure to natural disasters and catastrophes. These events often expose levels of uninsured risk in the community, with the potential for community disruption and permanent losses. Natural disasters and catastrophes also cause major damage to community infrastructure – losses that the community has to bear, often via the taxation systems.

The growth and prosperity of Australia is therefore dependent on mechanisms by which risk is financed – whether by the transfer of risk via the insurance process, or other risk financing mechanisms adopted by larger corporations and governments.

Risk is financed in three ways:

- self-insurance, whereby the individual, corporation or government (taxpayers) finance their own risks, thereby putting their own assets and income streams in jeopardy;
- risk transfer, whereby risks are transferred to an insurance pool, and the insurance pool and the insurer's capital carry and finance the risk; and
- community funding of risk and loss, which often occurs in Australia at the present time in respect of uninsured losses following natural disasters and other major events which affect numbers of people at the same time.

Insurance brokers are involved and are experts in all of the above areas of risk financing.

THE FINANCIAL SERVICES INDUSTRY IN AUSTRALIA

The Financial Services industry in Australia provides a very wide range of products and services to the Australian community. The financial system includes the following key sectors:

- Capital Markets;
- Wealth Management and related financial services, including retirement savings and superannuation;
- Banking – savings and loans;
- Payment Services;
- Risk Insurance – general insurance, life insurance, reinsurance.

NIBA strongly believes that these areas of the financial system perform very different functions, have very different products and services, and have very different goals and objectives. The various sectors of the financial services industry also present very different issues and challenges from a regulatory perspective.

For this reason, NIBA believes that any proposal for industry funding of ASIC must take account of the differing roles, products and objectives of the various sectors of the industry, and the varying regulatory issues and challenges relevant across those sectors.

Unfortunately, the regulation of financial advice has fallen under the single umbrella of Chapter 7 of the Corporations Act, which attempted to apply a “one size fits all” approach to the regulation of financial services and advice. NIBA believes this approach has not been and is not appropriate for the area of risk insurance, because the nature of the products, services and advice, and the goals and objectives of risk insurance products, are very different to products, services, goals and objectives in other sectors of the financial services system.

Following the implementation of the “Financial Services Reform Act”, significant tailoring to the legislation was required after the fact, once Government acknowledged the reality of these differences. The same issues arose in the implementation of the recent Future of Financial Advice reforms.

Of real concern to NIBA is that there is common use of the catch all term “financial advisers” (or in the Consultation Paper: Financial Advice Providers). Often, this term was being used to describe only financial advisers operating in the area of wealth management (financial planning and investment advice) sector.

NIBA respectfully submits there are major and important differences between products, services and advice in the wealth management sector, and products, services and advice in the risk insurance sector. Unfortunately, from a regulatory perspective, the use of the term “financial adviser” catches both types of adviser.

The regulatory regime, and any proposals for industry funding of the regulatory regime, should recognise a clear distinction between general and life insurance risk advisers on the one hand, and financial planners and investment advisers who provide a very different form of advice in the investment space.

NIBA therefore offers the comments and observations in this submission from this perspective.

CHAPTER 1: CONTEXT AND OVERVIEW

This section of the submission provides comments on a number of areas covered in Chapter 1 of the Consultation Paper.

Australian Government's Charging Framework

The Consultation Paper references the Australian Government's Cost Recovery Guidelines. We note a number of key provisions of the Guidelines include the following:

- “non-government recipients of specific government activities should be charged some or all of the costs of those activities”³
- “who might be charged (e.g. is there an identifiable individual, organisation or group that receives the activity or creates the need for it?)”⁴ (our emphasis); and most importantly
- “It is usually inappropriate to cost recover some government activities, such as general policy development, ministerial support, law enforcement.....”⁵

As will be noted in subsequent comments, the Consultation Paper lists some of these matters, but appears to give little or no acknowledgement to how these core principles should affect the development of the funding model.

Clause 11 of the Cost Recovery Guidelines identifies those who might be charged as part of a cost recovery process. The Guidelines identify both groups that receive the activity (in the context of ASIC, this presumably refers to those who receive the benefit of its regulatory activities – consumers and investors) and those who create the need for it. The Consultation Paper appears to concentrate almost entirely on those who create the need for the activity – presumably regulated financial services firms – with little or no discussion of the potential for recovering from those to receive the benefit of the activity – consumers and investors.

³ CRG clause 10.

⁴ CRG clause 11.

⁵ CRG clause 12.

NIBA understands that in New Zealand, approximately 60% of the regulator's costs are recovered from industry, and approximately 40% of the costs are funded by the Government, on the basis that consumers, investors and the community generally benefits from a sound and well managed regulatory environment.

NIBA therefore respectfully submits that further consideration should be given to the issue. Recovery should come more broadly than simply from those that create the need for regulatory activity (regulated firms).

Benefits of Industry Funding

The Consultation Paper lists a number of benefits of an industry funding model.

The primary benefit is said to be that those who drive the need for regulation should bear the costs of that regulation. As noted above, Cost Recovery Guidelines indicate that cost recovery should be sought from those who receive the benefit of regulation as well as those who drive the need for regulation. This does not appear to be recognised in the Consultation Paper.

The Consultation Paper also asserts that industry funding would drive economic efficiencies in the way resources are allocated. We will comment later in this submission on the operation of the model itself, but it is important to note here that this will only occur if the cost recovery process truly burdens those sectors with the highest levels of risk and the highest levels of regulator attention, and benefits those sectors where there are relatively low levels of regulator activity. We have serious doubts as to whether the proposed model will achieve this result.

The Consultation Paper notes that exposing ASIC to greater scrutiny of its regulatory costs would allow industry to hold ASIC more accountable for the efficiency in which it undertakes its regulatory activities.

In this regard, NIBA has advised the ASIC Capability Review that NIBA has no useful visibility of ASIC's investigation and enforcement actions, procedures and operations. It is therefore not possible for a body such as NIBA to form a view as to whether the investigation and enforcement activities are being performed in an efficient and effective manner.

NIBA also understands that key industry bodies in the United Kingdom have little or no influence on the operational efficiency of the Financial Conduct Authority, or on the level of the levies the FCA imposes on industry to fund its operations. NIBA has strong reservations in relation to the likelihood of the proposed industry funding model driving efficiencies either among regulated firms or within ASIC itself.

CHAPTER 2: ASIC'S ACTIVITIES

Regulatory activities not to be funded by industry

The Consultation Paper notes a number of ASIC functions that are not to be funded by industry under the proposed model. The Consultation Paper also notes that it is usually not appropriate to cost recover some government activities, such as general policy development and ministerial support.

The Consultation Paper then goes on to indicate the areas which are not intended to fall within the cost recovery model, including the operation of the Enforcement Special Account, administration of unclaimed money, financial literacy programmes, the operation of the insurance aggregator site and administration of the Assetless Administration Fund.

NIBA supports the exclusion of these activities from the proposed industry funding model, as they are in the nature of government services for the benefit of the broader community rather than being regulatory activity as such.

NIBA also notes the Federal Government's Cost Recovery Guidelines state that "It is usually inappropriate to cost recover some government activities, such as general policy development, ministerial support, law enforcement...."⁶

The Cost Recovery Guidelines clearly suggest there are activities which should not form part of the cost recovery process, but the Consultation Paper does not appear to address these matters. For example, Table 1 lists ASIC's Regulatory Activities as including Policy Advice to Government, an area clearly outside the ambit of the Cost Recovery Guidelines.

It is also not clear whether activities such as Guidance, Stakeholder Engagement and Education are appropriate to be included within the cost recovery framework. These types of activity are of a broad governmental nature, rather than being functions and activities that are driven by the firms that are being regulated.

Given the concerns expressed above in relation to the adoption and application of the Federal Government's Cost Recovery Guidelines, NIBA would like to strongly urge –

⁶ Australian Government Cost Recovery Guidelines, clause 12.

1. A more comprehensive discussion of the basis for cost recovery from industry, including the allocation of costs to those who receive the benefit of regulation as well as those who drive the need for regulation;
2. A more comprehensive discussion of the activities and functions of ASIC and the extent to which – and the basis on which - those activities will be included or excluded from the proposed cost recovery model; and
3. A clear outline of the basis on which ASIC activity will be costed and how the costs are to be allocated across activities that are to be included and excluded from the cost recovery model.

It will be important that the Government and/or ASIC provide clear information and statistical data in relation to these matters, in order to ensure AFS licence holders have confidence in the construction and operation of the industry funding model, and to achieve the improved transparency and accountability referred to in the Consultation Paper.

Regulatory activities currently funded by industry

NIBA notes that some of ASIC's activities are currently the subject of cost recovery action via APRA, and supports the suggestion that in future all areas of cost recovery are to be consolidated into a single ASIC industry funding model.

MoneySmart

NIBA notes the comment that most of the costs of operating the MoneySmart site are recovered through APRA supervisory levies.

NIBA respectfully submits that the MoneySmart site provides excellent information to consumers and members of the community who are most likely to deal directly with the major financial institutions – banks, life and general insurance companies, industry superannuation schemes, and that it is appropriate for the current funding arrangements to continue.

CHAPTER 3: INTERNATIONAL FUNDING MODELS

United Kingdom

The Consultation Paper notes the United Kingdom FCA is funded by industry. While the FCA is accountable to HM Treasury and to the UK Parliament, it appears it has a large measure of independence when it comes to the setting of budgets and levies on industry. From the most recent response to consultations on industry funding of the FCA, the FCA appears to have simply noted expressions of concern and then continued to implement its proposed levy structure.

There is one feature of the FCA levy structure that would appear to be of merit. The Consultation Paper proposed model would appear to impose the same levy on all Financial Advice Providers, regardless of the nature of the advice provided and regardless of the level of regulatory activity undertaken in the various financial services sectors⁷.

As noted in the Consultation Paper, the FCA model segments regulated firms into a number of fee categories, known as “fee-blocks”. The fee-blocks are as follows⁸:

The fee-blocks across which the AFR is allocated are:

- A.0 - minimum fee
 - AP.0 - FCA prudential fee
 - A.1 - deposit acceptors
 - A.2 - home finance providers and administrators
 - A.3 - general insurers
 - A.4 - life insurers
 - A.5 - managing agents at Lloyd’s
 - A.6 - the Society of Lloyd’s
 - A.7 - portfolio managers
 - A.9 - managers and depositories of investment funds, and operators of collective investment schemes or pension schemes
 - A.10 - firms dealing as principal
 - A.13 - advisory arrangers, dealers or brokers
 - A.14 - corporate finance advisors
 - A.18 - home finance providers, advisers and arrangers

⁷ Consultation Paper Attachment C, Table C2, item “Financial Advice Providers”, page 44.

⁸Source:https://small-firms.fca.org.uk/fees-and-levies/how-we-calculate-annual-fees?field_fcasf_sector=246&field_fcasf_page_category=unset

- A.19 - general insurance mediation
- A.21 - firms holding client money, or assets, or both
- B - recognised investment exchanges, operators of multilateral trading facilities, recognised auction platforms and service companies
- C - collective investment schemes
- D - designated professional bodies
- E - issuers and sponsors of securities a depository receipts
- F - unauthorised mutual societies
- G - firms registered under Money Laundering Regulations 2007 and firms covered by the Regulated Covered Bonds Regulations 2008, Payment Services Regulations 2009 and Electronic Money Regulations 2011

The following fee-blocks fund our consumer credit costs:

- CC1 - firms with limited consumer credit permission
- CC2 - firms with a full consumer credit permission

NIBA is concerned that the concept of “Financial Advice Provider” is capable of including a very wide range of activities across the financial services industry, including products and advice that are designed for very different purposes, and where the level and intensity of regulatory activity varies greatly.

We note that the FCA specifically recognises “general insurance mediation” as a specific fee-block for the purposes of its industry levy process and procedures. NIBA believes this goes a long way to recognising that the work of general insurance intermediaries is different to the products, services and advice provided by other sectors of the financial services industry.

NIBA therefore strongly recommends that further analysis be undertaken in relation to the nature and level of regulatory activity undertaken by ASIC, with a view to making proper distinctions between those sectors with the highest level of regulatory attention and those who do not. It may be that the FCA fee-block approach may be a reasonable starting point for analysis of this nature, but we also acknowledge that there may be more effective ways to categorise ASIC regulatory activity.

In order to ensure there is ongoing confidence in the process, NIBA would like to see the basis for any allocation of costs across the various sectors in due course.

New Zealand

NIBA understands the New Zealand FMA recovers approximately 60% of its operating costs from industry, with the remainder being funded by Government on the basis that consumers and the community generally benefit from a sound, well regulated, financial services industry.

As noted earlier in this submission, NIBA believes the Australian Government Cost Recovery Guidelines require any cost recovery model to assess the position of those who receive the benefits of cost recovery as well as imposing costs on those who drive the need for regulation in the first place.

NIBA firmly submits an approach similar to that adopted in New Zealand should be seriously considered for any cost recovery model being developed in Australia.

CHAPTER 4: PROPOSED INDUSTRY FUNDING MODEL

Proposed levy arrangements

NIBA has noted above strong reservations as to whether it is appropriate for the proposed funding model to include ASIC activities such as developing advice for Government, engaging with stakeholders and educating consumers and investors.

NIBA has also expressed strong concerns that the concept of “Financial Advice Provider” captures a very wide range of products and services. NIBA once again has to raise the equity of adopting a “one size fits all” approach to the regulation of financial advice, and subsequently to the recovery of the regulator’s forecast costs. If industry funding is to proceed, NIBA strongly submits that cost recovery from insurance brokers should reflect the level of regulatory activity in relation to insurance brokers, not the level of activity directed to Financial Advice Providers operating in other sectors of the financial services industry.

NIBA notes that on page 18 of the Consultation Paper, the discussion of Step 3 refers to the development of a proxy for determining and allocating supervisory intensity across various sectors. At this time it is not clear to NIBA how this process would work, and how it would apply within the area of Financial Advice Provider.

NIBA firmly believes further consultation is required before a full assessment of the proposed methodology can be undertaken, as there are a number of critical issues that are not clear from the Consultation Paper.

Proposed fee arrangements

NIBA is seriously concerned about the proposed increase in the cost of processing an AFS licence from \$1,522 (corporate) or \$846 (personal) to \$11,000 (Table G21, page 63).

This will amount to a very high barrier to entry, and will operate as an incentive for firms to operate as authorised representatives rather than hold an AFS licence in their own right. This proposal is a massive impost on what are often small businesses with limited cash flow in the initial years of operation.

CHAPTER 5: DETERMINING ANNUAL LEVIES AND FUNDING ACCOUNTABILITY

NIBA respectfully submits that in order for industry to have confidence in any industry funding model, it will be necessary for ASIC to collect and publish clear information regarding the nature, level and extent of regulatory activity across the various areas of its operations.

The simple assertion that ASIC needs to recover \$91 million from “AFS Licensees” provides no information on the nature and extent of regulatory effort, nor does it indicate the sectors where this activity is taking place.

If the proposed consultation and review process as set out in Chart 4 on page 24 of the Consultation Paper is to be implemented, extensive information would need to be included in the Government consultation process.

NIBA also has strong reservations regarding the concept of certainty as to the fees and levies to be charged (consultation question 14). The main problem is that the Government would consult with industry in September, and then little would be revealed until the release of the Budget in the following May.

Given the funding would be determined as part of the annual budget cycle, it is entirely possible that ASIC funding could be influenced by factors outside the regulatory activities it is required to undertake. NIBA notes the discussion and recommendations of the Financial System Inquiry in this regard⁹. NIBA notes the Government is considering its response to the FSI recommendations.

Put simply, the fact that the funding is part of the annual budget cycle would be likely to give industry little confidence or certainty as to the fees and levies likely to be charged under the model.

NIBA would support the formation of a Cost Recovery Stakeholder Panel, on the basis that the information provided to the Panel is widely available to all sectors of the financial services industry, especially those sectors not formally represented on the Panel. Appropriate representation would need to be provided to sectors which are the subject of intense regulatory attention as well as those that are not.

NIBA also notes the Financial System Inquiry recommendations for oversight of the key regulatory agencies in the financial services industry. We look forward to the Government’s response in this regard.

⁹ Financial System Inquiry Final Report, recommendation 28.

CHAPTER 6: PHASE-IN ARRANGEMENTS AND LEVY ADMINISTRATION

NIBA notes the intention to phase in the industry funding model over 3 years.

However, the proposed timetable would see the industry funding of financial services regulation phased in over only 2 years, with 50% being implemented in 2016/2017 and the remaining 50% being implemented in 2017/2018.

NIBA strongly recommends that if an industry funding model is to proceed, there should be a full financial year period of notice, followed by a 3 year phasing in period.

CHAPTER 7: CONSULTATION AND REGULATORY IMPACT ASSESSMENT

NIBA notes and welcomes the Government’s intention to subject this proposal to a full Regulation Impact Assessment.

As noted earlier in this submission, the majority of insurance broking firms in Australia are medium and small businesses, operating in the suburbs, towns and regions across Australia. It is critically important that any additional costs imposed on those firms is carefully assessed and understood well prior to implementation.

On the one hand, receipt and payment of an annual invoice from ASIC is not going to create a new compliance burden for insurance broking firms that hold an AFS licence. However, by any measure the raising of an additional \$91 million from AFS Licence holders is going to have a major impact on the cost of doing business.

Following the introduction of financial services reform legislation in 2002, there has been a major change from general insurance broking and advice being provided mainly by AFS licensees to the position today where significant – and growing - amounts of advice are provided by authorised representatives of AFS licensees. There is little doubt that this proposal will provide a strong incentive for those wishing to operate businesses as general insurance brokers to become authorised representatives of existing AFS licence holders rather than seeking an AFS licence in their own right.

NIBA regularly receives expressions of concern from Members regarding the cost and complexity of complying with the current AFS licensing and regulatory regime. This is a particular burden for medium and small broking firms holding AFS licences.

NIBA therefore submits that as part of any proposal to introduce industry funding of ASIC, action should be taken to reduce the cost and complexity of complying with the current regulatory regime, with any savings being used to fund ASIC cost recovery, such that there would be no net cost or burden from any new industry funding model.

NIBA is keen to work with Treasury and ASIC to develop proposals and strategies to achieve this outcome.

ATTACHMENT C: FUNDING MODEL FOR AFS LICENSEES

NIBA respectfully submits that there needs to be far greater clarification of definitions and concepts in relation to the proposed operation of the funding model for AFS licensees.

Licence authorisations

NIBA questions the assumption that the number of authorisations on an AFS licence is a suitable proxy for the likely level of regulatory intervention and attention. Currently, typical AFS licences for insurance brokers include authority to-

- Provide financial product advice
- Deal
- In general insurance and/or life risk insurance products.

A licence may also include authority to deal in miscellaneous risk products, or a range of financial and investment products.

An insurance broker who provides advice and services in relation to general insurance and life risk insurance products may have an AFS licence along the following lines:

1. This licence authorises the licensee to carry on a financial services business to:
 - (a) provide financial product advice for the following classes of financial products:
 - (i) general insurance products; and
 - (ii) life products including:
 - (A) investment life insurance products as well as any products issued by a Registered Life Insurance Company that are backed by one or more of its statutory funds; and
 - (B) life risk insurance products as well as any products issued by a Registered Life Insurance Company that are backed by one or more of its statutory funds; and
 - (b) deal in a financial product by:
 - (i) applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of the following classes of products:
 - (A) general insurance products; and
 - (B) life products including:
 - (1) investment life insurance products as well as any products issued by a Registered Life Insurance Company that are backed by one or more of its statutory funds; and
 - (2) life risk insurance products as well as any products issued by a Registered Life Insurance Company that are backed by one or more of its statutory funds;
- to retail and wholesale clients.

Depending on the application of the proposed model, this licence may have 2, 4 or possibly 10 authorisations. Any funding model must not be built upon a process that allows such a subjective assessment of the model's operation in practice.

Tiering methodology

Table C1 proposes a tiering methodology for Financial Advice Providers based on whether advice is authorised for Tier 2 products only or Tier 1 products generally.

NIBA respectfully points out that a typical AFS licence for insurance brokers does not distinguish between advice for Tier 2 or Tier 1 products. It is not clear how ASIC will apply the proposed funding model in the absence of this information.

If applied, NIBA also notes that in the context of general insurance (which is all Tier 2 except for sickness and accident general insurance which is Tier 1), the end result is likely to be unfair as insurance broker dealing in one Tier 1 product will not be able to rely on the Tier 2 only category. The risk associated with such a business is significantly less than a business operating on more than one tier 1 product. NIBA assumes that this was not the intent, but we strongly submit this issue needs to be addressed.

Table C2: Proposed levy arrangements – AFS Licensees

It is well known that there have been major issues and concerns with AFS licensees providing financial advice in relation to life insurance, investments, retirement savings and superannuation. All of these sectors would fall within the concept of “Financial Advice Providers Tier 1 Provider”.

Unfortunately, insurance brokers with ASIC Tier 1 qualifications also fall within that concept.

There have been no expressions of concern in relation to the nature and quality of advice provided by insurance brokers in recent years, whether from ASIC, Governments, Parliamentary Committees or the Financial Ombudsman Service. While a small number of insurance brokers have been the subject of regulatory activity, there have been no expressions of concern by ASIC regarding systemic or widespread poor advice by insurance brokers.

As noted above, NIBA calls for greater granularity in the classification of Financial Advice Providers, to ensure that those sectors that receive the greatest level of regulatory attention pay the largest component of the recovery levies. The proposed funding model does not appear to allow for this to occur at the present time.

Unless and until this distinction can be made, NIBA is strongly opposed to the industry funding model as proposed.

Table C2: Insurers

Insurers operating in the Australian market can be categorised as –

- Insurance companies authorised by APRA under the Insurance Act 1973;
- Lloyd’s underwriters operating in Australia under Part VII of the Insurance Act 1973; and
- Unauthorised foreign insurers that do not require authorisation under the Insurance Act 1973 (UFI).

NIBA notes that in an AFS licence context, some insurers won’t need a licence due to some licensing exemptions e.g Lloyd’s underwriters and UFIs that may act through Australian AFS licensee distributors.

The concept of “Insurer” is broadly defined in the Consultation Paper as “An AFS licensee with an authorisation to deal, or arrange for a person to deal, in a financial product by issuing general and life insurance products”.

This definition catches insurers as well as their agents that hold AFS licences.

The Consultation Paper classifies “Insurer” (as defined above) into the concepts of “Product Issuer” and “Product Distributor”, and applies a levy of \$31,000 for the “Product Issuer” – a term not defined – and \$1,500 for the “Product Distributor” – also not defined.

The practical reality is that if an issue arises in relation to the relevant insurer’s product and they do not have an AFS licence but are represented by an AFS licensed distributor, the regulatory effort in managing the issue is likely to be the same as that where the insurer in question also holds an AFS licence.

The difference is that the non-licensed insurer won’t pay the \$31,000 levy and the licenced insurer will.

In addition, licensed insurance brokers acting as agent for one insurer in a limited class of insurance business and for clients in other classes may be required to pay the Product Distributor levy of \$1,500 when the level of regulatory effort is likely to be significantly less than that involving an AFS licensee acting solely for insurers.

NIBA believes the current proposal is likely to create an un-level playing field, and requires significant further consideration.

Table C2: Industry sub-sectors

The definition of “General Advice Provider” catches all of those licensees who provide general advice to retail and/or wholesale clients.

This will catch insurance brokers who have a broad financial product advice authority which covers both general and personal advice services.

This means insurance brokers will need to pay a levy for general advice providers and Financial Advice Providers. This seems to result in a duplication and NIBA believes further consideration should be given as to whether this is a fair and appropriate result based on available statistics and ASIC regulatory activity.

The concept of “Wholesale Advice Provider” appears to be limited to those providing financial product advice (which in the Corporations Act means general and/or personal advice) to wholesale clients. There seems to be a duplication as they would also be caught as a general advice provider and two levies would be payable. NIBA believes further consideration needs to be given as to whether this is a fair result based on available statistics.

NIBA is concerned that there is a degree of duplication in the likely levies applicable to insurance brokers for what in effect are the same services or services that are so intertwined when it comes to regulatory activity that a distinction is not justifiable or likely to achieve a fair result.

NIBA believes further analysis and discussion is required on this issue in order to avoid excessive regulatory arbitrage.

ATTACHMENT G: PROPOSED FEE SCHEDULE

NIBA strongly objects to the proposed fee of \$11,000 for an application for an AFS licence. We do not accept that it would take a lawyer being paid \$400 per hour 27.5 hours to assess an AFS licence application from an insurance broker. Even if 50% of the cost is allocated to corporate overheads – IT systems etc – we still do not accept that it would take in excess of 13 hours to assess a licence application.

The proposed \$11,000 fee is another example of a “one size fits all” approach. The same fee would be paid by a major financial services provider seeking a new licence, as well as a new insurance broking business owned by 2 business partners operating in a country town.

NIBA can see no justification for a fee of this nature in relation to the processing of AFS licence applications from insurance brokers.

This fee will also be a major barrier to entry for people wishing to commence a small to medium insurance broking business providing advice and other services to their clients.

The combined operation of a very high AFS licence fee and ongoing levies under the industry funding model will provide a strong incentive to people considering establishing their own business to operate as an authorised representative (or a corporate authorised representative), rather than as an AFS licensee in their own right.

NIBA strongly suggests that very careful consideration needs to be given to the implications of any such change in licensing and regulatory incentives.

FURTHER INFORMATION AND CONTACT DETAILS

For further information or clarification of any matter in this Submission, please do not hesitate to contact:

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