



SUPPLEMENTARY SUBMISSION

TO THE

FINANCIAL SYSTEM INQUIRY

NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA

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INTRODUCTION

The National Insurance Brokers Association of Australia (NIBA) welcomes the opportunity to provide a Supplementary Submission in response to the Interim Report of the Financial System Inquiry.

As previously stated, NIBA considers that Australia has been well served by the insurance industry in Australia, particularly since the implementation of the recommendations of the HIH Royal Commission. The sound performance of Australia's insurance industry during the global financial crisis when compared with foreign jurisdictions was good proof of this.

We believe it is important, however, to carefully reflect on the nature and effectiveness of financial services regulation in Australia and this Submission offers further commentary on these and a number of other matters.

EXECUTIVE SUMMARY

NIBA respectfully makes the following submissions in response to the Interim Report of the Financial System Inquiry.

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 conversation between the product supplier and/or adviser and the customer in each of these sectors is different.

Each sector should be regulated based on its own circumstances, and not on the basis of a “one size fits all” approach. The issues which arose from such an approach under the FSR and more recent FOFA reforms should be avoided.

Of real concern to NIBA is that there appears to be the common use of the catch all term “financial advisers” when discussing reform that in reality, is only needed in the financial planning space. The use of the term catches both types of adviser. There should be a clear distinction made between general and life insurance risk insurance advisers and financial planners who advise in the investment space.

Insurance Aggregator and Comparison Web Sites

Aggregator and comparison web sites provide very limited information, often from a very limited number of insurance providers. The regulators have expressed clear concerns about misleading conduct in this space.

There is no clear consumer benefit arising from the greater promotion of aggregator and comparison web sites in Australia as ultimately they act for their own benefit and the basis of their comparisons can lead consumer to focus on issues such as price rather than coverage in the insurance space.

Statutory Insurance Schemes

NIBA firmly believes the opening up of public sector workers compensation schemes to competition would provide real value to employers, and in fact to all stakeholders operating in those schemes.

Disclosure

NIBA believes any disclosure regime for financial products and services should be based along the following lines:

1. Broad based financial literacy programs, particularly in high schools;
2. Clear, easily understood information on key product features where products are being sold directly to consumers; and
3. Strong encouragement that consumers actively seek advice from a qualified and experienced adviser if they are not clear about their particular needs (what do I need to insure?) and/or the products that might be available for their financial needs (what insurance policy is best for me?).

Education of Insurance Brokers

There is a strong, nationally accredited, regime for the professional education and training of insurance brokers in Australia, with ongoing Continuing Professional Development obligations.

NIBA submits there is no evidence to support the need for any form of national examination for risk insurance advisers, at least so far as insurance brokers are concerned.

General Advice

NIBA makes a detailed submission on the current issues and concerns with “general advice” and “personal advice”, in particular the provision of scaled advice in relation to single products or single product issuers. NIBA:

- supports the suggestion to rename general advice as “sales” “marketing” or “product information”, and mandate that the term “advice” can only be used in relation to personal advice.
- queries whether it is appropriate to allow single product or single issuer limited personal advice services. If allowed, NIBA believes that special disclosure obligations should be imposed to seek to ensure consumers are properly informed of the clear conflict of interest that arises in such cases.

Regulatory Burden

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

Technology

Technology services and platforms will continue to develop in coming years. The principles in the Submission regarding General Advice must be made to apply regardless of whether the customer is interacting in person, by telephone, on the internet or via some other form of technology.

International Integration

Australian insurers and insurance brokers are closely interconnected with the world wide insurance markets. There should be no changes to the regulation of this activity unless and until a very careful analysis is undertaken on the likely impact of any proposed changes on the operation of those insurance markets, and the capacity of the insurance industry and insurance brokers to arrange suitable risk financing and insurance cover.

Coordination of Financial Integration

Legislative and regulatory proposals developed at international meetings of regulators or other task forces should not be adopted in Australia unless and until there is a detailed cost/benefit analysis on the need for those recommendations to be implemented domestically.

ABOUT NIBA

NIBA is the peak industry body for the insurance broking profession in Australia. NIBA represents around 400 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 400 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 380 small to medium sized insurance broker businesses located in the cities, towns and regions across Australia.

ABOUT INSURANCE BROKERS

The role of insurance brokers

As previously advised, the primary role of insurance brokers is to:

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

In doing the above the insurance broker acts on behalf of the customer as their representative or agent.

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 can and do access the range of available insurance products and services provided by intermediated insurance companies, on behalf of their clients.

This dual role played by insurance brokers – advising and assisting the client on risk and insurance issues; 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 years.

All insurance brokers in Australia must hold an Australian financial services (AFS) licence, issued by ASIC under the Corporations Act, which enables them to deal in and/or advise on risk insurance products.

THE FINANCING OF RISK

NIBA wishes to reaffirm that 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 activities.

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, 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.

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.

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 more sophisticated 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.

A modern society with a mature economy such as Australia should be entitled to assume that risks are being properly managed and mitigated, and that the financing of risk is operating in an optimum manner, for the benefit of all.

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 and life insurance.

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.

For this reason, NIBA believes that in any analysis of the performance of the financial system, care must be taken to determine whether the matter being examined pertains to the whole of the financial system, or relates to only a component sector of that system.

Following the Wallis Report, the regulation of the financial system has been largely divided between –

- Prudential regulation, by the Australian Prudential Regulation Authority; and
- Market regulation, by the Australian Securities and Investments Commission.

The regulation of market conduct occurs via the Australian Financial Services Licence, and the associated concepts of “advice” and “adviser”.

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 industry. 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 appears to be the common use of the catch all term “financial advisers” when discussing reform that in reality, is only needed in the financial planning space. The use of the term catches both types of adviser.

There should be a clear distinction made between general and life insurance risk insurance advisers and financial planners and investment advisers who advise in the investment space.

NIBA therefore offers the following observations, comments and submissions on the matters raised in the Financial System Inquiry's Interim Report from this perspective.

SUPPLEMENTARY SUBMISSION

NIBA makes the following submissions on the issues raised in the Interim Report, in the order in which they are covered in that Report.

GROWTH AND CONSOLIDATION

INSURANCE SECTOR

The Interim Report seeks views on the potential use of aggregator or comparison web sites to facilitate the sale and distribution of insurance products.

NIBA firmly believes that comparison websites do not and will not enable consumers to adequately compare the features of products offered in the Australian general insurance market.

Property insurance policies vary widely in their terms and conditions, and only the most sophisticated insurance databases (such as the reference maintained by the LMI Group¹) adequately monitor the policies available in the market place.

Because of this complexity, comparison websites often only provide very limited information, which can therefore be very misleading for those who view or use the site. ASIC has expressed strong concern on a number of occasions regarding the nature and content of comparison sites that have been available in Australia in recent years.

The use of comparison websites is further complicated by the recent experience of NIBA Members in North Queensland, who have found that the availability and cost of insurance cover for specific properties and risks can alter day by day. With a market that is operating in this manner at the present time, any form of comparison web site risks being inaccurate and misleading.

Accordingly, NIBA strongly believes the Financial System Inquiry should not recommend any changes in this area.

¹ See: <http://www.policycomparison.com/>

Currently, workers compensation in Australia is underwritten as follows:

- Public sector underwriting: Queensland, New South Wales, Victoria and South Australia.
- Private sector underwriting: Western Australia, Tasmania, Northern Territory and Australian Capital Territory.

In the public sector schemes, large employers have the option of self insurance, often including some form of insurance protection for major and high cost claims. All other employers have no option but to obtain workers compensation insurance from the public sector provider. Those employers do not receive the benefit of competitive pressure on service and pricing that are available in the private sector insurance markets.

Further, public sector workers compensation schemes are not subject to prudential regulation by a body such as APRA. An ongoing feature of public sector schemes has been the underfunding of liabilities, resulting in cost shifting to future generations of employers. This is happening at the present time in South Australia, and was taking place in New South Wales prior to Government changes to the benefit structure to reduce scheme liabilities.

In Western Australia and the other privately underwritten workers compensation schemes, client employers have the benefit of competitive pressure in relation to the quality and level of service provided by the workers compensation insurers, and the pricing of risk offered by those insurers. Client employers are able to work with their insurance broker to effectively manage the risk of workplace injury, and to obtain the most cost effective insurance coverage from the insurance market.

NIBA strongly believes opening up public sector statutory insurance schemes to competition would provide real value for employers.

Indeed, competition principles widely accepted across Australia now state that products and services should be provided in a competitive setting unless there are compelling reasons not to do so. NIBA submits that there are no compelling reasons for workers compensation insurance to remain in the public sector in Australia.

Compulsory third party personal injury insurance is also provided in the public and private sectors across Australia. Once again, there is no compelling reason for this form of insurance to operate without the benefit of competitive pressure from competing insurance companies. However, the value for consumers will depend on the regulatory structure of the CTP premium process, given the high levels of community rating that traditionally occurs in CTP insurance.

POST GFC REGULATORY RESPONSE

STABILITY

The Interim Report discusses the Financial Claims Scheme which provides a government guarantee of retail deposits held at Authorised Deposit-taking Institutions up to the value of \$250,000 per account holder per ADI.

NIBA notes the enactment of Part VC of the Insurance Act 1973, which provides a Financial Claims Scheme for certain policyholders with insolvent general insurers. The general insurance Financial Claims Scheme has features similar to the HIH Claims Support Scheme established by the Federal Government following the failure of the HIH insurance group.

Given the very small numbers of general insurance company insolvencies in Australia over time, the fact that the general insurance Financial Claims Scheme is post event funded would appear to be an appropriate approach.

DISCLOSURE

There is now widespread acceptance that the current disclosure regime –

- Financial Services Guide
- Product Disclosure Statement
- Statement of Advice
- General Advice Warning

does not work in a sufficiently robust manner to assist consumers to make sound decisions in relation to financial products and services.

NIBA acknowledges the extensive research being undertaken by ASIC and other agencies in relation to why people make the decisions they make, and what might be done to encourage them to make better decisions in relation to the financial products and services they purchase.

NIBA believes the following position is appropriate:

1. There must be ongoing programs for financial literacy, particularly during the high school years. High school students will be entering into mobile phone contracts, and may be purchasing (and insuring) motor vehicles and taking out credit cards. All of these activities require a basic understanding of financial products and services. NIBA commends ASIC for the excellent work it is doing to support financial literacy programs in high schools.

NIBA also accepts that industry bodies and industry participants have a role to play in the education of the broader community on financial products and services. NIBA has supported the “Understand Insurance” program developed by the Insurance Council of Australia², and NIBA is also developing a new web site which will provide more comprehensive information on insurance matters for consumers.

2. Where financial products are being sold directly to the community, insurance companies and product issuers should be required to provide straightforward, easily understood, product information which explains in simple terms the features and benefits of the product. Information being provided by insurance companies and product issuers – including summary product information - will be subject to the usual laws regarding misleading and deceptive conduct.

NIBA also notes that there is a regime for “Standard Cover” insurance policies under Division 1 of Part V of the Insurance Contracts Act 1984³. These provisions provide for standard terms and conditions for insurance policies relating to motor vehicles, home buildings, home contents, sickness and accident, consumer credit and travel insurance.

3. Consumers should be strongly encouraged to consult a qualified and experienced adviser if they are not clear about their particular needs (what do I need to insure?) and/or the products that might be available for their financial needs (what insurance policy is best for me?). In other words, they should be encouraged to seek advice from a competent and qualified insurance broker in relation to their insurance needs and solutions.

NIBA believes there is no evidence to support reforms which would give ASIC greater powers to intervene in the design and marketing of risk insurance products. Recent experience has shown that the industry has been prepared to respond to statements of concern by ASIC regarding the marketing of risk insurance products.

² See: <http://understandinsurance.com.au/>

³ See also Part II of the Insurance Contracts Regulations 1985

NIBA believes that before any recommendation is made in relation to “more default products with simple features and fee structures”⁴, the Standard Cover provisions of the Insurance Contracts Act and the Insurance Contracts Regulations should be carefully examined in consultation with consumers, industry, regulators and government.

FINANCIAL ADVICE

NIBA firmly believes in the importance of insurance brokers being properly trained, qualified, competent and experienced in the areas in which they work. NIBA operates its own Registered Training Organisation, NIBA College, and has extensive experience in providing professional education and training at Certificate, Diploma, Advanced Diploma and Graduate Diploma level.

Training and development opportunities offered through NIBA College reflect the needs of the insurance broking industry, in particular for –

- New staff members – introductory courses and Certificate III and Certificate IV courses;
- Staff members with one or two years’ experience, who are starting to undertake client facing roles (Diploma of Insurance Broking);
- More senior members of broking firms, including supervisors and managers (Advanced Diploma, Graduate Diploma).

NIBA also requires insurance brokers to undertake regular Continuing Professional Development, in order to stay abreast of developments in all areas of the business.

NIBA strongly believes there is NO EVIDENCE to support the need for any form of national examination for advisers providing personal advice on risk insurance products. In fact, NIBA strongly believes that in order to provide quality advice and support to clients, an insurance broker needs –

- Knowledge of the industry, its products and operations;
- Competencies which will allow the person to understand client needs and provide relevant and useful advice; and
- Experience, support and oversight in the early stages of their career.

A “national examination” cannot replace a properly structured course of study, with regular assessments to determine learning progress, and with ongoing support from both an academic and workplace point of view. This process already occurs in relation to insurance broking in Australia.

⁴ FSI Interim Report, page 3-62

ACCESSIBILITY

The Interim Report seeks comments on opportunities for enhancing consumer access to low-cost, effective advice.

The regulatory structure for personal advice in general insurance is extensive, with significant compliance burdens. While some insurance brokers go to the full effort of providing personal advice – and meeting the compliance burdens while doing so, most believe the remuneration available does not cover the cost of doing so.

The net result is that many insurance brokers either do not operate in the area of domestic insurance policies, or do so under a “general advice” model only.

Under this model, the broker identifies a preferred insurance policy for the key areas of domestic insurance (car, buildings, contents, travel), and offers that policy to clients. This is one way of providing clients with access to reasonable quality cover, at the best available price, without having to incur the full regulatory burdens and compliance costs of “personal advice”.

It is important to note that at all times the insurance broker has certain legal duties to their client, and strict legal remedies are available to clients if the products and services offered by the broker do not match the needs of the client. There is little or no evidence of insurance broker clients receiving poor quality advice or assistance from insurance brokers at the present time.

INDEPENDENCE

NIBA has recently introduced a newly revised and updated Insurance Brokers Code of Practice⁵. All Members of NIBA are bound by the Code of Practice, and are required to comply with it.

Importantly, Service Standards 2 and 3 state:

2. We will transparently manage any conflicts of interest that may arise.
3. We will clearly tell you if we do not act for you.

In the majority of cases, insurance brokers act for, and on behalf of, their client. They must act in the interests of the client, and have common law, fiduciary and statutory duties to do so.

Sometimes, an insurance broker might act for the insurance company – they may be simply selling an insurance product on behalf of and as agent for an insurer. Where this occurs, the Code of Practice requires the insurance broker to clearly inform the client accordingly.

GENERAL ADVICE

A financial services provider can currently provide the following types of financial product advice:

- general advice; and
- personal advice.

GENERAL ADVICE

What general advice is

General advice is in reality no more than factual information provided in conjunction with a subjective general statement.

It is not intended to be a recommendation or opinion as to the appropriateness of the product for the client based on a consideration of their personal circumstances. That is where personal advice comes into play.

⁵ See: <https://www.niba.com.au/codeofpractice/index.cfm>

General advice is defined in section 766B as a recommendation or a statement of opinion, or a report of either of those things that:

- is intended to influence the person it is given to in deciding something in relation to a financial product (or class of one or interest in one); or
- could reasonably be regarded as being intended to have such an influence.

General advice will usually involve expressing a general express or implied recommendation or opinion to a client on an insurer's product or a feature of a product which is not simply a statement of fact and not made as a result of consideration of the client's needs (or could not reasonably be seen as such) e.g. it is a personal opinion, the truth of which that cannot be objectively determined.

The following are some practical examples of what would be seen to be general advice:

- "this policy is better than our competitor's because it has higher benefits for home assistance and broken bones";
- "this is a good buy and the most popular product on the market";
- "we recommend that members have this type of insurance/this product"; and
- "This product is a great deal and can't be beaten".

The main risk that needs to be avoided in relation to general advice is to avoid it being seen as personal advice.

The General advice warning requirement is designed to assist in this respect.

General Advice warning obligation

Under section 949A, the providing entity (which is either a financial services licensee or an authorised representative) who is providing general advice must warn the retail client that:

- the advice has been prepared without taking account of the client's objectives, financial situation or needs; and
- because of that, the client should, before acting on the advice, consider the appropriateness of the advice, having regard to the client's objectives, financial situation and needs; and
- if the advice relates to the acquisition, or possible acquisition, of a particular financial product—the client should obtain a Product Disclosure Statement relating to the product and consider the Statement before making any decision about whether to acquire the product [note that this component is not necessary for a financial product which a PDS is not required – reg 7.7.14].

Generally, warnings must accompany all general advice regardless of the medium used to provide that advice but should be given by the same means as the general advice is given.

Financial Services Guide obligation

A financial services guide will also need to be provided by a licensee or authorised representative before or at the time of providing general advice subject to relevant exceptions. This explains the services being provided as well as other things such as their remuneration.

Special advertising disclosures

Under s1018A certain special advertising disclosure is required where a particular product is advertised. These advertisements will usually contain general advice.

Concerns with General advice

Such “advice” is not of any use to a consumer. It is merely a form of “marketing” a product by a person.

For this reason NIBA supports a rebranding of the term general advice to help make sure consumers understand the information they are receiving is merely “marketing” or product information, and is NOT advice.

The use of the word “advice” should be avoided as it gives the impression it is of some value to a consumer.

From a regulatory perspective NIBA sees little need to have separate rules/requirements for persons who:

- provide general advice only;
- provide factual information only;
- provide both of the above.

In all cases:

- they must ensure they don’t stray into personal advice.
- any information provided must be accurate and not misleading.
- they must disclose details of their remuneration which may be acting as an influence on them.

The consumer needs the same protection in both cases:

- they must be made aware that the person providing these services is not advising them as to whether the product is appropriate for their needs or not.
- any information provided must be accurate and not misleading
- they must understand if the person receives remuneration which may be acting as an influence on them to make the sale e.g from the product issuer.

PERSONAL ADVICE

Personal advice is where a person in making the recommendation or giving the opinion:

- has considered one or more of the person's objectives, financial situations or needs; or
- would reasonably be expected to have done so by the person they provide it to.

The following types of personal advice are possible in a general insurance context:

- personal advice on a client’s insurance needs generally without any limitation on subject matter e.g I have considered the products available on the market and recommend that you need the following types of insurance and the most appropriate for your needs are with #.
- personal advice on a client’s insurance needs with limitation on subject matter. The subject matter could be limited as follows:
 - personal advice on all insurance needs but limited to:
 - select list of approved insurers – which of the selected insurers’ products is most appropriate for the client’s needs; or
 - one insurer – advice on whether the product is appropriate for the client’s needs but not whether it is the most appropriate of available products;
 - personal advice on only specific insurance product type needs e.g motor insurance:
 - with no limitation as to insurers - which insurer’s product is most appropriate for the client’s needs;
 - with limitation to number of approved insurers - which of the selected insurers’ products is most appropriate for the client’s needs;
 - limited to single product with single issuer- advice on whether the product is appropriate for the client’s needs but not whether it is the most appropriate of available products;
 - limited to products offered by single issuer - advice on which of that insurer’s products is most appropriate for the client’s needs.
 - personal advice on options within a specific product type e.g you need to take the agreed value option of the product not the market value option.

NIBA’s personal advice concerns

NIBA’s main concern relates to:

- single issuer; or
- single product,

personal advice services which are not currently provided to any great degree but may be.

A consumer receiving such services (if properly performed) will be advised on whether the relevant product with the single issuer is appropriate for their needs or not.

The customer in such a case will not have any understanding of whether other products in the market may be *more* suitable.

In effect, the adviser, if the client freely and knowingly agrees to restrict the subject matter accordingly, will be able to recommend the product of their linked issuer if it is found to be appropriate for the client's needs.

For retail clients, personal advice providers need to:

- provide an FSG explaining their services and remuneration amongst other things;
- provide a Statement of Advice (SoA) or otherwise meet certain record keeping and disclosure obligations if the SoA requirements do not apply;
- meet the new:
 - best interest duty under s961B;
 - meet the appropriate advice requirement under 961G;
 - warn the client in accordance with section 961H if the resulting advice is based on incomplete or inaccurate information;
- meet the obligation to give priority to the client's interests under section 961J (not applicable is advice is only on general insurance);
- comply with the Division 3—Charging ongoing fees to clients requirements (not usually applicable to general insurance);
- comply with any of the conflicted remuneration provisions (not applicable to general insurance. Life risk insurance is subject to the non-monetary conflicted remuneration ban);
- meet the training requirements in RG 146 for personal advice;
- not mislead consumers;
- not breach any general law obligations e.g. duty of care, contractual obligations, fiduciary obligations; and
- other relevant legislation e.g unfair contracts provisions of the ASIC Act.

In theory, a personal adviser can meet the above obligations in providing single product or single issuer personal advice, although great care would need to be taken to manage the numerous risk which can arise if not done properly.

NIBA queries whether it is appropriate to allow such limited personal advice services as the impact may be to:

- promote point of sale personal advice by product issuers through their sales agents which reduces the ability of customers to compare the offering with what is on the market. ASIC has recently expressed concern regarding such practices in the add on insurance product market. NIBA can see banks seeking to provide personal advice in relation to their own products only;
- reduce competition in the marketplace;
- reduce the quality of personal advice as people restrict the advice provided because it is easier and less risky in certain respects to limit advice in this way;

- create conflicts where the sellers/agents of insurers issue the product on behalf of the insurer and then provide personal advice for the client.

Example of single product personal advice

The following is an example of how it could work.

A bank representative meets with a client about home loan and collects information.

In the process, the representative asks the client if they would like them to provide personal advice on whether the bank's home insurance product is appropriate for their needs.

Disclosure would need to be given that:

- no advice can be given on whether other products are more suitable;
- the representative acts for the bank's insurer in selling and arranging the product and providing the personal advice.

If the client agrees and consents to the above, the representative would then then identify the objectives, financial situation and needs of the client that would reasonably be considered as relevant to advice sought on the appropriateness of the subject matter i.e. the Bank's home insurance product.

If it is reasonably apparent that information relating to the client's relevant circumstances are incomplete or inaccurate, they would have to make reasonable inquiries to obtain complete and accurate information.

The provider must only provide the advice to the client if it would be reasonable to conclude that the advice is appropriate to the client, had the provider satisfied the duty under section 961B to act in the best interests of the client (The above steps result in the best interests duty being met so there should be no issue in this regard).

No recommendation or a statement of opinion, or a report of either of those things that:

- is intended to influence the person it is given to in deciding something in relation to the product; or
- could reasonably be regarded as being intended to have such an influence,

could be given if the product does not meet the client's identified needs in some respect.

The advice would need to be that the product does not suit the client's needs in the identified respect and thus they cannot recommend it as appropriate for the client.

If it is reasonably apparent that information relating to the objectives, financial situation and needs of the client on which the advice is based is incomplete or inaccurate, the provider must provide the required warning.

CONCLUSION

In conclusion, NIBA:

- supports the suggestion to rename general advice as “sales”, “marketing” or “product information”, and mandate that the term “advice” can only be used in relation to personal advice.
- queries whether it is appropriate to allow single product or single issuer limited personal advice services. If allowed, NIBA believes that special disclosure obligations should be imposed to seek to ensure consumers are properly informed of the clear conflict of interest that arises in such cases.

COMPENSATION ARRANGEMENTS

At the present time, insurance brokers maintain professional indemnity insurance.

NIBA offers a professional indemnity insurance scheme to its Members, and this scheme covers approximately 150 insurance broking firms in Australia. The NIBA scheme includes coverage in respect of awards made by the external dispute resolution arm of the Financial Ombudsman Service.

There is an important rule of insurance law in Australia that states that payment of an insurance premium to the insurance broker is deemed to be payment of the premium to the insurer. So long as a policy has been arranged, and the client has paid the premium to the broker, the insurer will be held to be on risk in respect of that policy.

At the present time, NIBA is not aware of any evidence of clients of insurance brokers suffering financially because of the nature or quality of advice they received from the broker.

In these circumstances, NIBA submits that any proposed new compensation arrangements should not apply to insurance brokers.

REGULATORY BURDEN

In the early 1980's, the Australian Law Reform Commission conducted a major review of insurance law and practice in Australia. After extensive research and consultation, the Federal Government enacted the Insurance Contracts Act and the Insurance Agents and Brokers Act.

The Insurance Contracts Act has served Australian policyholders very well in the 30 years since its enactment. There have been only minor changes over time, including the 2013 amendments. Australia now has a sound body of law in this area.

The Insurance Agents and Brokers Act was repealed following the enactment of the Financial Services Reform Act 2001. Effectively, insurance brokers were classified as financial advisers, and fell within the new Australian Financial Services licensing regime.

Since the implementation of this regime, there has been a regular dialogue with regulators, Treasury and the Federal Government in relation to the applicability of various parts of the Corporations Act to risk insurance products and services, including advice provided by insurance brokers. The history has shown a constant need for tailoring via exemptions and class relief orders.

The Parliamentary Joint Committee Report which gave rise to the Future of Financial Advice reform package looked almost exclusively at the experience of financial planners and investment advisers. Unfortunately, the legislative package that was developed following that Report applied, initially, to insurance brokers, stock brokers, mortgage brokers, bank tellers, as well as financial planners and investment advisers. There were no identified issues or concerns with the performance or the quality of advice from insurance brokers.

The Australian Government's Office of Best Practice Regulation has developed world leading principles and procedures for the development of new regulations.

NIBA's request is simple: before any further regulations are developed, clearly identify the problem. Then apply the procedures, including cost/benefit analysis, prescribed by the Office of Best Practice Regulation.

There are major issues and concerns with certain sectors of the Australian financial system at the present time. Those issues and concerns apply to specific sectors of the system only. Regulatory responses to those issues and concerns should not apply to other sectors of the system unless and until a clear cost/benefit analysis has been undertaken, and it can be clearly demonstrated that the proposed regulation will have a net benefit for the community.

CONDUCT REGULATION: TECHNOLOGY SERVICE PROVIDERS

There are a number of technology service providers that provide and support platforms for the conduct of insurance broking business as between insurance brokers, underwriting agencies and insurance companies⁶.

The effective and efficient operation of technology platforms is an operational risk for APRA authorised insurance companies in Australia, and these platforms are constantly tested and audited for operational effectiveness in order to ensure the insurance companies can continue to meet their operational risk management obligations.

NIBA does not see the need for further regulatory activity in this area.

INDEPENDENCE AND ACCOUNTABILITY

The Interim Report seeks comments on the suggestion that ASIC and APRA be moved to a more autonomous budget and funding process.

NIBA believes there should be a detailed study of the options, and the respective costs and benefits of any change to the funding and operational accountability of the key regulatory agencies in Australia, before any decision is taken in this area.

Any changes in this area would also need to take careful account of the need to maintain comprehensive and rigorous accountability of the agencies for their performance.

⁶ See, for example, <http://ebix.com.au/>

EMERGING TRENDS

TECHNOLOGY

Insurance brokers and insurance underwriters are constantly striving to improve the operational efficiency of their business systems, and the technology platforms, processes and procedures for insurance transactions.

In addition to the main operating platforms, new technologies are being developed for the distribution of insurance products to individuals and businesses. These developments will continue to occur in the future, and it is difficult to anticipate how the operating landscape will look in five to ten years' time.

NIBA believes that in the area of technology –

1. regulatory obligations should not be a barrier to these developments taking place over time, and in particular no new regulations should be introduced unless and until a detailed cost/benefit analysis has been undertaken in consultation with all interested parties; and
2. probably the most important issue is the extent to which new channels for the marketing and distribution of insurance products will lead to confusion and a real lack of understanding among less informed individual and business consumers of insurance products.

This Supplementary Submission contains a detailed commentary on the importance of the role of advice, as opposed to product marketing information⁷. The principles set out in that section of the Submission must apply regardless of whether the customer is interacting in person, by telephone, on the internet or via some other form of technology.

⁷ See the commentary and submissions under General Advice, page 19 and following.

INTERNATIONAL INTEGRATION

The general insurance industry in Australia is very closely linked to and is part of the world wide insurance industry. Australian insurance companies purchase reinsurance protection from the world wide reinsurance markets in order to provide greater security for their own insurance obligations to clients and customers, and to increase the amount of insurance cover APRA authorised insurance companies can offer to the Australian community.

In addition, insurance brokers are able to place large, special and difficult to place risks directly into the world wide insurance markets. During calendar 2013, insurance intermediaries total invoiced premium was as follows:

Business placed with APRA authorised general insurers	\$15,267 million
Business placed with Lloyd's underwriters	\$1,772 million
Business placed with "unauthorised foreign insurers" (ie directly into the world insurance markets)	\$1,367 million

Source: APRA Intermediated General Insurance Statistics, December 2013, published 5 March 2014, available at: <http://www.apra.gov.au/GI/Publications/Documents/IGIS-20131231.pdf>

The largest insurance market for overseas insurance placements was the United Kingdom, followed by Singapore.

It is critical to the successful financing of risk in Australia that insurance companies and insurance brokers continue to have access to the world wide insurance markets, and that Australian regulatory arrangements do not limit or impede this access unless there are very strong public policy and public benefit reasons to do so.

In this regard, NIBA notes the protections already available to Australian policyholders in relation to insurance business being placed overseas in section 3A of the Insurance Act 1973 and the associated Regulations⁸. These Regulations recognise and allow the placement of insurance business overseas in cases of high value insurance contracts, atypical risks, risks that cannot reasonably be placed in Australia and contracts that are required to be placed overseas by foreign laws.

⁸ See Part 2, Insurance Regulations 2002.

NIBA believes there should be no changes in these areas unless and until there is a very detailed analysis of the likely impact of those changes on the insurance markets, and the capacity of the insurance industry and insurance brokers to arrange suitable risk financing and insurance cover.

COORDINATION OF FINANCIAL INTEGRATION

There have been a number of significant developments in the international arena which have the potential to have an impact on the Australian insurance industry, both insurance underwriters and insurance brokers.

These include the following:

- International Association of Insurance Supervisors development of the Insurance Core Principles, part of which relates to insurance intermediaries and insurance markets.
- OECD Task Force on Financial Consumer Protection, which includes consideration of issues relating to the disclosure of information relating to financial products and services, addressed previously in this Supplementary Submission.
- G20/OECD development of High Level Principles on Financial Consumer Protection.

Given the extent to which the Australian financial markets, and the insurance markets in particular, are already integrated into the world wide insurance and financial markets, NIBA believes there needs to be much greater consultation and discussion within Australia – involving governments, regulators, industry and consumer representative bodies - of the issues being discussed at international meetings of regulatory agencies and international task forces.

In addition, recommendations developed at international meetings and task forces of this nature should not be adopted and applied in Australia unless and until detailed cost/benefit analysis has been undertaken on the need for those recommendations to be implemented domestically.

CONCLUSION

As stated in the initial NIBA Submission to the Financial System Inquiry, the OECD, the Council of Australian Governments, the Productivity Commission and many others have identified, confirmed and agreed on the core principles that must be applied whenever consideration is being given to regulatory intervention in markets and the economy. They include:

- a clear statement of what actually is the issue being addressed
- is there a sound legal and empirical basis for this issue
- have all potential options for dealing with the issue been identified and assessed, including the option of no further action
- a clear statement of the proposed regulatory intervention, including the governing principles that will be used to guide the development of the regulatory intervention
- a sound legal and empirical basis for the proposed intervention, including a clear assessment of the nature and value of benefits to be derived, and the nature and level of costs (including compliance costs) that will be incurred as a result of the intervention
- a careful analysis and assessment that the proposed intervention will produce benefits that justify the costs, considering the distribution of effects across society, and taking into account economic, environmental and social impacts of the intervention
- assurance that the proposed intervention will minimise costs and market distortions
- strategies to ensure the regulation will promote innovation through market incentives and promote global approaches to strong and effective community outcomes
- be clear, simple and capable of practical adoption
- be consistent with other regulations and policies
- be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

The history of financial services regulation in Australia does not show strong and consistent observance of these key principles. A stated preference for principles based regulation has been followed by hundreds of pages of statutes, regulations, regulatory guides and other instruments. The “one size fits all” approach has resulted in regulations designed for one sector being applied inappropriately in other areas, where there were no issues or concerns in the first place.

NIBA urges the Financial System Inquiry to strongly recommend the application and observance of these key principles in any further regulatory reform of the Australian financial services system.

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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