



National Insurance Brokers Association.



Monday, 6 June 2011

NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA (NIBA) RESPONSE TO REVIEW OF COMPENSATION ARRANGEMENTS FOR CONSUMERS OF FINANCIAL SERVICES FUTURE OF FINANCIAL ADVICE

ABOUT NIBA

NIBA is the voice of the insurance broking industry in Australia. NIBA represents 500 member firms and over 2000 individual qualified practising insurance brokers (QPIBS) throughout Australia.

Over a number of years NIBA has been a driving force for change in the Australian insurance broking industry. It has supported financial services reforms, encouraged higher educational standards for insurance brokers and introduced a strong independently administered and monitored code of practice for members.

The 500 member firms all hold an Australian financial services (AFS) licence under the Corporations Act that enables them to deal in or advise on risk insurance products.

ABOUT INSURANCE BROKERS

The traditional role of insurance brokers is to:

- advise customers on what insurance is appropriate for the customer's needs
- assist customers to arrange and acquire insurance; and
- assist the customer in relation to any claim that may be made by them under the insurance.

In doing the above the insurance broker acts on behalf of the customer as its agent. Insurance brokers offer many benefits to consumers:

- assistance with selecting and arranging appropriate, tailored insurance policies and packages
- detailed technical expertise including knowledge of prices, benefits and pitfalls of the wide range of insurance policies on the market
- assistance in interpreting, arranging and completing insurance documentation
- experience in predicting and reducing risks

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Your association. Your industry. Your profession. Your future.

- assistance with claims and a higher success rate with settlements (about 10 per cent higher than claims made without an insurance broker).
- 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.

OVERVIEW OF NIBA RESPONSE TO THE CONSULTATION PAPER

Generally

NIBA supports the Government initiative to investigate the costs and benefits of different models of a statutory last resort compensation fund for investors', especially given the recent issues arising in relation to investment products.

However, NIBA notes that the issues considered in the Parliamentary Joint Committee on Corporations and Financial Services Inquiry (**PJC**) and Recommendation 10 which gave rise to the Government recommendation, related to the investment services market, not the risk insurance market.

NIBA's position is that different industries (e.g risk insurance brokers and investment advisers) have significantly different risk profiles and what may be appropriate for one may not be appropriate for the other.

The differences between the risk insurance and investment markets are well evidenced and acknowledged. For example the:

- problems experienced in relation to investment advisers that gave rise to the proposed FOFA reforms have not been shown to exist in relation to risk insurance advisers. The Government's announcement that it will treat risk insurance advisers differently in relation to the banning of certain remuneration regarding risk insurance products supports this view;
- current state of the professional indemnity insurance market in relation to both industries indicates that the market is soft for insurance brokers but relatively hard for investment advisers. This is a good indicator of the expected risk associated with each industry; and
- low incidence of complaints against insurance brokers via the Financial Ombudsman Service (**FOS**) and the lesser limits that apply to insurance brokers.

Whilst changes to current consumer protection arrangements may be warranted in relation to the investment services market given recent experience, NIBA does not believe there is any evidence of a need to apply such changes to risk insurance intermediaries such as insurance brokers.

Whilst it cannot be argued that there is no potential risk in relation to insurance brokers of the type raised in the paper, the NIBA view is that the costs and detriment to insurance brokers and consumers (by way of passing on of increased costs of doing business) of the proposed changes would significantly outweigh any consumer benefit and it would not be appropriate or equitable for Government to implement such significant changes without evidence of consumer detriment.

This would in effect punish insurance brokers for the conduct of investment advisers which was the subject of the PJC review and also adversely affect the trusted adviser status insurance brokers have worked hard to achieve over the years.

NIBA believes that arrangements could be put in place that are industry specific where a clear risk has been identified and evidenced.

Information could be collected by ASIC and other bodies such as FOS on an ongoing basis in relation to those industry sectors not caught and if a developing risk is identified, such sectors could be included at that time.

If all industry sectors are caught, the sectors that are not in reality subject to the same problems identified by the PJC in relation to the investment industry would in effect subsidise the set-up of a scheme for the investment industry.

Summary of NIBA response on main issues

NIBA's position on the main issues raised can be summarised as follows:

- *The nature and extent of any shortfall in the delivery of compensation under current arrangements* - In NIBA's view there is no evidence of such a problem in relation to the insurance broking/risk insurance intermediary industry that would warrant any changes.
- *The scope for further measures to lift the standards of licensee conduct or assist consumers in looking after their own interests* - NIBA supports appropriate improvements in the standards of insurance brokers. However, NIBA opposes any changes to the current obligations applying to insurance broker/ risk insurance intermediaries as there is no evidence of a problem that would justify the costs involved in making any of the changes proposed. Any changes should be industry specific where a real risk has been identified.
- *The scope for more standardisation in the kind of professional indemnity insurance cover available for financial service licensees or classes of licensee* - This will be dependent on the willingness of the relevant PI underwriters to provide such cover. Terms that apply to some industries will not be appropriate to others.
- *The usefulness of improved disclosure about a licensee's professional indemnity insurance policy* - NIBA does not see any benefits from the additional proposed disclosure. It will not help consumers evaluate the advice, whether the licensee is likely to become insolvent or disappear or whether the policy will in reality respond.
- *Possible arrangements to deal with claims for compensation after a licensee ceases to trade* - NIBA agrees automatic run off cover is not generally available in the market. The group policy for run off risks would depend on underwriter interest. Competing arrangements should be allowed and any group policy should be industry specific to avoid cross subsidisation. NIBA opposes the concept of insurance brokers having to leave resources behind where there is no evidence of an issue in this regard in the market.
- *The case for additional requirements in regard to the financial security of licensees* - NIBA believes that the current arrangements for the insurance broking market are appropriate given there is no evidence of any consumer detriment. Such requirements could be imposed on industries where evidence of a real risk has been identified and a proper cost vs benefit analysis undertaken.

- *The merits, and key design components, of a last resort scheme to provide compensation for retail clients, including the approach to industry funding -* NIBA does not support a model that imposes obligations on insurance brokers where there is no evidence of a problem and the costs will outweigh the benefits. The scheme could be applied to specific industries where evidence of a real risk has been identified and cost vs benefit analysis undertaken. Any scheme should be limited to retail clients, not apply to matters beyond the scope of the Chapter 7 Corporations Act, be funded on a post event basis and limited to specific industries to avoid inequitable cross subsidisation.

For ease of reference NIBA has simply set out the relevant sections of the consultation paper in **Attachment A** below and inserted its specific response and comments in *yellow italics*.

Yours sincerely



Noel Pettersen
Chief Executive Officer

Attachment A

Chapter 2 Current Compensation arrangements

Issues of interest

Insurance market

ASIC concluded, on the basis of research in 2006, that the market for professional indemnity insurance was well supplied and competitive on price at that time. There appears to have been a tightening in this market in more recent years, in particular in the availability and cost of cover for financial advisers. Information and comment are sought on the current conditions in and prospects for the market in the supply of professional indemnity insurance to licensees. In particular, the following aspects are of interest:

- 2.1 The capacity of the insurance market to supply licensees with professional indemnity insurance (PI) cover that is adequate to the needs of licensees considering the specific features ASIC requires the licensee to take into account such as minimum levels of cover, excess amounts the licensee can confidently sustain, and coverage of EDR scheme awards.

[In relation to risk insurance intermediaries such as insurance brokers and agents, there are no major issues with such persons accessing PI that meets the ASIC requirements and there is no anticipated problem regarding access in the future. The market can be considered relatively soft at present. NIBA is of the view that the current PI arrangements are satisfactory for the risk intermediary market and achieve a fair balance between the interests of consumers and intermediaries.]

NIBA notes in particular that the FOS disputes regarding insurance brokers are significantly less than any other FOS membership class. The soft PI market for insurance brokers is also indicative of the lesser risk.

In relation to investment advisers, the PI market is harder given the recent adverse claims/dispute experience. NIBA understands that whilst aggregated adviser groups can still obtain compliant PI at reasonable cost given the numbers of participants, smaller advisers may face difficulty, dependant on their claims experience. NIBA also understands that in certain cases there has been a move by insurers to seek to increase excess levels, especially in relation claims that would fall within the FOS jurisdiction.

NIBA assumes that when the paper refers to financial advisers it is referring to licensees that advise in relation to investment products - See paragraph 5.31 of the Consultation paper.]

- 2.2 The circumstances in which the market has been able to supply run off cover to a financial services licensee.

[Run off cover in relation to risk insurance intermediaries is not generally available at a reasonable cost for all participants. Insurers are unlikely to agree to provide such cover in advance and instead seek to negotiate terms on cessation of the business based on individual claims performance and other matters. For this reason NIBA does not believe the run off requirement is feasible as a minimum PI cover requirement.]

- 2.3 The conditions, in terms of access and price, for reinsuring the risk of professional indemnity insurance provided to financial service licensees.

[This in effect reflects the position noted above for the direct market]

- 2.4 Changes in the availability of professional indemnity insurance for licensees since 2008 when s912B arrangements came into full operation, in terms of premiums, excess amounts, cost of including specific policy features, factors that have impacted on pricing this product and the impact on licensees of any changes, particularly on those who provide financial advice.

[In relation to insurance broker licensees, the change was minimal as they had been subject to similar compulsory PI under the Insurance (Agents and Brokers) Act 1984 (Cth). The Corporations Act Chapter 7 requirements effectively mirrored the protection already in place for insurance brokers. The main change affected investment advisers that under the old legislation were subject to a security bond.]

[Since the introduction of the PI requirements the claims experience of investment advisers with the relevant collapse of providers such as Westpoint and Storm etc has worsened making PI insurance for such service providers harder and more expensive to obtain.]

- 2.5 The longer term outlook for the insurance market in terms of the supply, cost and coverage of professional indemnity insurance for financial service licensees in accordance with the requirements of s912B, associated regulations and guidance from ASIC.

[NIBA does not expect any significant change for risk insurance intermediaries such as insurance brokers.]

[NIBA expects that the position of investment advisers may worsen if claims experience continues as is, especially for smaller advisers without access to group buying power.]

- 2.6 The circumstances in which licensees have found it difficult to acquire professional indemnity insurance cover that meets their needs.

[This would be a rare occurrence for any insurance broker and NIBA is not aware of any examples in this regard.]

[In relation to investment advisers, issues can arise where the investment adviser is a sole operator with poor claims experience/risk management practices. Unlike bigger groups the risk will not be spread between the group participants.]

ASIC requirements for professional indemnity insurance

In administering the requirement that licensees who deal with retail clients have in place compensation arrangements, ASIC provides formal guidance on the factors to be taken into account by licensees in assessing the adequacy of their professional indemnity insurance. ASIC is able to approve in writing compensation arrangements other than professional indemnity insurance. Information and comment are sought on the experience of insurers, licensees and consumers with this approach. In particular, the following aspects are of interest:

- 2.7 The utility and effectiveness of the guidance provided by ASIC to licensees in enabling them to assess the adequacy of their professional indemnity insurance.

[NIBA is not aware of any concerns with the guidance provided by ASIC as it was prepared after comprehensive consultation between ASIC and industry].

- 2.8 The adequacy of the current administrative approach in providing assurance that licensees meet their requirements to have adequate insurance cover.

[NIBA has no concerns with the self-policing approach currently in place in relation to insurance brokers where the PI market is soft and there is no evidence of any non-compliance. The main issue is whether ASIC has sufficient resourcing to check compliance. NIBA does not believe that the submission of forms confirming compliance adds any value to the process and would simply be another costly compliance obligation.]

[A more risk focussed approach by ASIC with better resourcing ie in relation to areas where a hardening of the market is known and claims experience is high is likely to achieve better results. A more general approach will impose unnecessary additional cost on those that are not high risk].

- 2.9 The appropriateness of the current exemptions from the need to hold professional indemnity insurance cover.

[NIBA has no issues with the current exemptions]

- 2.10 The scope for a licensee in practice to make alternative compensation arrangements with the approval of ASIC.

[ASIC currently requires that such alternative arrangements must provide no less protection than the PI. NIBA understands that this has meant that discretionary mutual fund type arrangements to manage risk have not been approved by reason of their discretionary nature].

Process for claiming compensation

Information and comment are sought on the experience of respective parties with the process for claiming and recovering compensation for loss or damage arising from a breach of a statutory obligation by a licensee. In particular, the following aspects are of interest:

- 2.11 Awareness by retail clients of the available dispute resolution schemes and compensation arrangements, and the degree of clarity to consumers about using those processes.

[NIBA believes the process is working well. Consumers are already advised on how to access these arrangements in FSGs and PDSs. Requiring further information without evidence that there is a problem would be inappropriate]

- 2.12 Any issues arising from the existence of separate compensation schemes and arrangements in various segments of the financial services sector (for example, NGF and FCS).

[The FCS applies to insurers not insurance brokers. NIBA is not aware of any concerns in this regard].

- 2.13 The possible scope for bringing together some of these schemes and arrangements or moving towards some form of common administration

[This is a matter for insurers subject to the FCS].

- 2.14 The experience of respective parties in making and responding to claims for compensation in terms of time, cost and outcomes, including claims pursued through an internal or external dispute resolution scheme or the courts.

[NIBA is not aware of any problems in the insurance broking industry in this regard. FOS disputes involving insurance brokers are extremely limited, so much so that the FOS insurer and broker committees have been merged because of the lack of insurance broker disputes. The limits applicable to insurance brokers are also less than other industries to reflect the different risk.]

- 2.15 Circumstances in which retail clients have been unable to recover compensation awarded to them, or have not pursued claims because of the low probability of being able to recover any award in practice.

[NIBA is not aware of any such examples of this in the insurance broking industry.]

- 2.16 Circumstances in which retail clients have found it difficult to pursue a claim for loss or damage against a provider of financial services, including where the provider is no longer carrying on business, has become financially stressed or insolvent.

[NIBA is not aware of any such examples in the insurance broking industry]

- 2.17 Any experience in pursuing compensation from financial services providers who are not in fact licensed as required.

[NIBA is not aware of any such examples in the insurance broking industry]

- 2.18 Any practical difficulties arising from differences between the standards of liability for licensees under Chapter 7 of the Corporations Act, the general law and under EDR schemes, and the ambit of liability covered in professional indemnity insurance policies obtainable by licensees.

[NIBA is not aware of any such issues however the FOS proportionate liability issue is of some concern given the complexity it can create regarding recovery against other third parties that are not members of FOS and is worth further discussion. It appears that it would need to be resolved by a change in the FOS Terms of Reference].

- 2.19 Any issues in practice with compensation claims against licensees by retail clients in regard to the distinction between inappropriate advice or misconduct by a licensee on the one hand and investment losses in the absence of such misconduct on the other.

[NIBA is not aware of any such examples in the insurance broking industry as the products are risk insurance and have no investment component. In such cases, the risk is insurer failure and APRA is responsible for applying strict prudential standards under the Insurance Act 1973 (Cth) which significantly reduce this risk. As noted in the compensation paper, there is also the FCS put in place by the Government covering failures by authorised general insurers.]

- 2.20 Ability of clients to pursue claims through EDR schemes against parties, other than licensees with whom they have dealt, who may bear some responsibility for loss or damage (for example directors or auditors)

[If the responsible entity is not a licensee in its own right no direct rights arise under FOS in the insurance context. However the licensee is responsible under the FOS EDR scheme for its representatives.]

- 2.21 Ability of licensees to seek recourse against other licensees or parties, who may bear some responsibility for the loss or damage suffered by a retail client, in relation to an award of compensation in favour of that client under an EDR scheme.

[Licensees would need to bring a separate action against such parties outside of FOS]

Chapter 3: Compensation arrangements in practice

Issues of interest

Premium and payout experience

Information and comment are sought on trends in premiums for professional indemnity insurance borne by licensees, and on claims experience under those policies, from 2008 when the requirement for professional indemnity insurance was applied broadly to licensees. In particular, the following aspects are of interest:

- 3.1 The trend in premiums for professional indemnity insurance taken out by financial services licensees, and the factors behind that trend.

[In relation to insurance brokers, as the risk has remained relatively stable along with the PI requirements that applied before the Corporations Act 2001 (Cth), so too has the premium and availability of insurance.]

[In relation to investment advisers the trend has generally been towards a lessening of capacity as insurers withdraw from this specific PI market as a result of the increasing claims experience trends. NIBA understands that the costs have been increasing and the flexibility of terms decreasing].

- 3.2 The trend in claims paid under professional indemnity insurance held by those licensees and the value of claims made under those policies which are still outstanding.

[NIBA does not have access to such information]

- 3.3 As a subset of the above, the proportion of the premiums received from, and claims paid out to, licensees who provide financial advice.

[NIBA does not have access to such information]

- 3.4 The typical grounds upon which claims under professional indemnity insurance policies are not met.

[Subject to the protection provided by the minimum PI cover requirements, the typical grounds would be:

- non-disclosure misrepresentation,*
- breach of duty of utmost good faith,*
- claims not within insuring clause,*
- claims excluded by exclusions,*
- failure to comply with condition of the policy,*
- claim under excess,*
- amount of claim over limits is not covered*
- cover not entered into/renewed or cancelled]*

Experience with compensation arrangements

Comment and perspectives are sought on the effectiveness of current compensation arrangements, including the costs and benefits for consumers and industry of the reliance on professional indemnity insurance as the default arrangement for compensation. In particular, the following aspects are of interest:

- 3.5 The costs and benefits of professional indemnity insurance for licensees and the financial services industry more broadly.

[In NIBA's view, whilst PI insurance does not provide complete protection for retail clients of insurance brokers, it is an adequate arrangement having regard to the lack of evidence regarding unsatisfied complaints/disputes between insurance brokers and clients. This arrangement has been in place for insurance brokers since the original introduction of the Insurance Agents & Brokers) Act 1984 (Cth) and continued with the advent of the Chapter 7 Corporations Act requirements.]

NIBA does not believe its members should be affected by the conduct of other industries which have developed a very different risk profile. Any changes should be industry specific, addressing areas where evidence of a real risk has been shown. A one size fits all approach is not appropriate and would result in innocent industries being affected by the misconduct of others.]

- 3.6 The level of assurance to retail clients that claims for loss or damage will be dealt with and awards for compensation paid.

[The licencing requirements regarding IDR and EDR processes ensure that disputes will be dealt with up to the limits of the FOS scheme. For claims over the limits, the current PI insurance, given the ASIC requirement minimum terms, is designed to reduce the risk of claims being denied for reasons such as non-disclosure and misrepresentation.]

NIBA's concern is that whilst there is always a risk of non-payment if the assets of licensees are insufficient to meet the claim, the costs to industry associated with putting in place measures to manage this risk significantly outweigh any benefits to consumers, especially where there is no evidence put forward of any consumer detriment in relation to the insurance broking industry. NIBA believes any changes should be industry specific and only applied where there is real evidence of a problem in the relevant industry.]

- 3.7 The contribution of the current compensation arrangements in maintaining confidence by retail clients in dealing with financial services providers, including financial advisers, and in underpinning responsible behaviour by licensees.

[There is no evidence of a lack of consumer confidence in the insurance broking industry. NIBA's position is that for insurance brokers the PI arrangements are appropriate and satisfactory as they are. There is no evidence of any issues in the insurance broking industry that are similar to those in the investment advisory area. NIBA does not wish to have its members pay for changes that are not justified or required in its industry or subsidise changes by reason of problems in other industries.]

Chapter 4 Comparison with other arrangements

Issues of interest

Given the compensation arrangements for financial services in other countries, and in respect to other professions and occupations domestically, views and comments are sought on:

- 4.1 The practical operation of those other arrangements including their costs, benefits and scope, and their effectiveness in contributing to consumer protection and the underpinning of consumer confidence in relevant markets.
- 4.2 The possible relevance of those arrangements as models for the compensation of consumers of financial services in Australia.

[NIBA does not support a model that imposes obligations on insurance brokers where there is no evidence of a problem. To the extent such a scheme were put in place, NIBA would be opposed to the prospect of its members having to subsidise a failure in another market]

Chapter 5 Observations and issues

Information and comment is sought on the issues and possible remedial measures canvassed in this chapter, including on:

- 5.1 The nature and extent of any shortfall in the delivery of compensation under current arrangements.

[In NIBA's view there is no evidence of such a problem in the insurance broking industry]

- 5.2 The scope for further measures to lift the standards of licensee conduct or assist consumers in looking after their own interests.

[NIBA always supports appropriate improvements in the standards of insurance brokers.

However, NIBA opposes any changes to the current obligations applying to insurance broker/ risk insurance intermediary licensees as there is no evidence of a problem that would justify the costs involved in making any of the changes proposed.

Any changes should be industry specific where a real risk has been identified. NIBA is not opposed to ASIC undertaking such a risk analysis. In this way change are made where needed as opposed to all industries irrespective of cost vs benefit analysis.

NIBA is open to discussions regarding the imposition of lesser obligations on licensees that meet certain standards e.g as set by approved industry associations such as NIBA.

NIBA supports any effort to improve the financial literacy of consumers. NIBA also believes that advising consumers of the availability and value of professional advice should be promoted]

- 5.3 The scope for a tighter approach to the administration of the current requirement to hold professional indemnity insurance.

[NIBA believes current self-compliance/self-reporting is appropriate for insurance brokers. NIBA has no issue with ASIC obtaining improved resourcing to undertake audits in appropriately identified areas of risk.

The concept of sending ASIC confirmation of the renewal of the PI insurance is an unnecessary extra cost that adds little extra protection to the self-compliance/self-reporting model if the licensee is dishonest. The impact of failing in the current self-compliance/reporting requirements is already significant.

The concept of reporting through a company's financial statements whether they hold a current PI policy or have alternative arrangements and on the adequacy of the cover is also in NIBA's view inappropriate for the reason noted above. It places additional cost on industry for little benefit.

NIBA supports greater resources for ASIC and a risk based audit approach is likely to achieve better results for significantly less industry cost as noted in paragraph 5.67.

NIBA queries whether any independent audit sign off is likely to be able to certify compliance that the arrangements are adequate given the subjective nature of certain aspects of the requirements.]

- 5.4 The scope for more standardisation in the kind of professional indemnity insurance cover available for financial service licensees or classes of licensee.

[Whether a standard policy or group underwritten policy can be developed will be dependent on the willingness of the relevant PI underwriters to provide such cover. It is likely that terms that apply to some industries are not appropriate to others.]

- 5.5 The usefulness of improved disclosure about a licensee's professional indemnity insurance policy.

[NIBA does not see any benefits from additional proposed disclosure. It will not help consumers evaluate the advice, whether the licensee is likely to become insolvent or disappear or whether the policy will in reality respond.]

Consumers are unlikely to understand the information and all of the required information is unlikely to be able to be provided in sufficiently short form. Any notice will need to be qualified by reference to the policy which the consumer will not see. Insurers also impose confidentiality requirements on insureds regarding disclosure of the limits of cover available. NIBA does not believe that the proposed disclosure would provide a better picture of the licensee's credit worthiness. It is likely that such information may mislead consumers and will not provide any basis for comparability e.g. What are "significant" exclusions is subjective. Notification of an insurer's name may be simple if there is one insurer but not where there are a number covering the same risk.

It will also substantially add to the length of documents that the government is currently trying to reduce, for no real benefit to consumers.]

- 5.6 Possible arrangements to deal with claims for compensation after a licensee ceases to trade.

[Automatic run off cover is generally not available in the market.]

In relation to the group policy for run off risks, it will again depend on underwriter interest.

NIBA's main concerns are that:

- there is no evidence of a problem in relation to the insurance broking industry that would justify such a requirement and the costs it would entail;*
- any group arrangement must not result on one industry subsidising cover for another. Any cover would need to be industry specific (e.g. insurance broking industry should be separated from investment advisers or insurers).*

- any requirements in this regard and the associated cost may result in fewer people choosing to obtain a licence, thereby reducing the availability of advice to the market which is not the Government intent

In relation to the concept of a licensee leaving resources behind, NIBA would oppose such a measure unless it can be shown that existing detriment outweighs the costs to industry of such an approach]

5.7 The case for additional requirements in regard to the financial security of licensees.

[In NIBA's view the current arrangements in relation to the insurance broking market are appropriate given there is no evidence of any consumer detriment. Prior to the Corporations Act Chapter 7 requirements being introduced, no security was required by insurance brokers because there was no evidence of any need for this and the compulsory PI insurance arrangements were working well (as they continue to currently). Such a requirement was however in place for investment advisers and was removed with the introduction of Chapter 7]

5.8 The merits, and key design components, of a last resort scheme to provide compensation for retail clients, including the approach to industry funding.

[NIBA does not support a model that imposes obligations on insurance brokers where there is no evidence of a problem and the costs will outweigh the benefits.

To the extent a scheme was to be put in place it should:

- only be limited to retail clients as defined in the Corporations Act.
- not apply to matters beyond the scope of the Chapter 7 Corporations Act requirements.
- be funded on a post event basis and limited to the specific industry. The UK model of linking insurers and insurance intermediaries is not supported. NIBA is opposed to a model where its members would have to ultimately subsidise a failure in another market.

The FOS response to the Consultation paper and proposed model is not supported by NIBA.

FOS's comment that it should be the potential for problems rather than evidence ignores the fact that significant regulatory change should only occur where there is a demonstrated need for such change and the benefit of such change does not significantly outweigh the detriments. No such process has occurred in relation to the risk insurance industry and the PJC review and recommendations were clearly focussed on the investment industry.

NIBA notes that the only examples provided by FOS relate to investment advisers. NIBA has no issue with a scheme being put in place for an industry sector where evidence of real issues exist and a cost benefit analysis supports a change.

NIBA's concern is that the funding model proposed by FOS would in effect result in innocent industries subsidising the administration of the scheme for those industries with real issues.

In relation to the limits proposed, they should mirror the limits in the FOS Terms of reference which are different depending on the relevant type of member]