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Review of the regulatory framework for managed investment schemes

The Insurance Brokers Code Compliance Committee (IBCCC) welcomes the opportunity to contribute to Treasury's consultation.

Our submission focuses on one aspect of the consultation: the need for a clearer distinction between retail and wholesale clients.

The role of the Insurance Brokers Code Compliance Committee

We are an independent body that monitors compliance with the Insurance Brokers Code of Practice (the Code).

By monitoring compliance with the Code, we aim to improve standards of service in the insurance broking industry and promote best practices to, ultimately, deliver better experiences for clients.

Our work involves:

- collecting and analysing industry data
- examining the practices of brokers
- monitoring compliance with obligations in the Code
- identifying current and emerging industry-wide problems
- recommending improvements to practices
- consulting with stakeholders and the public on issues and keeping them informed.

Although we are industry funded, we operate independently of the industry. Our operations are carried out by an independent secretariat service that sits within the Australian Financial Complaints Authority (AFCA).

Codes of practice are an important part of a broad consumer protection environment. When implemented well, and supported by the industry, codes of practice are an effective layer of consumer protection beyond the minimum requirements of the law.

Monitoring compliance with the Code

We draw on a wide range of data and information to identify areas of potential non-compliance with the Code.



To effectively identify issues in non-compliance, we collect and analyse information from a variety of sources:

- self-reported breaches from brokers
- allegations of breaches
- complaints data from brokers and AFCA
- inquiries and investigations
- engagement with stakeholders
- public information from organisations in Australia and overseas.

Self-reported breaches from insurance brokers are a critical part of our compliance program and are crucial in helping us identify issues. The data on breaches, along with other information and sources of intelligence, contributes to our Annual Work Program, which targets current or emerging risks.

Key points

1. We would like the definition of 'retail client' amended so that the regulatory framework adequately covers the type of consumers that it was established to protect, particularly small businesses.
2. The definition of 'retail client' should focus on the type of consumer and/or broaden the prescribed list of insurance products.
3. Recent changes to the Insurance Brokers Code of Practice demonstrate the need to clarify and amend the definition of retail client to adequately protect small businesses.

Protecting the consumers it was intended to protect

The current definition of 'retail client' in the Corporations legislation covers a narrow list of insurance products and fails to adequately cover the diverse insurance needs of Australian small businesses. As such, the definition can inadvertently leave small businesses with reduced regulatory safeguards.

While the typical small business may share similar insurance needs to its larger counterparts, it does not necessarily share the size, complexity, resources and capability.

Many small businesses operate on small budgets with limited resources and personnel. Generally, they lack the expertise and risk management capabilities of larger corporations. They are often family-owned and run operations and frequently engage insurance brokers to help them navigate the complexities of insurance coverage and risk management, relying on the brokers to provide expert advice and tailored solutions.

We know that a large proportion of consumers serviced by insurance brokers are small businesses. We observe this through the breach data provided by Code subscribers. Breaches of the Insurance Brokers Code of Practice that involved small business or farm insurance products had the highest financial impact in the 2022 calendar year (\$1.4 million). Furthermore, our data shows that 44% of all complaints that insurance brokers reported to us for the 2022 calendar year were about small business or farm insurance products.



By expanding the definition of 'retail client' for insurance products to acknowledge the nature of small businesses, and the types of insurance products that they are inclined to purchase, the regulatory framework can be improved to protect the consumers that need it.

Focus on the consumer, not the product

The current focus on a prescribed list of insurance products restricts the effectiveness of the regulatory framework.

The focus should be on the nature of the consumer rather than type of insurance product the consumer needs.

As the business environment changes, a small business's needs change. Many small businesses now require a diverse range of insurance products to sufficiently manage their risks, including products commonly required by larger corporations as wholesale clients. For example, a typical small business may need business interruption insurance, public liability insurance, cyber insurance, and equipment breakdown insurance.

The unique and diverse insurance needs of a small business should not dictate the regulatory protections it is afforded. The protections should be based on the nature of the consumer – its size, capabilities and personnel.

We believe the gap in the regulatory framework that leads to inadequate protection of small businesses can be addressed by expanding the definition of retail client in the *Corporations Act 2001* (Cth) as it applies to insurance.

To expand it in a way that retains its original intent to protect consumers such as small businesses, we propose a small amendment to the following clause:

Section 761(G)(5):
(viii) a kind of general insurance product prescribed by regulations made for the purposes of this subparagraph.

We believe that the following amended version of the clause would appropriately expand and improve the definition:

Section 761(G)(5):
(viii) Any other insurance product provided by a financial services provider to its retail client.

This change recognises that insurance requirements are not one-size-fits-all, especially when considering the distinct needs of small businesses.

An approach that focuses on the nature of the consumer ensures a more equitable classification that reflects the varied insurance needs of small businesses and affords them regulatory protections commensurate with their business stature.

Recent changes to the Insurance Brokers Code of Practice

On 7 July 2023, the National Insurance Brokers Association (NIBA) announced changes to obligations to disclose remuneration and commissions to clients in the 2022 Code of Practice (section 6.1).



The changes limited the obligations for brokers to disclose remuneration and commissions to retail clients only.

We view this as a significant retrograde step, which will reduce important protections for consumers. Crucially, it emphasises the importance of a strong regulatory framework for protecting certain consumers, when voluntary codes fail to do so.

We have raised these concerns with NIBA and have taken steps to collaborate and discuss the changes further. However, despite our efforts to negotiate, we have not reached a resolution with NIBA on the issue.

The changes to the Code do not align with consumer interests.

Disclosing remuneration and commissions helps consumers understand the true costs of a product and the drivers influencing product recommendations and make an informed decision on insurance that best suits their budget and needs. This transparency is critical to keeping insurance brokers accountable by reducing the risk of financial incentives producing conflicted decision-making.

We believe that individuals and small business clients should be entitled to the same level of disclosure regardless of whether they purchase a prescribed retail product or not.

Adequately covering small businesses in the definition of 'retail client' can ensure they are protected from elements of the financial services sector that may be incentivised to not act in the interests of the smaller client that relies on advice.

Thank you again for the opportunity to provide a submission. If you have any questions or would like to discuss this submission, please do not hesitate to contact me c/o Prue Monument, General Manager Code Compliance and Monitoring, by email at info@codecompliance.org.au

Yours sincerely

Oscar Shub
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Insurance Brokers Code Compliance Committee

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