NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA (NIBA)

SUBMISSION ON:

- **CORPORATIONS AMENDMENT (FUTURE OF FINANCIAL ADVICE) BILL 2011 AND**
- **CORPORATIONS AMENDMENT (FURTHER FUTURE OF FINANCIAL ADVICE MEASURES) BILL 2011**

27 January 2012

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. Brokers handle almost 90% of the commercial insurance transacted in Australia, and play a major role in insurance distribution, handling an estimated $16 billion in premiums annually and placing around half of Australia's total insurance business. NIBA member firms also place large and special risks into the world insurance markets.

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 role of insurance brokers

The traditional role of insurance brokers is to:

- assist customers to assess and manage their risks, and provide advice on what insurance is appropriate for their needs;
- assist customers to arrange and acquire insurance; and
- assist customers 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, terms and conditions, benefits and pitfalls of the wide range of insurance policies on the market
- assistance in interpreting, arranging and completing insurance documentation
- experience in predicting, managing and reducing risks
- assistance with claims and a higher success rate with settlements (often 10 per cent higher than claims made without a broker).

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

EXECUTIVE SUMMARY

NIBA's position can be summarised as follows:

- The FOFA reforms arose as a result of issues identified in the Parliamentary Joint Committee in its Inquiry into financial products and services in Australia (**PJC Inquiry**) which were clearly focussed on the investment and superannuation industries and financial planners.

- The general insurance and stand alone non-investment linked life insurance industries (**Risk Insurance**) were never intended to be and were not a focus of the PJC Inquiry.

- Any recommendations arising from the PJC Inquiry relating to Risk Insurance were limited in nature and arose in circumstances where an appropriately focussed review of Risk Insurance and relevant stakeholders had not taken place.

- The Risk Insurance industry is distinctly different to the investment and superannuation industries in significant ways. This has been shown in the insurance specific amendments made since the introduction of Chapter 7 of the Corporations Act which was originally enacted as a "a one size fits all" regime. Such changes were all made once the reality of the specialised nature of Risk Insurance was understood by Government.

- NIBA is opposed to the "one size fits all" approach to the regulation of financial services in Australia, especially where proper analysis and consideration of the issues unique to the Risk Insurance Industry has not been properly undertaken by Government. NIBA's position is consistent with the principles of sound regulation promoted by the OECD and in Australia by the Productivity Commission and the Council of Australian Governments.

- The FOFA reforms were originally developed on a "one size fits all" approach, affecting all areas of financial advice, even though the PJC Review concentrated primarily on investments, superannuation and financial planning. NIBA is pleased the Government has recognised the issues and unintended consequences that would occur if the original proposals were applied to Risk Insurance.

- In relation to general insurance, NIBA is pleased that it has been specifically acknowledged that general insurance products are more widely understood by customers, leading to a lower risk of customer detriment. Whilst NIBA would have preferred the status quo to be maintained given the reasons noted in this submission, it is satisfied that this is the best result it could expect in circumstances where:
  - general insurance was not the subject of the PJC Inquiry
  - the Minister and Government's agenda was clearly to push through broad brush reforms in reaction to the investment industry's impact on consumers without any real focus or understanding of Risk Insurance and its unique issues
  - consideration of whether to catch general insurance was added as an aside without a proper review (which investment products had the benefit of) and caught up in the process.
- NIBA remains concerned that the proposals will have unfortunate and unintended consequences for stand alone pure life risk insurance products which are for the most part being treated in the same way as investment products, which they are not. NIBA strongly submits this position and the impact on industry be reconsidered.
- Given the ongoing debates regarding the adequacy of Regulatory Impact Statements that were prepared prior to the tabling of the Bills in Parliament, NIBA strongly submits the Parliament should require a Post Implementation Review of these reforms, two to three years after their commencement.

PRINCIPLES OF SOUND REGULATION

NIBA strongly agrees with the Productivity Commission commentary[1] that "Regulation provides key foundations for a well-functioning economy. But regulation generally comes with costs as well as benefits for society."[2]

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[1] This discussion is taken from commentary in the Productivity Commission Research Report *Identifying and Evaluating Regulation Reforms*, December 2011

[2] Productivity Commission 2011, page 9

The Productivity Commission cites the Organisation for Economic Cooperation and Development's observation that "good" regulation should –

- Serve clearly identified policy goals, and be effective in achieving those goals
- Have a sound legal and empirical basis
- Produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account
- Minimise costs and market distortions
- Promote innovation through market incentives and goal-based approaches
- Be clear, simple, and practical for users
- 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.[3]

Australian Governments have agreed that these principles are appropriate for this country, and have expressed this agreement in the COAG National Partnership Agreement to Deliver a Seamless National Economy.

Unfortunately, not all regulation complies with these core principles. In 2006 the Federal Government Regulation Taskforce identified five features of regulations that contribute to compliance burdens on business that are not justified by the intent of the regulation.

They are:

- Excessive coverage, including 'regulatory creep' – regulations that appear to influence more activity than originally intended or warranted, overly prescriptive, or where the reach of regulation impacting on business, including smaller businesses, has become more extensive over time.
- Regulation that is redundant – regulations that have become ineffective or unnecessary as circumstances have changed over time.
- Excessive reporting or recording requirements – multiple demands from different areas of government for similar information.
- Variation in definitions and reporting requirements –these variations can generate confusion and extra work for businesses than would otherwise be the case.
- Inconsistent and overlapping regulatory requirements – regulatory requirements that are inconsistently applied, or overlap with other requirements, either within governments or across jurisdictions.[4]

[3] Productivity Commission 2011, page 10

The Productivity Commission also notes the policy of the Australian Government to develop and publish a Regulatory Impact Statement for any new proposed regulation. This is important, because regulation can impose costs on the Government and on businesses directly affected by the regulations, and can also result in economic distortions and benefits being forgone through unintended consequences and other perverse effects.[5]

Where a comprehensive Regulatory Impact Statement has not been prepared or is not sufficiently comprehensive, Australian Government policy requires a Post Implementation Review, which is to be undertaken within one to two years of the regulations being implemented. Issues to be examined in any Post Implementation Review include –

- The problem that the regulation was intended to address
- The objectives of government action
- The impacts of the regulation (whether the regulation is meeting its objectives), and
- Whether the government's objectives could be achieved in a more efficient and effective way.[6]

NIBA respectfully submits that it is entirely appropriate to assess the proposals contained in the Bills under review in accordance with the policy requirements already adopted by COAG and the Australian Government. This will ensure the policy objectives for the legislation actually will be achieved and avoid undesirable consequences, and costs, that can arise as a result of unintended outcomes.

Further, NIBA respectfully submits that these proposals have not been the subject of a comprehensive Regulatory Impact Statement assessment. For that reason, NIBA submits the Committee should recommend a thorough Post Implementation Review, conducted in accordance with the principles set out by the Productivity Commission, two to three years after the provisions take effect.

Whilst NIBA has not identified any significant concerns with the current proposed legislation in relation to general insurance policies (see below for further detail), the reality is that issues will more likely than not be identified once such legislation is put into practical effect by industry. The above recommended review will be useful to identify the scope for such 'unintended impact".

NIBA notes that it remains concerned that the proposals will have unfortunate and unintended consequences for stand alone life risk insurance products which do not have an investment

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[4] Productivity Commission 2011, page xiv

[5] For discussion of the need to properly assess the benefits and costs of regulation, see Productivity Commission 2011, page 11 and following, including Figure 2.1 on page 12.

[6] Productivity Commission 2011, page 38.

component (see below for further detail). Proper consideration of these issues and concerns now rather than after the fact is important.

WHY INSURANCE IS DIFFERENT

The fundamental and long standing doctrine governing insurance contracts is that of “utmost good faith” (the doctrine of *uberrimae fides*). Both the buyer and the seller of an insurance product must make a full declaration of all material facts at the outset, before the contract is entered into. This principle is of long standing in the common law (case law) of insurance, and has been embedded in the insurance law of Australia by means of section 13 of the *Insurance Contracts Act 1984* (Cwlth.).

In addition to the doctrine of utmost good faith, insurance contracts are regulated extensively through the *Insurance Contracts Act*, which was enacted following an extremely thorough review of insurance contract law by the Australian Law Reform Commission and a more recent review in 2003/4 in which only minor changes were recommended. These were ultimately included in the Insurance Contracts Amendment Bill 2010 (Cth) which has not proceeded. These changes are expected to be finalised this year in new draft legislation.

Provisions of the *Insurance Act* and Chapter 7 of the *Corporations Act* are also relevant in relation to the operation of insurance policies, and the rights and obligations of parties under those policies.

By contrast, most typical market activity is subject to the principle of “let the buyer beware” (otherwise known as *caveat emptor*). General provisions such as those in the Australian Consumer Law have been developed over time to protect purchasers of goods and services from unfair and unscrupulous market conduct.

Finally, it is important to note that under an insurance policy, the purchaser does not receive a tangible (physical) product or service. In return for the agreed premium, the policyholder receives an undertaking or a promise from the insurer. The promise only comes into effect an insured event occurs, and the policyholder has suffered a loss covered by the policy. In the great majority of insurance policies, the policyholder receives the benefit of the protection afforded by the policy, but does not receive anything further unless or until an insured event occurs.

SUBMISSIONS ON THE FOFA REFORMS CONTAINED IN THE BILLS

NIBA sets out below specific detail on the FOFA reforms and its principal concerns.

NIBA first deals with the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 as it has most relevance to Risk Insurance.

CORPORATIONS AMENDMENT (FURTHER FUTURE OF FINANCIAL ADVICE MEASURES) BILL 2011

The following are the key changes affecting Risk Insurance and NIBA's comments on any issue of significance identified at this stage (noting that many implications are only identified once industry seeks to practically implement the legislation and consumers seek to test it).

New Best interests duty – only applies where personal advice is given to retail clients

Significant changes have been made to the previous draft Bill as a result of lobbying efforts by NIBA in which it sought to explain to Treasury and other key Stakeholders, the inappropriateness of applying the reform to Risk Insurance.

In a nutshell:

- The duty is more limited in relation to *general insurance* which is a good result and thus the concerns about the impact of the change should be more limited than expected. There will however be additional compliance costs and unintended consequences that will arise once industry seeks to practically implement the new requirements and consumers seek to test the new law.
- For financial advice relating to life risk and investment products the obligations are more onerous.

The best interest duty is different in relation to general insurance. Where the subject matter of the personal advice sought by the retail client is solely a general insurance product, only specified steps must be taken that are less onerous than those which would apply to those providing advice on other product types (these additional non-general insurance requirements are not dealt with in this explanation – see ss961B(2) for details).

The proposed best interest duty *where the subject matter of the personal advice is solely a general insurance product*, requires the provider (as defined in s961 - essentially focussed on the individual(s) providing the advice rather than AFSL holder) to "act in the best interests of the client in relation to the advice".

The provider satisfies the above duty if the provider proves that they have taken each of the following steps:

- identified the objectives, financial situation and needs of the client that were disclosed to the provider by the client through instructions;
- identified:
    - the subject matter of the advice that has been sought by the client (whether explicitly or implicitly); and
    - the objectives, financial situation and needs of the client that would reasonably be considered as relevant to advice sought on that subject matter (the client's relevant circumstances).

  According to the Explanatory Memorandum (EM), this process is designed to accommodate the provision of limited advice (also referred to as 'scaled advice') that only looks at a specific issue (for example, single issue advice on retirement planning) and 'holistic' advice that looks at all the financial circumstances of the client.

  NIBA suspects that this area of the new law will give rise to much debate in the future, especially where advisers (especially those linked to product issuers) seek to scale their advice. It remains to be seen whether this will practically work and/or create a market imbalance; and

- where it was *reasonably apparent* that information relating to the client's relevant circumstances was incomplete or inaccurate, made reasonable inquiries to obtain complete and accurate information.

  Something is *reasonably apparent* if it would be apparent to a person with a reasonable level of expertise in the subject matter of the advice that has been sought by the client, were that person exercising care and objectively assessing the information given to the provider by the client.

  The EM notes that the provider cannot solely rely on the instructions from the client, but is also obligated to make further inquiries in situations where it is reasonably apparent that the information provided by the client about their relevant circumstances is incomplete or inaccurate.

  This is only necessary if the information is considered relevant to the client's relevant circumstances; it is not necessary for providers to ensure every piece of information provided by the client is complete or accurate. If, having made reasonable inquiries, it is still reasonably apparent that the information about the client's relevant circumstances is incomplete or inaccurate, the provider can still give the advice; however, the provider is under an obligation to warn the client (see below). If the information provided by the client

in relation to their needs and objectives illustrates the client has unrealistic or conflicting expectations (for example, the client wants high returns but is not willing to accept any level of risk), the provider should explain to the client that their expectations cannot be met and seek further information from the client about how the relationship should proceed.

The EM notes in relation to Basic Deposit Products that are subject to the same requirements that "the arrangements do not require a provider to conduct a reasonable investigation (ie one of the steps applicable for advice on life risk and investment products). **This means that there is no obligation on providers to consider products outside of those offered by the ADI for which they are working.**"

NIBA is concerned with this statement. It needs to be considered further and be better qualified as the end advice must still be appropriate and other obligations beyond the Corporations Act (e.g. misleading and deceptive conduct and duty of care etc) would need to be considered by any insurer/bank giving personal advice to a customer, as is the case for insurance brokers.

NIBA's understanding is that the intent is to maintain essentially the same position as that which currently exists in the general insurance personal advice space. If this is not the case this would be of grave concern.

For example, it would be of concern if an insurer could give personal advice to a customer about whether the insurer's policy is appropriate for their needs or not where the customer is misled into thinking that the insurer is acting on their behalf and has considered their product against others that may be available to the customer.

The EM states that the steps are not intended to be an exhaustive and mechanical checklist of what it is to act in the best interests of the client and a provider may be able to demonstrate that it has, in fact, acted in the best interests of the client without having recourse to the specified steps. However these steps provide an indication of what, as a minimum, is expected of providers in order to be considered to have acted in the best interests of the client.

The party taking action against the provider must demonstrate that the provider has failed to satisfy the best interests obligation, and the provider may challenge them on the basis that it has met the specified steps but must prove on the balance of probabilities that it took each of the steps.

As a consequence, there appears to be a conflict between the provisions of the Bill in this area, and the policy position outlined in the Explanatory Memorandum. There is a regulation making power to amend the above. This at least provides some form of flexibility if issues arise.

In addition to the above best interests duty:

- the resulting advice must be appropriate to the client; and
- 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 best interest duty to act in the best interests of the client as described above.

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 warn the client that:

- the advice is, or may be, based on incomplete or inaccurate information relating to the client's relevant personal circumstances; 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.

The new obligation applies in relation to the provision of personal advice to a person as a retail client on or after 1 July 2012 (whether or not the advice was sought before that day). This means all systems and other changes will be required by then.

The current requirements under s945A of the *Corporations Act*, which will be replaced by the above, are essentially similar and state that the providing entity must only provide the advice to the client if:

- the providing entity:
  - determines the relevant personal circumstances in relation to giving the advice; and
  - makes reasonable inquiries in relation to those personal circumstances; and
- having regard to information obtained from the client in relation to those personal circumstances, the providing entity has given such consideration to, and conducted such investigation of, the subject matter of the advice as is reasonable in all of the circumstances; and
- the advice is appropriate to the client, having regard to that consideration and investigation.

NIBA notes that whilst it is happy that the original proposals to catch general insurance has sensibly been dropped, the real issue seems to be whether given this end result, the whole process has been worthwhile and handled effectively in relation to general insurance.

Nevertheless, significant compliance costs will still be incurred (to ensure procedures are in fact in accordance with legislated obligations) even though the end result is essentially the same as the current regime.

NIBA believes there is no logical reason why stand alone life Risk Insurance products (without any investment component) should not be in the same position as general insurance products. NIBA sets out further below why it believes the current approach is not appropriate. NIBA believes there is no logical reason as to why this should be the case given the nature of such products and submits the position be reconsidered.

New duty to give priority to the interest of the retail client

Where the provider of the personal advice to a retail client knows, or reasonably ought to know, that there is a conflict between the interests of the client and the interests of:

- the provider; or
- an associate of the provider; or
- a financial services licensee of whom the provider is a representative; or
- an associate of a financial services licensee of whom the provider is a representative; or
- an authorised representative who has authorised the provider, under subsection 916B(3), to provide a specified financial service or financial services on behalf of a financial services licensee; or
- an associate of an authorised representative who has authorised the provider, under subsection 916B(3), to provide a specified financial service or financial services on behalf of a financial services licensee;

the provider must give priority to the client's interests when giving the advice.

However, the above requirement *will not apply if the subject matter of the advice sought by the client is solely a general insurance product*.

This carve out does not apply to life risk insurance.

NIBA supports the carve out for general insurance.

NIBA believes there is no logical reason why stand alone life Risk Insurance products should not be in the same position as general insurance products given the nature of such products and submits the position be reconsidered.

This obligation applies to personal advice provided from 1 July 2012.

New conflicted remuneration ban

Certain people will be banned from receiving “conflicted remuneration” which catches “any benefit, whether monetary or non-monetary, given to a financial services licensee, or a representative of a financial services licensee, who provides financial product advice to persons as retail clients that, because of the nature of the benefit or the circumstances in which it is given could reasonably be expected to influence the:

- choice of financial product recommended by the licensee or representative to retail clients; or
- financial product advice given to retail clients by the licensee or representative.”

However, conflicted remuneration given to a financial services licensee, or a representative of a financial services licensee, who provides financial product advice to persons as retail clients is not conflicted remuneration where the benefit is given to the licensee or representative solely in relation to a general insurance product.

Remuneration that is mixed may be an issue.

The same carve out applies for life risk insurance (except for a group life policy for members of a superannuation entity as defined or a life policy for a member of a default superannuation fund). However unlike general insurance there is no carve out for life risk insurance in relation to non-monetary benefits (see s963C for the requirements).

For those caught, only benefits given under an arrangement entered into before 1 July 2012 and not given by a platform operator will not be caught. Regulations may prescribe circumstances in which the provisions do apply to such remuneration and do not apply to other kinds of remuneration.

In relation to general insurance, NIBA is pleased that the Explanatory Memorandum specifically notes that general insurance products are more widely understood by customers, leading to a lower risk of customer detriment. Whilst NIBA would have preferred the status quo to be maintained given the reasons noted further below, it is satisfied that this is the best result it could expect in circumstances where:

- general insurance was not the subject of the PJC Inquiry
- the Minister and Government’s agenda was clearly to push through broad brush reforms in reaction to the investment industry’s impact on consumers without any real focus or understanding of Risk Insurance and its unique issues

- consideration of whether to catch general insurance was added as an aside without a proper review (which investment products had the benefit of) and caught up in the process.

NIBA believes there is no logical reason why stand alone life Risk Insurance products should not be in the same position as general insurance products.

CORPORATIONS AMENDMENT (FUTURE OF FINANCIAL ADVICE) BILL 2011

Ongoing fee requirements

The proposed ongoing fees requirements apply where the adviser provides personal advice to a retail client and the client pays a fee which falls within the definition of an “ongoing fee arrangement”.

In the risk insurance context, fees paid to insurance brokers for arranging general and stand alone life risk insurance should not be caught as either the total of any fee is specified in the arrangement or is not dependent on any amount invested or the amount in relation to which personal advice is given.

The origins of the Opt in provisions is clearly noted as being to address the issue of “getting people more engaged with their investment activities” J Murphy (Department of Treasury) Evidence to the Economics Legislation Committee Senate Estimates Hansard 19 October 2011 p 104. The Explanatory memorandum reinforces this in Chapter 3 Regulatory impact statement which only talks of investment advice see in particular 3.5 where the focus is not on pure risk insurance.

It was never intended to apply to risk insurance and although no express carve out has been included it appears at this stage that risk insurance should not be affected.

New ASIC Banning Powers

ASIC is to provide with more significant powers in relation to licensing and banning orders. The principal concern is that there is no definition of “likely to contravene” or “likely to breach” which is likely to cause confusion for industry. More guidance is required from Government or ASIC on this. There is no clear standard of proof and ASIC at a minimum should be required to set out how it intends to apply these new powers.

PRINCIPAL NIBA CONCERNS AGAINST THE FOFA PROPOSALS BEING APPLIED TO RISK INSURANCE (IE GENERAL INSURANCE AND STAND ALONE LIFE RISK INSURANCE)

Federal Government had not conducted a Risk Insurance market review or cost benefit analysis of the Risk Insurance market

The PJC Inquiry was clearly focussed on a review of non-Risk Insurance type products and services, in particular, investment products and services. There was no identified market failure, and no identified need to reform the obligations that currently exist in relation to Risk Insurance advisers.

Investment advice and planning deals with assets, risks associated with the investment of those assets, and the potential rates of return on the investment of those assets. The outcome of the transaction is the eventual return of the capital invested together with the expected interest accrued.

Risk insurance deals with the assessment and management of risk, and the transfer of risk to other parties in appropriate circumstances. The nature of the transaction, the nature of the products, and applicable law and the nature of the advice that is provided are all very different to the nature of any investment transaction. The outcome of the transaction in most circumstances is no further action – if an insured event has not occurred, the policy expires and the cover concludes. Where an insured event has occurred, the insurance promise is honoured and the insurance policy responds, normally with the payment of an amount far greater than the insurance premium.

The Minister stated very clearly in relation to the FOFA reforms “this is about building confidence in financial advice and the wealth management industry, such that all Australians who work hard their whole life, pay their taxes, save their money, will have a decent next egg along with their house when they retire” (Inside Business, ABC TV, 4 September 2011).

The entire focus of these reforms has been financial planning and wealth management, not Risk Insurance.

It is contrary to good public policy, and good regulatory policy in particular, to apply such proposals to an area of activity that is totally different to the area where concerns have been identified. The Risk Insurance industry has not had the opportunity of a review similar to that undertaken in relation to financial planning and wealth management, or to make submissions in relation to perceived issues or concerns to the same extent as the financial advisory industry has during the PJC Inquiry process.

Whilst NIBA notes that the Federal Treasury FOFA process has generally been consultative, the main focus of that consultation has always been on investment products and superannuation.

In addition, during these discussions, the scope of the proposed statutory best interests duty has remained unclear until the recent release of the draft legislation. Whilst NIBA has been part of the Treasury FOFA consultation process, the fact that the Risk Insurance industry has not been the subject of the same detailed review as financial planners puts it at a significant disadvantage.

NIBA's view is that the perceived benefits for retail clients advised by insurance brokers in relation to Risk Insurance are likely to be outweighed by the detriments associated with the imposition of a statutory duty on insurance brokers.

There is no evidence of any problem in the Risk Insurance market akin to that identified for financial planners on which the PJC Inquiry was actually focussed and there are significant differences between the Risk Insurance market and investment products

No evidence has been provided by the PJC Inquiry or Federal Government of any fundamental or systemic problems with the provision of advice in relation to the Risk Insurance industry that are of a nature that would justify the introduction of a new suite of statutory reforms, and the resulting costs and market impact associated with it.

A recent industry review by ASIC found no such problems and the regime (effectively Chapter 7 of the Corporations Act and general law) is working well for insurance brokers and their retail clients. In particular, this is evidenced by the low level of disputes referred to the Financial Ombudsman Service (FOS) in relation to insurance brokers. Insurance brokers are effectively being tarred by the same brush as financial advisers for no good reason.

The Risk Insurance (in particular general insurance) and investment and superannuation industries and their products, structure and risks are in reality significantly different. For example, insurance is generally a short term product and is often seen as a grudge purchase given it protects a retail client from future risk that in most cases will not occur rather than potentially earning them money. This distinction has been acknowledged in all comparable regulatory regimes worldwide and has also been recognised in the Federal Government's decision not to extend the financial adviser's ban on conflicted remuneration to Risk Insurance advisers (save for life insurance mixed with superannuation).

By applying the new obligations to insurance brokers for Risk Insurance products:

- **there will be a significant increase in the compliance burden carried within insurance broking offices, resulting in additional costs (in particular there is real potential for an increase in the cost of professional indemnity)**

- **there will be less personal advice being provided for no real consumer benefit**

Recent disaster events have shown that there is real value in retail customers having ready access to personal advice provided by Australian Financial Services Licensees such as insurance brokers. There is no substitute for the provision of advice from qualified advisers such as insurance brokers, and where an unfortunate event occurs in having an insurance claim proactively managed.

Despite Federal Government attempts to simplify insurance documentation (which have continued since the introduction of the financial services reform legislation), the reality is that an insurance product is, by its very nature, complex and difficult for many to understand. Many consumers are not inclined/or well equipped to read/understand them.

The services of a professional adviser can go a long way to ensuring retail customers have good advice and get the coverage they need at a proper price, and in reducing claims issues.

Retail customers have access to this advice without having to pay fees or charges. The insurance broker is only remunerated if the customer decides to proceed and purchase a policy. Most importantly, the insurance broker acts as the representative of the policyholder in these transactions, and is not the representative of the insurance company (unless this is made very clear to the client prior to the transaction proceeding). It would be extremely unfortunate if these proposals were to operate in a way that reduces access to competent and professional advice for retail customers. NIBA's assessment of the proposals is that this is likely to occur.

Risk Insurance is already subject to substantial legislative and regulatory intervention -

- Prudential regulation of insurers (Insurance Act)
- Protection of policyholder interests (Insurance Contracts Act), including the statutory obligation of Utmost Good Faith
- Regulation of risk insurance advice and intermediaries (Corporations Act, previously the Insurance (Agents and Brokers) Act).

The adequacy (or otherwise) of these regulatory regimes has not been examined as part of the current FOFA reform program. Unless and until this examination occurs, NIBA believes it is not appropriate to add further regulatory burden in this area of financial services.

- **there is likely to be an increase in under/non insurance which is of real detriment to the community**

- **there is likely to be a reduction in competition in the market and the choices available to consumers that insurance brokers bring to the equation; and**

- **any increased costs may be passed to consumers for little added benefit.**

NIBA believes that because of the above, insurance brokers providing personal advice on Risk Insurance products should not be caught by the new requirements.

NIBA has never had any objection to the issue of financial advice in Risk Insurance being monitored by the Government or ASIC, and if necessary having a proper review within an agreed period of time. To date, however, there has been no evidence of any need for such a review.

If any issues of concern with the operation of the current retail client protections in relation to Risk Insurance are identified, proper and appropriate proposals for reform could then be developed in consultation with the industry.

This would also allow time for the impact of any proposed statutory duty to be better analysed, would no doubt reduce the cost impact of any new statutory duty on the market and would hopefully avoid any reduction in the provision of personal advice services to the community.

If you would like to discuss any aspect of this matter further do not hesitate to contact us.

Dallas Booth
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