



**NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA (NIBA)**  
**SUBMISSION ON THE INQUIRY INTO THE INSURANCE CONTRACTS**  
**AMENDMENT BILL 2013**

**ABOUT NIBA**

NIBA is the voice of the insurance broking industry in Australia. NIBA represents 400 member firms and around 3,000 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. Insurance brokers also place substantial insurance business into overseas markets for large and special risks.

Over a number of years NIBA has been a driving force for professionalism 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 400 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.

NIBA appreciates the opportunity to be able to provide comments on the Insurance Contracts Amendment Bill 2013 (**2013 Bill**).

**ABOUT INSURANCE BROKERS**

**The role of insurance brokers**

The traditional role of insurance brokers is to:

- assist customers to identify, understand and manage their risks, and provide advice 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 their agent. Insurance brokers offer many benefits to customers and consumers:



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- experience in predicting, managing and reducing risks;
- 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; and
- assistance with claims and a higher success rate with settlements (about 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 is clearly advised up front.

### **EXECUTIVE SUMMARY**

NIBA generally supports the proposed changes in the Bill.

In doing so, it is important for the Parliament to appreciate that the Insurance Contracts Act governs the operation of millions insurance policies in Australia. It is crucial that the legislation, and any amendments, operate with certainty for the parties involved, so that insurers can develop and price their products with confidence, and insureds can be confident that the benefits expected from the cover being provided will in fact eventuate if the insured event occurs.

#### **Duty of utmost good faith**

NIBA supports the changes to section 13.

However, NIBA notes that the Government has not decided to apply the change to variations of general insurance contracts entered into before commencement of the item where the variation occurs after commencement.

This has been done in relation to life insurance contracts where the contract is treated, to the extent of the relevant variation post commencement as if it had been entered into after commencement.

#### **Section 21 - The insured's duty of disclosure**

NIBA notes that the concept of "class of persons who would ordinarily be expected to apply for insurance cover of that kind" may give rise to some debate as to its precise meaning.

For example does the reference to "kind of cover" mean that the circumstances in which the contract of insurance is entered into can be taken into account in identifying the relevant class or not. The "class of persons" could in fact be extremely wide – anyone who owns residential property, or anyone who owns a motor vehicle.



This change appears unlikely to fix the issues which were identified in the review as having arisen in relation to this section 21 duty of disclosure test.

NIBA also notes that the issues of concern relating to the original test in section 21 also arise in relation to the misrepresentation provisions of the Act (e.g section 26). This does not appear to have been addressed in the review or the Bill.

NIBA notes that the changes to section 21(1)(b)(ii) will apply to general insurance contracts originally entered into after the commencement and contracts originally entered into before from the time they are renewed after commencement.

This means that variations which occur after commencement but between original entry and renewal will not be affected by the changes until the relevant renewal after commencement.

Variations of this type are however caught in relation to life insurance contracts.

#### **Eligible contracts of insurance**

NIBA supports the changes made in relation to section 21A.

In sub-section 21A(6) the definition of "eligible contract of insurance" could probably be improved. It is not a "contract of insurance" that is specified in the regulations, rather "eligible contracts of insurance". See Regulation 2B.

#### **Section 21B - Duty of disclosure before renewal of eligible contract of insurance**

NIBA's view is that the net effect of sections 21A and section 21B will be that section 21 will apply in relation to an extension, reinstatement or variation of an eligible contract of insurance.

NIBA is concerned that the end result is likely to be confusing for all involved.

Section 21A only applies in relation to entry into the original contract of insurance and section 21B only applies to the disclosure in relation to the renewal of the contract of insurance.

Where the insured seeks a variation, extension or reinstatement of the eligible contract of insurance between original entry and renewal, this triggers the duty of disclosure obligation under section 21 and in such circumstances section 21 would appear to apply.

The notice to be provided to insured is likely to be complex. We have not yet seen the proposed notice to be included in the regulations.

NIBA does however support the rationale behind the changes.



### **Insurers' duty to inform duty of disclosure**

NIBA supports the rationale behind the proposed changes to section 22.

NIBA queries the use of providing a reminder in an "acceptance" from the insurer that the duty applies up until or at the time the contract is entered into. As the acceptance by the insurer would be expected to trigger the contract, it is at that point too late for the insured to make any further disclosure.

NIBA is concerned that if the duty of disclosure obligations become too complex and costly to comply with, insurers may seek to simply to rely on their rights in relation to misrepresentation which in effect would circumvent what the section 21A and 21B changes were intended to fix in the first place. This issue does not appear to have been addressed in the relevant changes to the legislation.

### **Cancellation of contracts**

The current proposal maintains the existing status quo regarding sub section 210(5) of the Life Insurance Act regarding cancellation of life policies for non-payment of premium.

NIBA does not believe consideration was given to whether the divergent regimes for cancellation for non-payment of premium between general insurance and life risk insurance remain appropriate or operate as originally intended.

The original intent of sub section 210(5) appears to have not been for sub-section 210(5) to apply to life risk policies that did not contain a surrender value. By reason of a relatively recent removal of a particular regulation in the Life Insurance Act , life risk products without a surrender value may be unintentionally caught and this has caused some confusion. This is something worth considering in the future.

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

**Dallas Booth**

**Chief Executive Officer**

**National Insurance Brokers' Association of Australia**