



SUBMISSION

TO THE

PARLIAMENTARY JOINT COMMITTEE ON
ON CORPORATIONS AND FINANCIAL SERVICES

NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA

5 September 2014

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INTRODUCTION

The National Insurance Brokers Association of Australia (NIBA) welcomes the opportunity to provide this Submission to the Parliamentary Joint Committee on Corporations and Financial Services.

NIBA has a long history of commitment, on behalf of its Members, to quality training and education of insurance brokers in Australia, and to the provision of professional, competent and expert advice and support to the clients of insurance brokers.

One of the four key corporate objectives of NIBA at the present time is:

Professionalism – insurance brokers are perceived as having high professional standards, and are regarded by their clients as trusted advisers.

NIBA operates a Registered Training Organisation, NIBA College, which aims to provide opportunities to achieve and maintain high levels of professional competence in insurance broking.

NIBA also maintains and promotes the Insurance Brokers Code of Practice, including independent Code monitoring and oversight, and a newly established Code Compliance Committee.

One of the core commitments in the Insurance Brokers Code of Practice the following:

We will discharge our duties diligently, competently, fairly and with honesty and integrity.

We are pleased to have the opportunity to demonstrate the commitment of NIBA and its Members to quality professional, ethical and education standards for insurance brokers in Australia.

EXECUTIVE SUMMARY

NIBA respectfully makes the following submissions in relation to the Committee's Terms of Reference.

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 risks to the client/customer in relation to the purchasing decisions they make 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 Financial Services Reforms and regulatory regime of the early 2000's and the more recent Future of Financial Advice 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 and investment advice space. The use of the term catches all 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.

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. The education and training regime for insurance brokers has been in place for NIBA Members since 1990, and has proven well suited to the needs of the insurance broking industry and their clients.

Any reform or enhancement of the education standards with respect to insurance broking should take careful account of the knowledge, skills and competencies required of insurance brokers.

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

NIBA has provided detailed submissions to ASIC on the need for major revisions to Regulatory Guide 146, to ensure the regulatory requirements are consistent with industry needs and standards, and with nationally set training and competency frameworks.

Professional Qualifications

NIBA and NIBA College have established a comprehensive suite of professional qualifications for insurance brokers in Australia, which require the attainment of educational standards, industry experience and peer review of professional and ethical behaviour. In addition, NIBA requires Continuing Professional Development by all Members in order to maintain knowledge and skills as developments occur and the law and industry practice changes over time.

Insurance Brokers Code of Practice

NIBA has recently revised the Insurance Brokers Code of Practice, and the newly revised Code is binding on all NIBA Members as from 1 July 2014. The new Code includes the creation of an independent Code Compliance Committee which oversees monitoring and oversight of the Code's implementation, and the independent resolution of disputes regarding alleged breaches of the Code.

Recognition of Professional Bodies

NIBA has a long history of establishing and improving professional, ethical and education standards for insurance brokers in Australia.

NIBA is keen to continue to work with ASIC in a co-regulatory framework to ensure professional, ethical and education standards remain appropriate for customers and clients of insurance brokers across Australia.

Best Practice Regulation

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

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

The primary role of insurance brokers is to:

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

In doing the above the insurance broker acts on behalf of the customer as their representative or agent. Insurance brokers offer many benefits to customers and consumers, including:

- assistance in identifying risk requirements;
- 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 the resolution of claims; and
- assistance with the ongoing management of their risks.

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.

For larger corporations, public sector agencies, governments and other sophisticated purchasers of insurance services, insurance brokers play a key role in assisting with identifying and managing risks, and with assisting the organisation to finance risks via self-insurance, national and international insurance and reinsurance programs, or other risk financing mechanisms.

Insurance brokers handle around 90% of the commercial insurance transacted in Australia, and play a major role in risk assessment, risk financing and insurance distribution, handling over \$18.6 billion in premiums in the 12 months to 30 June 2014¹, and placing around half of Australia's total

¹ Source: Australian Prudential Regulation Authority, *Intermediated General Insurance Statistics*, June 2014, issued 3 September 2014, available at www.apra.gov.au

insurance business. Insurance brokers place most insurance business with Australian authorised insurers, but also place substantial insurance business into Singapore, London and other overseas markets for large and special risks where the local markets are either unable to provide such insurance or provide it on unsatisfactory terms.

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 years².

As noted above, 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.

² Benjamin, R, 1988, A History of Insurance Broking in Australia, Craftsman Publishing, Melbourne.

THE FINANCING OF RISK

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, support their family, 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.

Insurance brokers are involved and are experts in all of the above, and the insurance broker education system (qualifications, CPD etc) all support the knowledge required to provide these services professionally.

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, life insurance, reinsurance.

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 any examination of the professional, ethical and education standards in the financial services industry must take account of the differing roles, products and objectives of the various sectors of the industry. Care must be taken to determine whether a particular 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 is common use of the catch all term “financial advisers”. Often, this term was being used to describe only financial advisers operating in the area of wealth management (financial planning and investment advice) sector.

NIBA respectfully submits there are major and important differences between products, services and advice in the wealth management sector, and products, services and advice in the risk insurance sector. Unfortunately, from a regulatory perspective, the use of the term “financial adviser” catches both types of adviser.

The regulatory regime should recognise a clear distinction between general and life insurance risk advisers and financial planners and investment advisers who advise in the investment space.

NIBA therefore offers the following observations, comments and submissions on the Committee’s Terms of Reference from this perspective.

CURRENT QUALIFICATIONS IN INSURANCE BROKING

NIBA and its Registered Training Organisation NIBA College have many years' experience in the design and offering of accredited training courses for insurance brokers in Australia. Those courses are designed having regard to the student's level of experience when coming into insurance broking, their level of experience in the industry, the nature and complexity of the advice they are providing to their clients, and their roles and responsibilities within the insurance broking firm.

Structuring education and training for insurance brokers in this way –

- Provides an “educational pathway” for those entering the industry and who wish to make a career in insurance broking;
- Matches the education and training of staff to the nature and level of complexity of the work they undertake, and the nature of advice and support they will be giving to clients;
- Ensures Broker Principals and business owners have a clear strategy for the development and training of their staff.

INTRODUCTORY COURSES

When new staff join insurance broking firms, they are employed as a Broker Assistant, and work on basic tasks under close supervision. New members of staff could be school leavers, university graduates, or people with some work experience but wishing to pursue a new career.

In all cases, new members of staff will require industry specific training and development in order to attain the necessary knowledge and competencies to be a professional insurance broker.

The initial courses that NIBA College provides for new members of staff are:

- Certificate III in Insurance Broking – directed mainly at school leavers; and
- Certificate IV in Insurance Broking – directed at those with some work experience.

Completion of these courses will satisfy current ASIC Tier 2 General Insurance requirements. The employee will progress to Assistant Broker roles in the broking firm, and will normally achieve up to 2 years' experience working in the industry.

INTERMEDIATE COURSES

Assistant Brokers who wish to continue their career in insurance broking are encouraged to undertake the Diploma of Insurance Broking or the Diploma of Life Insurance. The Diploma is undertaken in two stages – Block 1 and Block 2.

Completion of Block 1 of the Diploma course satisfies current ASIC Tier 1 Insurance Broking requirements. This means the Assistant Broker is able to provide broking services to retail clients, including personal advice.

Completion of Block 2 satisfies the full requirements for the Diploma of Insurance Broking or the Diploma of Life Insurance, and allows the employee to progress to the role of Account Executive working with retail and commercial clients. With further experience, the employee would continue to progress to the role of Senior Account Executive.

ADVANCED COURSES

NIBA College also offers a number of advanced courses for insurance brokers who wish to pursue a career at higher levels of responsibility, including –

- Advanced Diploma of Insurance Broking, which would enable the broker to undertake leadership roles in a broking organisation and managing broking operations and the services relating to the provision of advice to broking clients;
- Graduate Diploma of Insurance Broking, which would enable the broker to work towards a General Manager role within the insurance broking firm, or undertake specialist roles in compliance, the development and management of broking insurance schemes and facilities, and risk management.

Both of these courses satisfy ASIC requirements for the role of Responsible Manager.

NATIONAL ACCREDITATION

The range of work functions undertaken by insurance brokers from entry level to senior managers are described by a comprehensive set of competency units that are contained in the Financial Services training package. The training package is a set of nationally endorsed standards and qualifications for recognising and assessing people's skills in a specific industry, industry sector or enterprise. They are developed by national Industry Skills Councils (ISCs).

The insurance broking units of competency are the nationally agreed statements of the skills and knowledge required for effective performance in the insurance broking job function—they describe work outcomes as agreed by industry.

Training packages are a key feature of Australia's national vocational education and training (VET) system. They are used as the basis for most of the programs delivered in the VET system, including Australian Apprenticeships, training courses offered by TAFE and private training organisation, VET in schools programs, recognition of existing skills, and occupational licensing.

Training packages are designed to regulate training outcomes through nationally recognised qualifications. The insurance broking units of competency offered by NIBA College are packaged under several levels of national qualifications within the training package, ranging from Certificate III qualifications through to tertiary level graduate diploma qualifications.

Training packages do not describe how people should be trained but provide the nationally endorsed industry standards against which training can be developed and delivered to meet particular local, individual, industry and enterprise requirements. Training packages are developed with industry and are not owned by an individual training provider.

The Australian Skills Quality Authority (ASQA) is the national regulator for Australia's vocational education and training sector. NIBA College is a registered training organisation which is accredited by ASQA to deliver vocational education and training (VET) services.

ASQA regulates courses and training providers to ensure nationally approved quality standards are met.

CONTINUING PROFESSIONAL DEVELOPMENT

Following completion of the Diploma of Insurance Broking course, NIBA membership rules require insurance brokers to undertake regular Continuing Professional Development activities to ensure their knowledge of insurance products and services, and their understanding of all relevant areas of insurance broking remains up to date and relevant. Members must undertake approved Continuing Professional Development involving approved courses and activities which involve the accumulation of at least 50 CPD points every two years.

Continuing Professional Development requirements and professional qualification standards have been in place for NIBA Members since 1991.

NIBA College is committed to ensure that brokers undertake professionally useful education and training, and require all Continuing Professional Development training courses to be assessed against specific quality educational criteria. Approved courses are listed online on the NIBA College CPD Register.

PROFESSIONAL QUALIFICATIONS

The recognised professional qualification for insurance brokers in Australia is Qualified Practising Insurance Broker (QPIB). The rules of NIBA College state that applicants for the QPIB qualification must satisfy the NIBA Board of Directors in relation the following:

- They have a Diploma of Insurance Broking with NIBA College or another registered training organisation or equivalent;
- They have a minimum 4 years' experience as an insurance broker;
- They have participated in continuing professional development as required by the NIBA Board of Directors in the 12 months prior to the date of his or her application;
- They can overcome any written objection lodged by any member relating to his or professionalism and business ethics; and
- They have been nominated by an insurance broker of QPIB or similar status.

NIBA has higher levels of professional qualification – Certified Professional Insurance Broker and Fellow of NIBA College – for insurance brokers with higher levels of learning and longer periods of practice as an insurance broker.

Each of these professional qualifications require insurance brokers to continue to meet their Continuing Professional Development obligations under the NIBA College rules.

INSURANCE BROKERS CODE OF PRACTICE

During 2012 and 2013 NIBA undertook a major review, in close consultation with all major stakeholders, of the Insurance Brokers Code of Practice. Following that review, a new and revised Insurance Brokers Code of Practice was developed and approved. The revised Code of Practice is binding on Members of NIBA as from 1 July 2014.

The new Code of Practice is available at: <https://www.niba.com.au/codeofpractice/index.cfm>

The Code of Practice sets out 12 core Service Standards that insurance brokers commit to meeting. Those Service Standards are:

1. We will comply with all relevant law.
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.
4. We will clearly tell you about the scope of our covered services.
5. We will discharge our duties diligently, competently, fairly and with honesty and integrity.
6. We will clearly tell you how our covered services are paid for before we provide them and answer any questions you have.
7. We will handle any money received in accordance with relevant law and any agreement with you.
8. We will ensure that we and our representatives are competent and adequately trained to provide the relevant services and will maintain this competence.
9. We will respond to catastrophes and disasters in a timely, professional, practical and compassionate manner in conjunction with any industry-wide response.
10. We will ensure that we have an internal complaints and disputes handling process that meets the Code Complaints and Disputes process standards.
11. We will support NIBA in promoting the Code and make information on the Code (including how to make a complaint) and our Covered Services readily available to you.

12. We will not engage in activity or inactivity that is reasonably likely to bring the insurance broking profession into disrepute.

Most of these Service Standards have more detailed statements to give meaning and clarity to the standards and commitments contained in the Code of Practice. In particular, Service Standard 5 contains a substantial level of detail regarding the steps the insurance broker will take to act in the best interests of the client, help them understand and assess their insurance needs, and communicate effectively and in a timely manner on the insurance cover that has been put in place on their behalf.

NIBA has appointed the Financial Ombudsman Service to monitor, administer and oversee the implementation of the Code of Practice by insurance brokers who are bound by the Code.

NIBA and the Financial Ombudsman Service have jointly established a new Code Compliance Committee. The Code Compliance Committee has two roles – to oversee the monitoring and oversight of the Code by the Code Administrators, and to act as the judicial body which will determine whether there has been a breach of the Code of Practice, and to make orders and impose sanctions on the insurance broker as may be appropriate in the circumstances. Any determination by the Code Compliance Committee is binding on the insurance broker but is not binding on the complainant, who retains their full legal rights at all time.

The Code Compliance Committee consists of an independent Chair, jointly appointed by the Board of the Financial Ombudsman Service and the Board of NIBA, an industry representative appointed by the Board of NIBA, and a consumer representative appointed by the Board of the Financial Ombudsman Service.

ADEQUACY OF CURRENT QUALIFICATIONS

Over the past 25 years, NIBA and NIBA College have constantly developed higher standards of knowledge, competency and professionalism through the education and training courses that are available to insurance brokers, and via CPD obligations and the newly revised Insurance Brokers Code of Practice.

The industry qualifications that are currently in place require more than compliance with ASIC RG 146 requirements. The NIBA College courses and the College itself all operate within the national vocational education and training framework, and satisfy Australian Skills Quality Authority requirements.

NIBA believes the industry requirements are adequate and appropriate for insurance brokers in Australia and, more importantly, for the standard of advice and support that individuals and businesses can and should expect from their insurance broker.

NIBA has reservations in relation to the operation of ASIC's Regulatory Guide 146. NIBA's response to the ASIC Consultation Paper 212 stated that major modifications were required to RG 146 in order to make skills and knowledge requirements work more effectively for financial advisers, AFS licensees and training providers. The NIBA submission in response to ASIC Consultation Paper contains detailed suggestions in relation to the need to modify the operation of RG 146. A copy of the NIBA submission is attached to this document.

PROFESSIONAL STANDARDS AND RULES OF PROFESSIONAL CONDUCT

As noted above, NIBA and NIBA College have established educational standards for insurance brokers, relevant to their experience, roles and work responsibilities, and NIBA has reviewed and updated the Insurance Brokers Code of Practice to ensure the insurance broking industry's commitment to its clients remains up to date, relevant and appropriate.

These standards reflect the accepted requirements for all professionals: a qualifications system to acquire the unique set of skills and knowledge required to perform the insurance broking role; a commitment to participate in ongoing professional development which is audited annually; and subscription to a code of practice that carries transparent sanctions for non-compliance.

NIBA notes that NIBA College provides education and training within the nationally accepted and accredited vocational education and training framework.

Further, the Insurance Brokers Code of Practice was reviewed and revised in consultation with a wide range of stakeholders, including consumer groups, ASIC, other Government agencies and Departments, and client representative bodies.

To date, there is no evidence of any deficiency in the nature and quality of education and training for insurance brokers. Similarly, no concerns are being expressed by any party regarding the nature and content of the Insurance Brokers Code of Practice.

NIBA has committed to review the content and operation of the Insurance Brokers Code of Practice every three years. The next review of the Code is due to take place in 2016.

NIBA did not seek ASIC approval or endorsement of the 2014 Insurance Brokers Code of Practice in accordance with Regulatory Guide 183. NIBA advised ASIC, during the course of consultation on the 2014 Code, that serious consideration would be given to seeking ASIC approval of the Insurance Brokers Code of Practice following the next review of the Code in 2016.

NIBA therefore respectfully submits –

1. There is a strong framework for professional, ethical and education standards in insurance broking in Australia.
2. There are no serious or systemic concerns with the operation of those standards in relation to insurance brokers.

3. There are no serious or systemic concerns in relation to the advice and services offered by insurance brokers in Australia to their clients.
4. Breaches of Australian Financial Services licences are identified by and/or reported to ASIC, and licensees are investigated and dealt with appropriately by the regulator. This includes removal of the insurance broker's AFS licence in appropriate circumstances.
5. There are no strong reasons for change to the current professional, ethical and educational standards for insurance brokers in Australia.
6. Nevertheless, NIBA has committed to ongoing review of those standards in order to ensure they remain timely and relevant, and continue to meet community and stakeholder expectations.

RECOGNITION OF PROFESSIONAL BODIES

As noted above, NIBA and NIBA College have taken steps for over 25 years to develop and maintain appropriate professional, ethical and education standards for insurance broking in Australia.

At all times, NIBA has operated within the over-arching legal environment including, since 2002, the financial services regulatory regime introduced following Wallis Report.

As such, NIBA has adopted a co-regulatory approach, involving a strong role by the industry association in setting standards for education and training of insurance brokers, and in developing and maintaining a strong commitment to professional competence and consumer confidence via the Insurance Brokers Code of Practice.

At the same time, NIBA recognises the important role and responsibilities of the regulator (ASIC) in the licensing of financial services providers, and ASIC's role in monitoring and enforcing the AFS licence obligations and the relevant laws.

As stated above, NIBA has provided a commitment to seriously consider seeking ASIC approval of the Insurance Brokers Code of Practice when it is next reviewed in 2016.

Accordingly, NIBA remains keen to continue to work with ASIC in a co-regulatory manner, setting appropriate professional, ethical and education standards for insurance brokers within the broader financial services regulatory framework.

CONCLUSION

As stated in the NIBA Submissions 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 Parliamentary Joint Committee to carefully note the framework currently being implemented by NIBA and NIBA College to establish strong and effective professional, ethical and education standards for insurance brokers in Australia.

NIBA respectfully submits to the Committee that any proposed changes in this area – so far as they relate to insurance brokers - should only occur after the application and observance of the key principles for regulatory reform set out above.

ATTACHMENT

Feedback from the National Insurance Brokers Association to ASIC in response to Consultation Paper 212: Licensing – Training of Financial Product Advisers – Update to RG 146.

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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