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**Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600**

National Insurance Brokers Association of Australia (NIBA) submission on Inquiry into Life Insurance Industry

The National Insurance Brokers Association of Australia (NIBA) appreciates the opportunity to make a submission to the Parliamentary Joint Committee inquiry into the life insurance industry.

NIBA represents over 300 insurance broking firms across Australia, the majority of which are small to medium businesses. Insurance broking firms provide traditional insurance broking and risk management advice in the areas of property and liability insurance, and in many cases broking firms also provide advice in relation to life risk insurance (as opposed to life investment products).

NIBA is grateful for the opportunity to provide this submission to the Parliamentary Joint Committee.

Professionalism

NIBA is strongly committed to the promotion of high standards of professional conduct by insurance brokers in Australia. One of the three core NIBA Goals and Objectives, as endorsed by the NIBA Board of Directors, is as follows:

Professionalism: develop and promote high standards of professional practice for insurance brokers in Australia for the benefit of their clients and the community. This will be achieved through:

- **Education** – industry relevant education and continuing professional development;
- **Code of Practice** – a membership that subscribes to the Insurance Brokers Code of Practice; and
- **Professional Standards** – a framework for high standards of ethical and professional conduct by Members.

NIBA's commitment to high standards of professional practice has been and continues to be evidenced by –

- Our collaboration with the Australian and New Zealand Institute of Insurance and Finance (ANZIIF) for the development and delivery of high quality education and training opportunities for insurance brokers;
- Longstanding requirements for insurance brokers to meet Continuing Professional Development obligations;

- Insurance Brokers Code of Practice, the current version of which has been operating since 2014, under the auspices of an independent Code Compliance Committee and was one of the first Codes designed in a consumer friendly manner in both written and electronic form; and
- A commitment to develop and promote higher standards of ethical and professional conduct in insurance broking.

The Role of Insurance Brokers

NIBA member firms include large multinational corporations, large Australian broking companies, and a large number of medium and small brokerages operating in the cities, towns and regions right across Australia.

Insurance brokers in Australia all hold an Australian Financial Services Licence under the Corporations Act, which enables them to deal in or advise on risk insurance products. Brokers are regulated by the Australian Securities and Investments Commission.

The traditional role of insurance brokers is to –

- Assist customers to assess and manage their risks, and provide advice on risk financing and risk transfer, including 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 that has been arranged.

In doing the above, the insurance broker acts for and on behalf of the customer as their agent. In essence, insurance brokers do not SELL insurance to their clients, they PURCHASE insurance on behalf of their clients. They act in the client's best interest when doing so.

Insurance brokers offer many benefits to customers and 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; and
- Assistance with claims, with higher success rates for clients who use a broker than those who do not.

In limited cases, the insurance broker may act as agent of the insurer not the insured, but where such a relationship exists the customer is clearly advised up front. This is a key requirement of the Insurance Brokers Code of Practice.

Terms of Reference

In providing this submission, NIBA would like to specifically reference the following areas of the Inquiry's Terms of Reference:

(b) assessment of relative benefits and risks to consumers of the different elements of the life insurance market, being direct insurance, group insurance and retail advised insurance;

(d) the sales practices of life insurers and brokers, including the use of Approved Product Lists.

Life Insurance Markets in Australia

NIBA believes it is critical to any examination of the life insurance industry to understand the various markets and processes for the sale and distribution of the various products. The main types of life insurance sales and distribution processes are as follows.

(a) Life within superannuation

NIBA understands that many people choose to either structure some or all of their life insurance cover via their superannuation funds or via employer or industry funds.

The policy, including terms of conditions of cover, is as determined between the superannuation fund trustees and the life insurance company. Invariably these insurance policies are Group Life insurance contracts that are classed as superannuation business.

Typically, these policies have a group life contract where there is an automatic acceptance level, and hence there is little or no underwriting of the risk associated with individual insured lives. Invariably, standard cover (as agreed between the superannuation fund and the life insurance company) is provided to all members of the superannuation fund. This occurs in order to limit the exposure of the life insurance company to unusual, high cost or high risk policies.

The superannuation fund may offer some information or assistance to its members in relation to the nature and type of insurance that is offered, possibly allowing individual members to increase their cover, but the information is unlikely to be personal advice that takes into account the member's individual needs and circumstances.

The superannuation fund may employ the services of an insurance adviser/broker to negotiate the terms and conditions of the life insurance cover being provided by the superannuation fund. Where this occurs, the insurance adviser/broker acts on behalf of the Trustees of the superannuation fund in negotiating and arranging insurance for the fund and its members. In many cases, the insurance adviser/broker will take an active interest in the handling and resolution of claims by the life insurance company, as this is a relevant issue for ongoing discussions between the superannuation fund/Trustee and the life insurance company regarding the provision of life insurance to members of the fund.

(b) Group Life Insurance

Group life insurance is normally provided by an employer to its employee. The employer typically purchases a group insurance policy covering its staff, and members of staff have the cover provided by the group insurance policy while working for that employer.

The policy, including terms and conditions of cover, is as determined between the employer and the life insurance company. The employer is the policy holder, and the employees are typically entitled as third party beneficiaries to claim under the life insurance contract.

As with life insurance within superannuation, there is typically little or no underwriting of individual risks, with standard cover (as agreed between the employer and the life insurance company) being provided to all members of the group. Again, this occurs so that the employees are insured on a defined and objective basis, and that tends to limit the exposure of the life insurance company to unusual, high cost or high risk policies.

The employer will usually provide information to the employee regarding the nature of cover offered under the group life policy. The employee would have little or no opportunity to tailor the cover to meet individual needs and circumstances.

The employer would normally employ the services of an insurance adviser/broker to negotiate the terms and conditions of the group life insurance cover being provided by the employer. Where this occurs, the insurance adviser/broker acts on behalf of the employer in negotiating and arranging life insurance cover for the employer and its staff. The insurance broker would take an active interest in the handling and resolution of claims by the life insurance company, as this is a relevant consideration for ongoing discussions between the employer and the life insurance company regarding the ongoing provision of group life insurance to the employer's staff.

(c) Retail advised life insurance

Retail advised life insurance is where a life insurance adviser/broker works with the client to determine the nature and level of life insurance appropriate for their individual circumstances and needs. The life insurance adviser/broker would usually give what the Corporations Act describes as "personal advice" to the client.

Just as the terms and conditions of the policy, and the policy limits, are determined according to the needs and circumstances of the client, the insurance company would review the underwriting risk factors referable to the client in order to determine its pricing for the agreed cover.

Once the life insurance adviser/broker has assessed the client's needs and circumstances, the adviser/broker would take that proposal to the life insurance market to obtain what in its professional opinion are the most appropriate terms, conditions and pricing that would match the needs of the client.

The life risk adviser/broker would be trained in and familiar with the terms and conditions of policies offered in the market by various life insurance companies.

The adviser/broker often utilizes appropriate research software to assist in the independent assessment of products and definitions.

Finally, the life insurance adviser/broker will advise and assist the client in relation to any claim that may arise under the policy, and will act as the client's advocate to the insurance company as the claim is being assessed and resolved.

As noted in the introductory paragraphs of this Submission, in providing the personal advice the life risk adviser/broker must act in the best interest of the retail client under the Corporations Act. It is important to note that they act on behalf of the person covered, unlike the other two arrangements noted above and owes a duty of care to them.

Care needs to be taken to compare this position with instances where “advice” is provided by advisers who may in some way be connected with, and potentially acting on behalf of, a life insurance company.

NIBA represents life risk brokers who act for and on behalf of the client. NIBA believes it must be made MORE clear to clients than is currently the case, at all times, by any party acting for the client in any capacity, whether the “adviser” is acting for and on behalf of the client, or is acting in some other capacity or has a connection with the product issuer (e.g part of same corporate group).

Advisers with a connection to product issuers may limit offerings to the products available from those issuers and consumer may not be sufficiently made aware of what this practically may mean for the scope of advice they are receiving until they are too far down the purchasing trail. Consideration of behavioral economics in such situations is warranted.

Given the wide range of policies available in the market, NIBA submits there is a very strong and valid need for people to have ready access to expert, professional advice on life insurance risks, and the range of policies that might be available to insure those risks.

(d) Direct life insurance

Individuals also have the option of purchasing life insurance directly from the insurance company, or from agents acting on behalf of the life insurance company. The individual will also need to determine whether terms and conditions of cover are appropriate for their needs, and will also need to determine the nature and extent of cover they purchase.

The individual may not receive personal advice as to the nature and extent of cover that will be relevant to their circumstances. The individual (or their family) will also be responsible for pursuing any claims that might arise.

In this scenario customers are the most exposed.

This submission will now examine the legal framework in which life insurance advice is delivered, the obligations on life insurance companies, and arrangements for the resolution of disputes.

FOFA

Since the passage of the Future of Financial Advice reforms, advice relating to life insurance products and services is subject to the detailed obligations set out in those reforms.

However, as noted above, there are a wide range of circumstances where life insurance is sold without “personal advice”. In those circumstances, there is no obligation on the insurer or distributor to ensure that the policy is appropriate for and meets the individual needs and circumstances of the consumer.

The real risk is that a customer will never appreciate the value of getting such advice.

Insurance Contracts Act 1984

Claims handling and other practices by life insurance companies are subject to the duty of utmost good faith under the Insurance Contracts Act 1984. The duty of utmost good faith includes the concept of fairness.

Practically speaking, under the duty of utmost good faith and related common law principles, a claims handler must (among other things depending on the circumstances), in order to meet their legal obligations –

- Consider the wording of the policy and whether on its face it covers the claim;
- Consider any concerns identified by the claimant regarding any pre-contractual representations made that may be inconsistent with the wording that the customer has relied on;
- Act in accordance with the duty of utmost good faith and other relevant provisions of the Insurance Contracts Act in handling and settling claims (see sections 13 and 14 of the Act).

We also note that section 14A of the Insurance Contracts Act provides that if an insurer under a contract of insurance has failed to comply with the duty of utmost good faith in the handling and settlement of a claim or potential claim under the contract, despite the fact that the Corporations Act does not consider claims handling services to be a financial service, ASIC may exercise its powers under Subdivision C of Division 4 of Part 7.6 of the Corporations Act, or Subdivision A of Division 8 of that Part in relation to the insurer as if the insurer's failure to comply with the duty of utmost good faith were a failure by the insurer to comply with a financial services law. In other words, ASIC currently has a robust and appropriate power to investigate claims handling practices where there is a concern that there has been a breach of the duty of utmost good faith.

NIBA notes that in ASIC's Life insurance claims: An industry review ASIC Report 498 it made a Recommendation to Government regarding the strengthening of the legal framework covering claims handling.

ASIC stated that: "Currently 'handling insurance claims' is explicitly exempted from the conduct provisions of the Corporations legislation. ASIC is recommending that this exemption be removed by the Government and that more significant penalties for misconduct in relation to insurance claims handling are also included in the review of ASIC's penalty powers."

This is a significant recommendation affecting not only life insurance claims which it reviewed, but also general insurance.

The issue is whether such a recommendation should have been made where ASIC does not consider or identify what it believes the detriment may be to industry when compared with the value to it and the 10% of consumers not being paid claims, as a result of the requested "enhancements". To remove the exception would clearly result in a significant compliance cost burden for industry.

Before making such recommendations there should be "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".

ASIC currently has significant powers which should enable it to reasonably address the issues identified as the conduct listed would usually be seen as a breach of the duty of utmost good faith under the Insurance Contracts Act by the insurer.

The comments made by ASIC as to the difficulties it says it faces need to be questioned having regard to the above, along with the fact such a recommendation has even been made

on such a wide basis given the scope of and results of its report. This gives NIBA cause for concern regarding any proposed extension of ASIC powers.

Financial Ombudsman Service

Consumers can go directly to the Financial Ombudsman Service (FOS) if they have a complaint, including regarding the claims handling practices of insurers. FOS can and does apply principles of fairness in considering any dispute. There has been no suggestion that FOS has failed to appropriately handle consumer disputes regarding life insurance policies. FOS has reported that life insurance disputes make up only 5% of total disputes (FOS Annual Report for 2015/2016).

Where to from here?

There have now been two major reports by ASIC expressing concerns in relation to the sale and distribution of life insurance in Australia. From media coverage, one could get the impression that there are very significant issues across all areas of life insurance. However, in its most recent report, ASIC acknowledges that the great majority of life insurance claims are paid in accordance with the terms of the policy, and that the experience of consumers is more favorable when advice is provided at the time of sale of the policy.

Nevertheless, there appears to be ongoing areas of concern, and NIBA fully supports moves to identify those concerns, fully assess the circumstances that gave rise to the concerns, and determine mechanisms that resolve those concerns.

In particular, NIBA submits the following needs to occur to better understand the nature and extent of issues and concerns in relation to the sale and distribution of life insurance.

1. Areas of concern need to be carefully identified and investigated, having regard to the various distribution models outlined above. For example, the first ASIC report on problems with life insurance advice gave little or no indication of the areas where the failures were occurring. It is therefore difficult to start to develop appropriate responses to those concerns.
2. Once the concern has been identified, the factors, drivers, incentives relating to those concerns also need to be investigated and identified. What were the key factors and incentives that led to the issue or concern? Are the concerns indicative of systemic issues across the industry, or are they indicative of individual instances of poor advice or poor policy or claims administration?
3. Once the issues and concerns are fully understood, there must be an analysis of the current laws that are available to ASIC as regulator, and to the parties to the insurance policy, to resolve those concerns and lead to better performance in the future. As noted above, extensive provisions already exist in the Corporations Act, the Insurance Contracts Act and with external dispute resolution facilities such as FOS to address issues and concerns.
4. Once the legal analysis is complete, any identified gaps in the current legal framework will be identified. Options for addressing those gaps in the most effective, and cost/effective, manner can then be determined. This should result in the preparation and implementation of appropriate reforms which will have a high likelihood of improving the operation of the life insurance market in Australia.

Life insurance policies are not the same. There can and will be wide variation between policies regarding the nature and level of cover offered by the policy.

NIBA believes that unless the consumer is very familiar with the nature of life insurance cover, they should be strongly encouraged to seek professional advice from an experienced life risk broker, to ensure the cover they are seeking will actually meet their needs and circumstances, and is the most cost effective insurance cover available in the market.

The life risk broker will also take steps, for and on behalf of the client, to make sure the life insurance company honours its promise and fulfills its commitment under the policy. After all, it is the obligation of the insurance company to meet its contractual obligations under the terms of the policy.

Please do not hesitate to contact us if you would like to discuss any aspect of this submission.

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