NIBA
National Insurance Brokers Association.

18 October 2018

The Committee Secretary
Senate Standing Committee on Economics
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018

We refer to the Committee's inquiry into the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018.

The National Insurance Brokers Association (NIBA) appreciates the opportunity to make this submission. NIBA represents around 350 member firms, employing over 4,000 insurance brokers in all States and Territories of Australia. Our members usually act for and on behalf of their clients (not insurers), and they have statutory, common law and fiduciary duties to act in the best interests of their clients at all times. Insurance brokers in Australia operate under an Australian Financial Services Licence, issued by ASIC.

NIBA supports any Government initiative to better protect consumers where they do not have the benefit of an insurance broker's advice and other services that help protect them from many of the issues identified in the current Royal Commission in relation to insurers and their agents.

That said, any legislation must be workable and understandable and not mislead consumers as to what service they are getting from an insurer and/or its distribution agents.

The Bill is about insurers designing products to meet the likely general needs and objectives of consumers in the target market. We are very concerned that a consumer who might see themselves as falling within a target market might conclude that the product is suitable and appropriate for their individual needs. We believe this is very dangerous, and potentially very misleading in the hands of consumers, who will not know or understand the finer points of the Bill and the processes it requires.

Only those providing personal advice such as insurance brokers can advise on whether the product meets the consumer's individual needs and objectives. To suggest insurers and their agents are doing more in the target market determination by reason of this Bill may unintentionally reduce the number of consumers seeking personal advice and the protection that comes with it. This is not a good result for the community.

There is another important preliminary issue we wish to draw the Committee's attention to.

At this time, it has not been made clear by Treasury, ASIC or by insurers what a Target Market Determination will encompass in the context of general insurance policies. We are unable to assess whether the existence of a Target Market Determination, and the procedures that are required by the Bill, will be of benefit to the clients of our members, or will merely be a compliance burden that our members will need to manage at unnecessary cost to clients.

The Bill also places monitoring and reporting obligations on our members as distributors of policies that will be covered by the Bill that are unnecessary and controlled by the insurer. Where an insurance broker is acting for the client and not the insurer, this is likely to create conflicts of interest. The costs that will be imposed on our members in complying with the monitoring and reporting obligations required by the Bill are likely to outweigh any benefits the Bill aims to offer to consumers arising from this reporting. We explain why in the submission.

NIBA notes that there are current insurance related reviews that can significantly impact on the Bill, including the work being undertaken by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, and the Government's review of the Committee's recommendations in the report "Australia's general insurance industry – sapping consumers of the will to compare".

We do not believe that it is appropriate to include insurance in the Bill until proper consultation has occurred to reasonably allow industry, regulators (ASIC and APRA) and Government to:

- identify appropriate and clear minimum obligations in the context of other reforms;
- undertake a proper cost benefit analysis; and
- determine an appropriate transition period.

If this reasonable approach is not accepted, then urgent discussion is needed to fix what are significant flaws in the proposed Bill which are discussed in the submission attached.

.

We would be pleased to meet with the Committee and discuss these matters further if required to do so.

Yours sincerely,

Dallas Booth
Chief Executive Officer

NIBA
National Insurance Brokers Association.

18 October 2018

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email (Word and PDF formats)

economics.sen@aph.gov.au

NIBA SUBMISSION TO THE ECONOMICS LEGISLATION COMMITTEE FOR INQUIRY INTO THE TREASURY LAWS AMENDMENT (DESIGN AND DISTRIBUTION OBLIGATIONS AND PRODUCT INTERVENTION POWERS) BILL 2018 (THE BILL)

The National Insurance Brokers Association of Australia (**NIBA**) appreciates the opportunity to make this submission in relation to the Bill.

NIBA is the industry association for insurance brokers across Australia. The association has around 350 member firms, employing over 4,000 insurance brokers in all States and Territories, in the cities, towns and regions of Australia.

ABOUT INSURANCE BROKERS

Insurance brokers work with their clients to assist them to:

- understand and manage their risks, including the risk of loss of or damage to property as a result of adverse weather or other climate related events;
- obtain appropriate insurance cover for their risks and their property; and
- pursue claims under their policies when an insured event occurs, in which case the insurance broker becomes the advocate for the client during the assessment and resolution of the claim.

Insurance brokers act primarily for and on behalf of their client, and they owe legal duties to their clients for the nature and quality of the work they perform on their behalf. When acting for and on behalf of the client, insurance brokers do not SELL insurance policies – they PURCHASE insurance policies on behalf of their clients from the markets available to them.

BACKGROUND

NIBA understands what the Government is seeking to achieve via the Bill in relation to the design and distribution obligations (**DDO**) and product intervention power (**PIP**).

NIBA is supportive of fair and reasonable improvements in product design and distribution practices and regulatory powers, implemented in accordance with sound regulatory practice. There must however be a proper cost benefit analysis to show that the benefits clearly outweigh any consumer or industry detriment.

NIBA has previously made detailed submissions in the consultation process on the DDO and PIP proposals and the issues raised in this submission have been raised in prior submissions.

The following summarises the main concerns NIBA has with the Bill taking into account amendments since the last consultation and provides detail on each proposed change (including technical ones) in the main submission.

EXECUTIVE SUMMARY

No valid cost benefit analysis in the insurance context

NIBA is supportive of fair and reasonable improvements in product design and distribution practices and regulatory powers, implemented in accordance with sound regulatory practice. There must however be a proper cost benefit analysis to show that the benefits clearly outweigh any consumer or industry detriment.

In consultations and discussions to date, no clear picture has been presented as to how the design and distribution obligations will work in practice in the context of general insurance policies for retail customers. Further there has been no clarity about the nature and extent of monitoring and reporting obligations that will be placed on distributors, including insurance brokers. It is therefore very difficult for NIBA to determine whether the proposals will provide genuine benefits for insurance policyholders, or will merely impose a new regulatory regime, at significant cost, for no better consumer outcomes.

NIBA has previously raised significant concerns regarding the cost benefit analysis conducted in an insurance context and the information provided in support. It is not clear from recent consultation with Treasury and ASIC that a proper cost benefit analysis has or could have been conducted.

Based on the lack of clarity of certain provisions and the proposed obligations discussed below, NIBA is of the view that the Bill could well result in significant costs

being imposed on insurance brokers, many of whom are small businesses, as well as insurers and their agents. On a proper cost benefit analysis, it is not clear that those additional costs are unlikely to be warranted.

If implemented in the form proposed, the changes are likely to result in increased insurance costs for consumers as well as less innovation, greater complexity and less competition. *The benefits obtained will not outweigh these costs if the very real issues raised below continue to be left unaddressed.*

Timing of the Bill is not appropriate

NIBA previously recommended a standard cover review as an alternative model for general insurance. NIBA notes this has been included as Recommendation 5 in the report Australia's general insurance industry: sapping consumers of the will to compare. It does not appear to NIBA that there has been any obvious consideration of how the standard cover proposals for general insurance will interact with the Bill and any potential duplication that may result as part of the cost benefit analysis.

NIBA notes that there are also current insurance related reviews that can significantly impact on the proposals (e.g. the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry).

We do not believe that it is appropriate to include insurance until proper consultation has occurred to reasonably allow industry, regulators (ASIC and APRA) and Government to:

- identify appropriate and clear minimum obligations in the context of other reforms;
- undertake a proper cost benefit analysis; and
- determine an appropriate transition period.

If this reasonable approach is not accepted, then urgent discussion is needed to fix what are significant flaws in the proposed Bill which are discussed below.

The Bill does not work as intended in its current form

We will provide detail below but in summary the core concepts in the Bill appear to be flawed.

NIBA, having reviewed the Bill, cannot work out how an insurer could, with any reasonable compliance certainty, meet the Target Market Determination (**TMD**) requirements.

In meetings with consumers, Treasury, regulators and industry stakeholders, no clear agreed position was reached how it should work in an insurance context.

We expect that if the Committee asked each for a view, it would receive conflicting responses. This of course, is not a good start to such important legislation.

Making a TMD s994B

An insurer must make a TMD for a financial product if under Part 7.9, the person is required to prepare a Product Disclosure Statement (PDS) for the product.

How this applies to packaged policies is not clear. Often package products such as Farm Packs contain home and contents and domestic motor insurance as well as non-retail products such as Public and Products Liability and Farm Property cover. Small business packages can contain professional indemnity insurance and retail covers such as sickness and accident or travel insurance or motor insurance.

In such cases the retail and wholesale covers are contained in a single PDS. The PDS obligations technically only apply to the retail client covers.

If the intent is for the TMD obligations to apply to all covers i.e. the retail and non retail covers, insurers may be forced to create separate offerings. The stop order powers are also likely to cause insurers to consider separating covers to mitigate the risk of all covers being stopped by reason of one breach in a retail cover affecting all.

This will likely result in costly changes as well as modifications to systems. This will add to the cost and complexity of insurance for consumers.

It is not clear whether Treasury has considered this issue or its likely impact.

Identifying the target market S994B(5)

An insurer is required to describe the "*class of retail clients that comprises the target market (within the ordinary meaning of the term) for the product*" in an insurance context.

There is no guidance in the EM or elsewhere on what this practically would mean in an insurance context.

At Treasury consultation on the issue, consumers, ASIC, and industry could not agree on what was required.

There is no scalability concept and even if guidance is provided by ASIC after the Bill is introduced as seems to be proposed, it will be too late given compliance measures will need to be implemented ahead of such guidance in order to meet the start date.

The question that requires clarity is, "At what level must a target market be identified?"

Is it:

- at the 'type of cover' level of choice? e.g. Motor Comprehensive insurance vs Third Party Fire and theft or Third party property damage – e.g. anyone with a car.
- more than this and if so, where is an insurer expected to stop? Is it:

    - For all cover benefits or only some? How would it work where the product has various options that may or may not be appropriate for various sub classes etc? For example, each product has additional benefits provided under the cover (automatic or optional), excess levels, cover limits and exclusions and other conditions of the product in determining the target market;

    - any characteristic that remove a person from eligibility (e.g. type of insured item, value of insured item, location of insured/insured item and at what level (e.g. State, area code) in effect the non-target market?

NIBA is concerned that the above will give rise to market inconsistency and without clarification, high compliance costs and an unfair exposure to compliance breaches.

Broad statements of principle such as that used in the UK are not helpful.

Where there is a lack of clarity, persons are forced to go to a compliance level that will either result in more limited product offerings or more expensive insurance or both. Systems change costs can be significant depending on the level to which a target market must be determined.

NIBA also understand that the proposals will apply to renewals which are usually provided on an opt out basis. Changing this model will have a significant cost impact on insurance we do not believe has been properly considered.

Industry also has no comfort that the position taken by ASIC would be reasonable. If unreasonable, this can clearly impact on costs to industry and ultimately consumers.

Identifying distribution conditions and other TMD content requirements

If you can't identify the target market with any certainty, it follows you cannot identify the distribution conditions in the TMD required to ensure the TMD is appropriate.

The distribution conditions required depend on the level to which the target market must be identified for a product. They may be simple or extremely detailed.

To achieve this could be very complex and TMD's would be very long. This might result in confidential or commercially sensitive information being made available to competitors and/or a breach of competition laws.

The same issues apply to review terms and record keeping and reporting.

TMD Content generally

The TMD content requirements are likely to make it a large document, and if publicly available as proposed, depending on the content level required – which cannot reasonably be determined – may reveal commercially sensitive information.

TMD Appropriateness s994B(8)

For a TMD to be appropriate it must be such that it would be reasonable to conclude that, if the product were to be issued:

- to a retail client in accordance with the distribution conditions—it would be likely that the retail client is in the target market; and

- to a retail client in the target market—it would likely be consistent with the likely objectives, financial situation and needs of the retail client.

In relation to the first concept, unless you can determine the target market (which is not reasonably possible with any compliance certainty based on the issues noted above) an insurer will have no reasonable compliance certainty as to whether it meets this obligation. Significant civil and criminal penalties apply if a TMD is not appropriate.

In relation to the second concept, the proposal as we read it is drafted contrary to the expressed intent of Government.

The EM states [our bold]:

> *"1.52 These requirements are objective.* ***They do not require an issuer to have knowledge about individual consumers.***
>
> *1.55 The second requirement focuses* ***on the likelihood of a product being appropriate for the retail clients in the target market****. Whether a product is appropriate is determined by reference to whether it is likely to be consistent with the likely objectives, financial situation and needs of the* ***retail clients****. Again, this formulation provides flexibility to an issuer in determining the appropriate target market for a product. For example, it would enable an issuer to conclude that it is appropriate for a product to be issued to an investor as part of balanced portfolio, even if it would not otherwise be appropriate for the investor.* ***[Schedule 1, item 5, paragraph 994B(8)(b) of the Corporations Act]****"*
>
> *1.531.56 The amendments use language similar to that currently used in the Corporations Act in the context of personal advice. In particular, it must be reasonable to conclude that if the product were issued or sold it would "likely be consistent with the likely objectives, financial situations and needs* ***of persons in the target market****" [emphasis added].*

However, the actual obligation as drafted refers to TMD having to be likely to be consistent with the likely objectives, financial situation and needs of "**the**" retail client i.e. this reads as the particular person buying the product, not the type of retail client on which the TMD is based.

An insurer could never safely form a view on the likely objectives, financial situation and needs of a particular retail client yet to be engaged with in the future.

The actual objective as we understand it, is that the end result should be that the retail client buying the product ***at least*** *had the generic objectives and needs of the retail client target market the insurer designed the product to meet.*

Assuming this is the intent and the above can be amended to properly and clearly reflect this objective, is an insurer required to:

- have looked at the 'objective' or 'need' at the 'type of cover' level (e.g. Comprehensive motor insurance vs other options) or lower levels such as limits of the cover - agreed value vs market value/limit of liability cover or lower still re additional benefits such as new for old replacement, excess levels, rental car and so on (which the consumer representatives support)?

- what happens if the expected target market 'need' of home owners insurers are expected to meet (which ASIC or consumers could argue) includes cover which is not provided by the insurer for a valid commercial reason? This could prevent insurers offering existing products in the market; and

- consider a location specific target market? If so the likely need for customers in that area will be different. This could have an anti-competitive effect if one insurer's limited distribution channel forces them to meet needs that an insurer with a broader distribution channel would not.

NIBA is also unclear on how the general 'financial situation' of a target market could ever sensibly be determined and at what level this analysis is required.

In effect, Government is proposing to implement legislation where the actual impact on the industry and consumers is not and cannot be known and industry is reliant on a regulator to set the rules. NIBA has real concerns the rules cannot properly be determined.

We expect that if the Committee asked for a view from stakeholders, it would receive conflicting responses. This of course, is not a good start to such important legislation.

Scope of Personal advice carve out and definition of "Excluded dealing"

NIBA supports the personal advice carve out applied to various provisions for the reasons previously submitted.

Excluded dealing needs to be amended **–**

EM 1.781.82 states {our bold]:

> "While retail product distribution conduct includes providing financial product advice, the new regime excludes personal advice **and associated conduct** from most of the new distribution obligations. This reflects that such conduct already involves consideration of the client's individual circumstances and is subject to the best interest obligations under Part 7.7A of the Corporations Act"

The definition of "excluded dealing" is this "associated conduct" and is currently too narrow. It only catches arranging by person "for the purpose of implementing personal advice that the person has given to the retail client".

If a person has been given information about 2 products and received personal advice recommending product 1, but they wish to purchase product 2 (which may be more expensive or have some other benefit the client prefers for some other reason) despite the personal advice, the arranging conduct implementing the client's instructions is not exempt.

It should be excluded as long as the client has received personal advice. If not, the insurance broker would be prevented from implementing its client's instructions. This makes the personal advice carve outs unworkable.

It could be amended to read "arising in connection with personal advice that the person has given to the retail client" which would cover such scenarios.

NIBA is not aware of why Treasury has chosen not to make this simple change and requests that the Committee make enquiries in this regard.

Obligations imposed on brokers by insurers in a TMD is not appropriate - An insurer's TMD can also apply requirements in this regard that an insurance broker (including when acting for a client) must follow:

- specify a reporting period for reporting information about the number of complaints about the product (per 994F(4)). Complaint is defined in subsection 994A(1). The period must be "reasonable"; and

- specify the kinds of information needed to enable the person who made the TMD to identify promptly whether a review trigger for the determination, or another event or circumstance that would reasonably suggest that the determination is no longer appropriate, has occurred and, for each kind of information, specify:
  - the regulated person or regulated persons that, under subsection 994F(5), are required to report the information to the person who made the determination; and
  - a reporting periods for reporting the information under subsection 994F(5). The period must be "reasonable".

An unscrupulous insurer could use this power for its own commercial advantage.

Reporting and record keeping obligations on broker when acting for the client

The Bill still requires insurance brokers, when providing personal advice to retail clients to:

- record information regarding complaints on the product and matters the insurer requires it to report on in the TMD (s994F(3));

- report to insurer that issued the TMD about complaints received in relation to the product and other matters required to be reported on per the TMD (s994F(4) and (5));

- report to the insurer that issued the TMD where they become aware of a significant dealing in the product and becomes aware that the dealing is not consistent with the TMD (s994F(6)). *This is a pointless exercise when s994G Notice to ASIC does not actually require the insurer to notify ASIC if they become aware of a significant dealing in the product in relation to a retail client that is an excluded dealing ie personal advice provided by a broker to a client that was not consistent with the TMD.*

NIBA believes all of the above obligations that continue to apply to insurance brokers providing personal advice will cause conflicts of interest and can cause an insurance broker to breach confidentiality obligations to its clients for little consumer benefit.

There is little if any evidence of insurance brokers engaging in wrongful conduct if you consider FOS statistics.

At best the above requirements act as a secondary measure to check on whether the insurer's TMD is appropriate. Given the obligations apply to the insurer and its agents (which we assume would also receive complaints if insurance brokers acting for clients were), there would identify the issue in any case. Any gap seems unlikely to NIBA.

If these obligations remain, it will come at a significant cost for consumers and insurance brokers and could result in services on behalf of consumers becoming more expensive or being reduced.

In particular, it will have the effect of increasing the cost of personal advice for consumers using insurance brokers (and compliance costs of insurance brokers many of whom are small businesses) for what would be a very limited benefit to consumers who do not (i.e. those who deal directly with insurers or their agents) that are already protected by obligations that apply to the insurer and its agent who the rules are targeted at.

This will further reduce the availability of personal advice to retail clients and competition in the retail client space.

NIBA does not believe Treasury has properly considered this issue. In short, what gap does applying the obligation to insurance brokers plug and if a gap exists will the costs impact outweigh any benefit to consumers?

General advice scenarios - NIBA also notes that an insurance broker providing general advice on behalf of a client and not the insurer is not exempt. NIBA believes they should be exempt. If not, conflict issues can arise for the insurance broker given it must act in accordance with the directions of the insurer, not its client.

Section 1018A advertising change

This advertising notice requirement is to be changed to require description of the target market for the product or specify where the determination (if PDS exists) or description (if no PDS yet) is available.

NIBA sees little benefit of this in circumstances where there is protection in the TMD rules at the point of issue. It will extend an already lengthy advertising notice distracting from important notices on product terms on the TV screen or radio advertisement.

The TMD rules do not work in the context of packaged policies that contain retail and non-retail covers. Insurers will be forced to create separate offerings at extra costs and complexity for consumers.

The TMD rules will create significant additional costs on consumers in the renewal context as insurers are required to make what are significant systems changes and adopt an approach contrary to the Governments existing renewal approach under the Insurance Contracts Act.

As drafted insurers are forced to go to a compliance level that will either result in more limited product offerings or more expensive insurance or both. Systems change costs can be significant depending on the level to which a target market must be determined.

A practical example explaining the issues in a motor context is provided at the end of the submission.

Consideration should be given as to whether certain core products (e.g. standard cover such as motor and home insurance) should be excluded from the requirements and the standard cover reforms (yet to be progressed) used to achieve reasonable and cost effective protection.

Guidance proposed to be provided after the introduction of the Bill to assist in this regard provides no reasonable compliance comfort.

Timing rules in certain provisions s994C(3)-(7)

There are proposed timing requirements in a number of obligations e.g. "must, as soon as practicable but no later than 10 business days after the person first knew [in (6) the word "aware" is used]…". In practice these timing requirements will be very difficult to meet despite reasonable efforts and in NIBA's view need to be reconsidered.

Prohibition on retail product distribution conduct unless TMD made s994D

The prohibition on regulated person engaging in retail product distribution conduct unless a TMD is "made" needs to make it clear that the Regulated person is not required to consider the *appropriateness* of the TMD if issued by the insurer in the Explanatory Memorandum.

Reasonable steps to ensure consistency with TMD s994E(1)

Under s994E(1), **a person who makes a TMD for a financial product** (e.g. the insurer) must take reasonable steps that will, or are reasonably likely to, result in retail product distribution conduct in relation to the product (other than excluded conduct) being consistent with the determination.

A carve out has been added (where the conduct is not excluded conduct) in which a regulated person is not taken to have failed to take reasonable steps if the person engages in retail product distribution conduct that:

- relates to a particular retail client; and
- relates to a particular financial product; and
- is necessary to implement personal advice given to the client in relation to the product. (s994E(6))

THE EM provides in 1.103 that:

> *For conduct to be "necessary" to implement personal advice, the distributor must be satisfied of all relevant matters including: that the particular retail client has received personal advice in relation to a particular product; that the advice remains current; and, that the distributor's proposed conduct would be consistent with that advice as it relates to the particular product they would be distributing. [Schedule 1, item 5, subsection 994E(6) of the Corporations Act]*

This imposes a significant obligation on regulated persons relying on this carve out to check the personal advice the retail client has received and scope of that advice. This is because if one aspect of the advice is not followed by the client e.g excess choice or limit choice or optional cover choice, the carve out doesn't apply. In such a case it is of little real use to anyone. Ultimately, if the retail client is being represented by a regulated person who has provided them with personal advice and the retail client

chooses to only take part of this advice, the insurer should not be subject to this obligation.

The provision does not state what parts of the TMD. Much of the TMD is irrelevant in this regard. Currently it is not clear what the TMD will comprise or how onerous the content will be.

Under s994E(3), if a TMD for a financial product has been made and the product is on offer for acquisition by issue to retail clients and a **regulated person**:

- engages in retail product distribution conduct in relation to the product; and
- has failed to take reasonable steps that would have resulted in, or would have been reasonably likely to have resulted in, the retail product distribution conduct being consistent with the determination,

the regulated person will be in breach unless the retail product distribution conduct is excluded conduct.

The requirements won't apply where the distribution conduct consists of personal advice or associated conduct. This associated conduct consists of any dealings engaged in by the personal advisor, or an associate of the advisor, for the purposes of implementing the personal advice.

Currently, it is not clear what the TMD will comprise or how onerous the content will be. The provision does not state what parts of the TMD. Much of the TMD is irrelevant.

Where an insurance broker is not providing personal advice and chooses to give general advice to a retail client (not as agent of the insurer) it is effectively forced to follow the insurer's TMD. Conflicts of interest may arise.

The above requires the issuer to seek to apply the rules to third party regulated persons not providing exempt conduct (i.e. agents of insurers, insurance brokers not acting for insurer but acting for client and not providing personal advice, and insurance brokers arranging for acquisition and not product personal advice related) to take measures to ensure their conduct is consistent with the TMD.

Record keeping and reporting s994F and s994G

In terms of record keeping and reporting obligations on issuers and regulated persons:

- until the TMD requirements are made clear, it is hard to comment on how this will impact on industry. It will, however, be costly and increase costs to the consumer;

- whilst NIBA supports the personal advice carve out in other provisions of the legislation, the reporting requirements on regulated persons apply to brokers acting for insureds, including when providing personal advice and could create a conflict of interest or possible breach of confidentiality. NIBA does not support this proposal as the cost impact on insurance brokers, many of whom are small businesses will be significant (See earlier comments in this regard);

- the record keeping and reporting requirements fail to take account that there may be more than one regulated person e.g. in a coinsurance arrangement, and may result in unnecessary and pointless duplication of records and reporting;

- the reporting requirements would require an insurer to report to itself as it would be the issuer of the TMD and regulated person;

- the 10 day period is very short;

- the obligation on a regulated person to report to the issuer of the TMD where they engage in retail product distribution conduct in relation to the product, and becomes aware of a significant dealing in the product and becomes aware that the dealing is not consistent with the determination applies to insurance brokers when providing personal advice; and

- what a significant dealing is unclear and will create confusion. Is the word "dealing" meant to be interpreted as defined in the Bill, or as a general concept?

TMD and PDS

We understand that there is no prohibition against building the TMD into a PDS or other document and it is not intended that issuers be required to build the TMD into every PDS. Confirmation needs to be included in the Bill, otherwise in the EM or via ASIC.

Suitable paragraph 760A (aa)

Use of the word suitable in paragraph 760A (aa) in our view will cause consumers to be misled as the term in our view creates a higher and incorrect expectation (i.e. a personal advice expectation) than that the Bill seeks to achieve. The plain meaning in the dictionary is "right or appropriate for a **particular** person, purpose, or situation". [our bold]. This is contrary to the intent of the proposed legislation.

Product Intervention power and other ASIC Design and Distribution obligation powers

NIBA is of the view that ASIC has sufficient powers to achieve its regulatory objectives from its existing toolkit despite representations to the contrary and has covered this in various other submissions. Relevant to FSI recommendation 22, the intervention power was expected to be used infrequently and as a last resort. This should be made clearer.

NIBA is concerned that subjectivity can lead to inappropriate use of powers. A recent concern in this regard was the ASIC Life claims review and the broader recommendation made regarding general insurance, which to our knowledge were never the subject of inquiry or consultation as part of that project.

NIBA's previous submissions noted a number of practical matters for consideration which were not addressed.

NIBA's main concern is that PIP orders now extend to remuneration where the remuneration is conditional on the achievement of objectives directly related to the financial product. The lack of clarity and breadth of the power is extremely concerning for NIBA as is the risk of ASIC seeking to change existing general insurance remuneration arrangements and operation of the laws as they currently relate to general insurance by use of this power.

No evidence has been provided in recent years indicating that remuneration arrangements for insurance brokers is resulting in poor quality advice, and poor consumer outcomes. Changes to remuneration arrangements could well have serious impacts on the viability of businesses, the way in which they operate, and ultimately the nature and level of advice that would be available to the community on risk and general insurance matters.

NIBA firmly submits that any regulatory measures in relation to remuneration frameworks should only be considered on the basis of clear evidence of concern, and full consultation on potential mechanisms to remedy those concerns. That has not occurred to date in relation to remuneration arrangements for general insurance brokers.

CONCLUSION

NIBA would be pleased to have the opportunity to discuss these matters in further detail, and to explain our concerns regarding the increasing complexity of legislative and regulatory intervention in relation to life and general insurance.