

21 August 2020

**Australian Small Business and Family Enterprise Ombudsman**

**Insurance Inquiry**

**SUBMISSION BY NATIONAL INSURANCE BROKERS' ASSOCIATION OF AUSTRALIA  
(NIBA)**

**1. ABOUT NIBA**

- a. The National Insurance Brokers Association of Australia (**NIBA**) appreciates the opportunity to make this submission to the ASBFEO Insurance Inquiry.
- b. NIBA is the industry association for insurance brokers across Australia and has around 450 member firms, employing over 14,000 insurance brokers in all States and Territories, in the cities, towns and regions of Australia.
- c. Over many years NIBA has been a driving force for change in the Australian insurance broking profession. It has supported financial services reforms, encouraged higher educational standards for insurance brokers and introduced an independently administered and monitored code of practice for members.

**2. ABOUT INSURANCE BROKERS**

**Types of insurance brokers**

- a. In Australia an insurance broker will generally fit within one of the following types of business model:
  - i. large multinational insurance broker;
  - ii. cluster group broker – a small to medium sized broker belonging to a network or group of broking firms; and
  - iii. independent broking firms acting outside the above model e.g. smaller to medium size brokerages not part of a group.

**Role of insurance brokers**

- a. The primary role of an insurance broker is to:
  - i. advise customers on risk and insurance, including what insurance is appropriate for the customer's needs;
  - ii. assist customers to arrange and buy insurance; and

- iii. assist the customer in relation to any claim that may be made by them under the insurance.
- b. Insurance brokers offer many benefits to customers in playing this role:
  - i. assistance with selecting and arranging appropriate, tailored insurance policies and packages;
  - ii. detailed technical expertise including knowledge of prices, benefits and pitfalls of the wide range of insurance policies on the market;
  - iii. assistance in interpreting, arranging and completing insurance documentation;
  - iv. experience in identifying and reducing risks; and
  - v. assistance with claims and a higher success rate with settlements.
- c. Insurance brokers provide support and assistance to individuals in relation to their domestic insurance needs, but the bulk of work undertaken by insurance brokers is in relation to small business clients. Larger corporations, multi-national corporations and governments are also supported by the work of the insurance broker.
- d. During calendar 2019 insurance intermediaries placed around \$25 billion in gross written premiums with insurance companies operating in Australia, with Lloyd's in London and with overseas insurance companies (see APRA Intermediated General Insurance Statistics reports.) This is around half of the general insurance premium pool in Australia.
- e. In doing the above, the insurance broker acts on behalf of the customer and when doing so, they owe legal duties to them for the nature and quality of the work they perform on their behalf.
- f. In limited cases, insurance brokers may act as agent of the insurer and not the insured, but where such a relationship exists, the customer is clearly advised up front and this is a requirement under both the Corporations Act and the Insurance Brokers' Code of Practice.
- g. Whilst insurance brokers continue to provide valuable personal advice to many retail clients, especially in the rural and small business space, the provision of insurance services by insurers directly or through their agents on a no advice or general advice model has restricted the ability of insurance brokers to competitively provide personal advice in the retail client space.

### 3. MAIN ISSUE FOR NIBA

- a. NIBA's main issue relates to the questions set out in the Inquiry's Terms of Reference is the role of brokers in getting the right coverage.
- b. As noted above, the role of the insurance broker is to act for and on behalf of the client, to help the client understand their risks and insurance needs, to prepare a recommended insurance program to cover those risks, and to access the insurance markets to get the best possible coverage for the client at the most cost effective price. Acting in this way, the insurance broker acts as a PURCHASER of insurance cover on behalf of their client, not a SELLER of insurance cover.
- c. Insurance brokers operate under an Australian Financial Service Licence issued by the Australian Securities and Investments Commission and are subject to the full regulatory regime established by Chapter 7 of the Corporations Act.
- d. Insurance brokers are also members of the Australian Financial Complaints Authority (AFCA), and are bound to implement AFCA determinations when they are made against the insurance broker.
- e. The following are good examples that show the insurance broking profession is generally acting professionally in the interest of customers, relevant law and community standards and expectations:

- i. **The low incidence of AFCA complaints and disputes by consumers and small businesses regarding insurance brokers.**

NIBA meets regularly with the General Insurance Ombudsman at AFCA, who has confirmed on a number of occasions that there are no significant or systemic concerns with insurance broker conduct or complaints.

- ii. **The sound operation of NIBA's self-regulatory Insurance Brokers' Code of Practice and lack of significant consumer complaints.**

Complaints are not at any significant level or showing any significant increase. The Insurance Brokers Code of Practice is currently under review as required by its terms and will take into account issues raised by the Royal Commission, and submissions received from a range of external stakeholders. An own motion inquiry on professionalism by the Insurance Brokers Code Compliance Committee (which has an

independent Chair and consumer and industry representatives), did not identify any significant concerns.

- iii. **The lack of material Government, public or ASIC identified concerns with the conduct of insurance brokers (as opposed to financial advisers involved in the provision of investment and non-risk insurance advice).**

NIBA has not identified any such concerns. NIBA notes that in recognition of the conduct of the insurance broking profession:

- lesser regulatory costs have been applied in the ASIC supervisory levy regime for general insurance brokers than those that apply to other financial advisers;
  - following on from the Financial System Inquiry and other Government and ASIC reviews and after careful consultation and consideration by stakeholders, general insurance brokers have deliberately not been subjected to the same additional ASIC registration and training obligations, conflicted remuneration ban or best interest duty provisions that are applied to financial advisers; and
  - the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2020 has included carve outs for personal advice services providers.
- f. NIBA notes that irrespective of the matters listed above, a robust protection regime applies for consumers in relation to the conduct of insurance brokers at general law, the Corporations Act (2001) Cth and other relevant legislation. There is no evidence that these mechanisms are not working.

#### **4. OTHER ISSUES**

##### **Availability and coverage of insurance policies provided to small businesses**

Insurance cover is provided to small businesses in a number of ways.

- A number of insurance companies offer “small business pack” insurance cover directly to small business owners. In doing so, the insurer determines the extent of cover it wishes to offer, and the product is almost always supplied by the insurer without any form of advice to the small business, and

without taking account of any special needs and circumstances of the small business.

- Insurance brokers work with their small business clients to determine their specific risks and needs, and develop an insurance program to meet those needs and circumstances. This often involves negotiating special terms and conditions with the preferred insurance supplier.

In some cases the small business owner forms the view that they cannot afford or do not wish to pay the cost of the recommended insurance program. In those cases (as undesirable as this is) the insurance broker works with the client to determine the risks that are most critical for the business, as opposed to those risks which might not need comprehensive insurance cover. These types of compromises are relatively common, but they do lead to levels of underinsurance in small business clients.

- In some cases an insurance broker will work with a small business industry association to develop an insurance program suitable for the great majority of members of that industry body. The insurance broker agrees the terms of cover with the industry association, and then approaches the insurance market to negotiate the terms and pricing of insurance cover. The benefit of this approach is that the industry association can normally utilise the benefits of group purchasing of insurance (rather than individual purchasing of insurance if each business purchases insurance cover on its own behalf). This can often provide advantages for the insurer, the industry association and its members.

At all times insurance brokers work on behalf of their clients to access the best terms and conditions, at the best price, that are available in the insurance markets. This involves negotiations with underwriters at insurance companies operating in the Australian market, but it can and often involves negotiations with insurance companies operating in major overseas insurance markets (especially London or Singapore) or with other overseas insurance companies. When business is placed overseas, the client is informed and specific consent to proceed is always obtained from the client.

### **Effectiveness of dispute resolution frameworks for insurance disputes**

Insurance companies and insurance brokers are members of Australian Financial Complaints Authority, which has the power to make determinations against an insurer or an insurance broker in accordance with the AFCA Rules and Operational Guidelines. AFCA can hear complaints and disputes from –

- Sole traders and partnerships;

- Small businesses with less than 100 employees (incorporated or unincorporated);
- Not-for-profit organisations or clubs that are not registered charities if they carry on a business and have less than 100 employees; and
- Registered charities regardless of how many people are employed and whether they carry on a business.

AFCA has indicated that in the year ending 30 June 2020 it received 15,748 complaints in relation to general insurance. NIBA has been advised that of those, approximately 300 related to insurance brokers, the majority of which were resolved in favour of the insurance broker.

NIBA publishes the results of AFCA determinations for or against insurance brokers for the information of its members.

### **Relevant codes of conduct**

NIBA members are bound by the Insurance Brokers Code of Conduct, which is available at: <https://www.niba.com.au/codeofpractice/index.cfm>

The Insurance Brokers Code of Conduct is currently being reviewed, with an independent external reviewer undertaking the review in line with ASIC requirements.

The Code of Conduct is monitored and administered by an independent, arms length, Insurance Brokers Code of Conduct Code Compliance Committee. The Code Compliance Committee operates under the auspices of AFCA, and comprises an independent Chair, a consumer representative appointed by AFCA and an industry representative appointed by NIBA.

Information about the Code Compliance Committee, including its annual reports and reports of its “own motion inquiries” is available at: <https://afca.org.au/about-afca/codes-of-practice/insurance-brokers-code-of-practice>

### **Other relevant matters**

Insurance brokers fell within the terms of reference of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. NIBA is pleased to note the following:

- Insurance brokers were not mentioned in any of the case studies examined in detail by the Royal Commission;
- Insurance brokers were not the subject of representations or submissions to the Royal Commission;

- There was no evidence of serious or systemic misconduct by insurance brokers presented to the Royal Commission;
- There were no specific recommendations by the Royal Commission in relation to the conduct or regulation of insurance brokers.

We do note the Royal Commission's Recommendation 2.6 relating to general insurance and consumer credit insurance commissions:

The review referred to in Recommendation 2.3 [to be completed no later than 31 December 2022] should also consider whether each remaining exemption to the ban on conflicted remuneration remains justified, including

–

- The exemptions for general insurance products and consumer credit insurance products; and
- The exemptions for non-monetary benefits set out in section 963C of the Corporations Act.

NIBA looks forward to making submissions to that review. In the meantime, we note that general insurance products were exempted from the bans on commissions which were implemented as part of the Future of Financial Advice reforms, as there was no evidence of serious or systemic consumer or client detriment arising from remuneration arrangements that exist in the intermediated general insurance industry. As noted above, the Royal Commission received no evidence of any such consumer or client detriment.

## **Conclusion**

As noted above, insurance brokers act for and on behalf of their clients to help them access insurance coverage specific to their needs and requirements. Insurance brokers provide considerable value to their clients by providing expert knowledge information and advice, on highly technical insurance issues. Insurance brokers also become the advocate of the client when an insured event occurs, and a claim has to be made under the policy. There are number of indicators which suggest what when a client has an insurance broker acting on their behalf, their insurance recovery is much more successful, and a higher proportion of the loss is recovered from the relevant insurer.

We would be pleased to provide further information on any of the foregoing, and to answer any questions the Small Business Ombudsman may have in relation to the role of insurance brokers.

Dallas Booth  
Chief Executive Officer  
National Insurance Brokers Association of Australia