



*National Insurance Brokers Association.*



24 March 2009

Mr Phil Khoury  
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C/- The Financial Ombudsman Service  
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Dear Mr Khoury

### **FOS Proposed Terms of Reference**

I refer to the proposed terms of reference for the Financial Ombudsman Service that were issued on 19 March 2009 for public comment. NIBA is very concerned about the jurisdictional limits contained in the proposed terms of reference and their implications for insurance brokers' professional indemnity insurance.

NIBA has previously indicated that insurance broker PI insurers will not support an increase in the current level for disputes from \$100 000 to \$280 000. The effect of this is that successful claims in excess of \$100 000 would not be paid automatically by the relevant PI insurer and that insurance brokers in making any additional payment could be in breach of their PI insurance policies and lose any entitlement to claim under their policy. In addition, the failure of PI insurance policies to cover new EDR complaints could make the policies held by insurance brokers non-compliant for the purposes of section 912B.

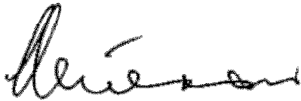
The NIBA letter also pointed out that there was no evidence to indicate that the monetary limit for insurance brokers should be increased from the current of \$100 000 to \$280 000. No cost benefit analysis of the proposal has been undertaken by either FOS or ASIC.

NIBA notes that under the proposed terms of reference issued on 19 March 2009 there is to be a delay in raising the limit and that it is now proposed to set the new limit at \$300 000 from 1 January 2012. It is apparently assumed that insurers of PI insurance would, during this transitional period, be able to modify their policies and accept a higher limit for FOS claims from January 2012. There is no indication at the present time that this will happen in relation to those insurers that currently underwrite PI insurance for insurance brokers.

NIBA suggests that the proposed terms of reference should be altered so that in setting jurisdictional limits into the future, regard is always had to the attitude of PI insurers and that if necessary different limits are set for different types of claims. After all, the issues affecting insurance brokers are different to e.g. stock brokers or product issuers.

NIBA would like to discuss the matter further and is prepared to have relevant PI insurance experts attend the discussion. Please contact me at [npettersen@niba.com.au](mailto:npettersen@niba.com.au) in order to make the arrangements for this necessary meeting.

Yours sincerely



Noel Pettersen  
CEO

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