



Thursday, 18 February 2010

Shona Batge
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
Canberra ACT 2600

Corporations.joint@aph.gov.au

Dear Shona,

Inquiry into Financial Products and Services

Introduction

I refer to the Committee's inquiry into the issues associated with recent financial product and services provider collapses, such as Storm Financial, Opes Prime and other similar collapses.

This submission is made on behalf of the National Insurance Brokers Association (NIBA). NIBA is the voice of the insurance broking industry in Australia. NIBA represents 500 member firms and over 2000 individual Qualified Practising Insurance Brokers (QPIBs) throughout Australia

The 500 member firms all hold an Australian Financial Services (AFS) Licence under the Corporations Act that enables them to deal in or advise on risk insurance products.

The recent financial product and services provider collapses, the subject of the Committee's inquiry, have been associated with managed investment products which fall outside the scope of the necessary AFS licence for insurance broking. As a result NIBA members generally have not been involved with the products or services of concern to the Committee.

For insurance brokers, the financial services reform changes have meant a significant upgrading of licensing requirements. The changes have boosted standards and the professionalism of insurance brokers and there is no evidence that any change in

licensing requirements for insurance brokers is warranted as a result of the failure of some managed investment products.

NIBA would be most concerned if solutions to perceived problems with managed investment schemes or advice given to the public about such schemes were to be automatically applied to risk insurance products. Investment and risk insurance products are very different and regulatory changes to overcome recent management investment scheme collapses would be inappropriate for insurance and insurance broking.

NIBA and the Role of Insurance Brokers

Over a number of years NIBA has been a driving force for change in the Australian insurance broking industry. It has supported financial services reforms, encouraged higher educational standards for insurance brokers and introduced a strong independently administered and monitored Code of Practice for members.

When performing their traditional role insurance brokers represent the interests of the purchaser of insurance, the client, and not those of insurance companies; insurance brokers act for clients both in the purchasing of insurance and in settling insurance claims.

Insurance brokers have a good track record in relation to regulatory compliance and there is little evidence of consumers being adversely affected by insurance broker negligence, poor advice, fraud or bankruptcy. Insurance broker effectiveness is evident by the relatively few claims that are considered by their external dispute resolution (EDR) scheme IBD Limited (which became part of Financial Ombudsman Service, FOS, on 1 January 2009) and from the size of those claims.

The reasons for the relatively low level of complaints against insurance brokers include:

- Insurance brokers have a long history with regulation and compliance with regulation. They have been effectively licensed by the Commonwealth Government for over twenty five years.
- Insurance brokers genuinely act in the interests of the client.
- Section 985 of the Corporations Act provides special consumer protection for insurance premium moneys and claims moneys; a protection that is not available to the clients of AFS licensees other than insurance brokers.
- Insurance brokers arrange and advise in relation to risk insurance products that are inherently far less likely to generate disputes and claims than are savings or investment products.
- Insurance brokers are intermediaries and not product producers. Insurance is regulated by Australia Prudential Regulatory Authority (APRA) and the product producers (insurance companies), unlike management investment schemes, have to satisfy stringent prudential standards.

- The public routinely deals with insurance and consequently the public has a reasonable knowledge about insurance and the need for insurance. This can not be said about many complex savings and investment products.
- Insurance brokers routinely exit the market without causing financial difficulties for their clients.
- Complaints by retail clients against insurance brokers generally have limited monetary implications. Insurance of such things as travel, personal property, consumer credit and motor vehicles do not normally generate significant claims in monetary terms even when a claim is determined in favour of the applicant.
- Insurance brokers have been required to hold PI insurance for 25 years. These regulatory arrangements are working satisfactorily. Insurance brokers have been able to purchase PI insurance that satisfies the requirements while retail clients have received an appropriate level of protection.

NIBA Membership and Educational Facilities

As the peak industry body, NIBA promotes the highest standards of insurance broking and risk practice in the community.

NIBA membership consists of 476 insurance broking firms. Each member has an AFS licence and has approval from ASIC to use the term insurance broker.

Insurance broking firms in Australia vary from small operations with one or two personnel up to multinational corporations. Around 90% of all commercial insurance in Australia is placed through insurance brokers.

Traditionally insurance brokers act for the client both in terms of purchasing insurance and in relation to claims. In those situations where a NIBA member elects to act for an insurance company they are obliged to clearly inform the client. NIBA members are also required to clearly inform the client how they will be remunerated for their services.

NIBA's own educational institution (NIBA College) develops services to help participants in the insurance broking sector keep pace with changes in their business environment and adjust their professional practices in response to regulatory and market conditions. A priority is to assist the insurance broking industry to achieve two priority goals of building workforce capability and deliver excellent client services.

Since its establishment in 1991 NIBA College has awarded over 7000 insurance broking qualifications. It currently has 2477 individual members.

More detailed comments on NIBA's training facilities are contained in an attachment to this submission.

Statistics on Insurance Broker Disputes

The latest available insurance broker EDR statistics are contained in IBD Limited's Annual Report for the year ended 31 December 2007. Those statistics indicated that during the 2007 year, 108 cases were opened and that 14 closed following a Referee determination. Many cases were settled without investigation and a significant number of the cases related to underwriting agencies and not insurance brokers. Even so dispute numbers are low when compared with those of other EDR schemes and this is particularly so given IBD's membership of 800. These claim numbers have not changed markedly over the last ten years.

The average monetary value of EDR claims for insurance brokers is very low compared to other financial sector participants. Fifty percent of claims are for less than \$1,000 and 75% less than \$5,000.

The Insurance Brokers Code of Practice

An Insurance Brokers Code of Practice applies to all NIBA members. The Code describes standards of good practice and service to be expected of members and clarifies what needs to be done by members to comply with relevant legislation.

The Code applies to both retail and wholesale clients and outlines requirements in relation to general behaviour, training of personnel, ensuring that the client is aware of whom the broker will be acting for, paying for services, conflicts of interest, handling money, assisting with claims and dealing with unauthorised foreign insurers.

The then Parliamentary Secretary to the Treasurer, the Hon Chris Pearce when launching the Code stated:

"I am pleased to express my support for the new NIBA Code....I am confident that the NIBA Code will be an effective tool in the self-regulation of insurance brokers and will assist in increasing consumer confidence in the insurance broking industry." And

"I am particularly interested to note that the new Code will be independently monitored and administered by Insurance Brokers Disputes Ltd, which operates a national complaints handling scheme approved by the Australian Securities and Investments Commission."

A copy of the Insurance Broker Code of Practice is also attached to this submission.

ASIC Campaign to Examine Insurance Broker Remuneration

In 2005 ASIC conducted a major campaign, taking over 6 months, to examine insurance broker remuneration. On 30 June 2005 ASIC issued a detailed report on the campaign. The review followed allegations in the United States that some insurance brokers had recommended insurance products based on the size of commissions they received from insurers rather than acting in the best interests of their clients.

ASIC conducted its review to assess insurance brokers' compliance with their legal obligations, particularly in relation to managing conflicts of interest and disclosing remuneration.

At the conclusion of its investigation ASIC stated that: **"The review did not find any evidence of the kind of systemic abuses uncovered in the United States recently."**

The ASIC Report effectively cleared insurance brokers of all misconduct of the kind uncovered in the United States. ASIC did, however, indicate that it would be taking some lesser issues up with individual insurance brokers and that it would continue to monitor insurance broker compliance with requirements. NIBA is not aware of ASIC taking any significant action against an insurance broker as a result of any follow up action from the campaign.

Following the ASIC campaign NIBA issued the Insurance Brokers Code of Practice which outlines additional obligations on insurance brokers in relation to payment for services and dealing with conflicts of interest. As mentioned above the Code of Practice is independently administered and monitored by the Financial Ombudsman Service (FOS). Prior to 1 January 2009 this function was carried out by IBD Ltd.

There is no evidence to indicate that insurance brokers in Australia are not fully adhering to their obligations in relation to remuneration and conflicts of interest.

APRA Regulation of Insurance

Insurance brokers are intermediaries and not product manufacturers. They are a primary means of distributing risk insurance products that offers clients protection against property and other loss.

APRA regulates insurance in Australia. Insurance companies have to satisfy stringent prudential requirements and the possibility of an insurance company not being able to satisfy claims by policyholders is minimal particularly following the recent introduction by the Commonwealth Government of a national claims support scheme. This kind of protection is simply not present for managed investment schemes where the risk of client loss is much greater.

Conclusion

NIBA believes that Australian insurance brokers have high ethical standards and serve their clients well. Those, using the services of an insurance broker appear to be well satisfied with the service that they had received and there is no evidence of widespread client dissatisfaction with insurance broker services.

The licensing arrangements for insurance brokers are working well and there is no client driven demand for change.

Dealing in or advising on managed investments is outside of the scope of the AFS Licence required for insurance broking. Consequently NIBA members generally have not had any involvement with the recent collapses of a number of managed investment schemes that are the subject of the Committee's inquiry.

NIBA and its members would be most concerned if recommended changes to overcome perceived deficiencies with managed investments were to apply to the insurance broking industry. Investment and risk insurance products are very different and regulatory changes to overcome recent management investment scheme collapses would be inappropriate for insurance and insurance broking.

I trust that you and the Committee find these comments useful. If you would like to discuss the matter further please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Noel Pettersen', written in a cursive style.

Noel Pettersen
Chief Executive Officer