

**PUBLISHER:**

NOEL PETTERSEN Chief Executive, NIBA  
Level 18, 111 Pacific Highway  
North Sydney NSW 2060 Australia  
Tel: + 61 2 9964 9400 Fax: +61 2 9964 9332  
Email: [npetersen@niba.com.au](mailto:npetersen@niba.com.au)

**PUBLISHED ON BEHALF OF:**

The National Insurance Brokers Association of Australia  
Level 18, 111 Pacific Highway  
North Sydney NSW 2060 Australia  
Tel: +61 2 9964 9400 Fax: +61 2 9964 9332  
Website: [www.niba.com.au](http://www.niba.com.au)

The Australasian Institute of Chartered Loss Adjusters  
Level 4, 190 Edward Street, Brisbane QLD 4000 Australia  
Tel: +61 7 3229 6663 Fax: +61 7 3221 7267  
Website: [www.aicla.org](http://www.aicla.org)

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Greentree House, Level 1, 143 Nelson Street  
Auckland, New Zealand  
Tel: +64 9 306 1732 Fax: +64 9 307 0960  
Website: [www.ibanz.co.nz](http://www.ibanz.co.nz)

**EDITOR:**

TERRY McMULLAN  
McMullan Conway Communications Pty Ltd  
PO Box 116, Ivanhoe VIC 3079 Australia  
Tel: +61 3 9499 5538 Fax: +61 3 9499 5535  
Email: [editor@insuranceandrisk.com](mailto:editor@insuranceandrisk.com)

**ADVERTISING:**

NAOMI CONWAY  
McMullan Conway Communications Pty Ltd  
PO Box 116, Ivanhoe VIC 3079 Australia  
Tel: +61 3 9499 5538 Fax: +61 3 9499 5535  
Email: [naomi@insuranceandrisk.com](mailto:naomi@insuranceandrisk.com)

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or PO Box 116, Ivanhoe VIC 3079 Australia (POST)

**SUBSCRIPTION ENQUIRIES:**

Membership Co-ordinator, NIBA,  
PO Box 265, Brunswick VIC 3056 Australia  
Tel: Inside Australia 1800 004 306 Fax: +61 3 9386 2866  
Tel: Outside Australia +61 2 9964 9400  
Email: [mgentile@niba.com.au](mailto:mgentile@niba.com.au)

**CONTRIBUTIONS:**

We welcome all material that is relevant to the Australasian and regional risk insurance industry, including all aspects of risk management. Please contact the Editor, +61 3 9499 5538. We also welcome readers' suggestions on subjects they would like to see covered by *Insurance & Risk Professional*.

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**FROM THE  
PUBLISHER**  
Noel Pettersen  
Chief Executive  
of NIBA

## AT LAST: NO BREACHES FOUND IN ASIC PROBE

It's taken sifting through truckloads of information for about half a year to find out, but the results were worth waiting for. Not surprisingly, NIBA was delighted to learn that ASIC's inquiry into broker remuneration in Australia cleared brokers of misconduct of the kind uncovered in the US insurance industry. When ASIC announced its campaign to examine remuneration practices between brokers and insurers it stated that "most importantly we want to confirm that brokers are properly managing conflicts of interest of their clients".

Using its compulsory powers to obtain statements and documents, ASIC selected a mix of fifteen brokers and nine insurers to provide information about their operations over an 18 month period ending December 2004.

The result was that ASIC found no systemic breaches of legislation or the need for any enforcement action.

The ASIC report stated: "None of the responses indicated that contingent or other preferential remuneration had influenced advice or resulted in inappropriate advice."

But in the very few cases where procedural deficiencies were identified, they were not judged serious enough to warrant enforcement action by ASIC.

This report reinforces what NIBA has been saying since last November, when the Spitzer inquiries in the United States first began – that Australian brokers are very tightly regulated and professional in their dealings with clients and insurers.

ASIC's inquiry has found no instances of bid-rigging in the Australian insurance industry, and in those few instances where "contingent commissions" and rebates did exist in some form, their impact on brokers' overall earnings were immaterial.

The results are important to NIBA because adverse findings could have significantly changed the traditional way insurance brokers have been remunerated. We can now move forward and work with ASIC to more clearly define the transparency guidelines relating to remuneration.

It's imperative that the industry continues to get it right. Brokers believe the interests of their clients are paramount, and we'll be working with ASIC to reinforce this across the industry.

The management of conflicts of interest, a topic NIBA will continue to promote vigorously, brings the issue of self-determination into the everyday decision-making of brokers.

It's worth repeating that the basic requirements of a conflict of interest policy are to control, disclose and avoid conflicts of interest. And ASIC expects to see robust arrangements in place.

Australian brokers have perhaps led the world in adopting formal policies about having adequate arrangements to manage conflicts of interest, including having written procedures and keeping records of how they are managed.

Brokers will need to continue to look at this issue in an objective and constructive way.

Put simply, any circumstance where the interests of your clients are inconsistent of your own, brokers must provide clear, concise and effective disclosure so that clients can make their own informed deci-

sions about how the conflict may affect the services you are providing.

Be succinct. Brokers should never take the view that you provide as little information as possible because disclosing possible conflicts reduces the possibility of damaging criticism that the client's interests are not paramount.

Despite the fact that the ASIC report found no significant problems the findings are nonetheless a warning call to an industry which is often an easy mark for its critics.

We've already seen one or two opportunists keen to capitalise on the supposed "wrongdoings" of brokers before the findings were even released. And it doesn't take much criticism, unwarranted or not, to the harm a broker's business or damage the hard-won reputation of the insurance broking industry.

Brokers everywhere should be taking this matter seriously. Depending on the size and nature of the business, proper procedures dealing with potential conflicts should be documented in a manual and linked to in-house compliance and review policies.

ASIC has said that it will continue to police these issues and will take into account the Federal Government's refinements paper as to the adequacy of disclosure.

NIBA has supported the 25 proposals released in the government's FSR refinements proposal paper because we want to help reduce the level of complexity and confusion in the documentation that clients receive.

The proposals need to be further refined and developed. Again, NIBA is keen to work with ASIC to ensure they reflect equally on brokers, insurers and the buyers of insurance. We should all, obviously, be working toward a common goal

Finally, there is another initiative that will go beyond the wash of legal requirements. And it will further enhance the standards of good practice and service to be expected of insurance brokers.

Right now NIBA is updating the Insurance Brokers Code of Practice to reinforce the fact that insurance-buyers in Australia are the best protected in the world. A draft will be released shortly in consultation with all key stakeholders.

When finalised and approved, it's NIBA's intention that every broker bound by the provisions of the code will be honour bound to offer the highest level of insurance advice essential to business and community life. ■