

NIBA Newshot

National Insurance Brokers Association

From: NIBA

Subject: FSR Refinements Regulations issued

Date: 22nd December, 2005

Treasury has now issued the final version of the FSR Refinement regulations (effective from 19 December 2005) which had previously been issued in draft by Treasury for feedback. NIBA welcomes these FSR refinement regulations as they help to simplify requirements in relation to retail client disclosure as well as authorised representative requirements.

The relevant regulations affect a wide range of areas and members will need to consider how they impact on existing practices and documentation and what changes need to be made. The following is a summary of the key changes made by the Regulations affecting the insurance industry.

For full details refer to Treasury's website www.treasury.gov.au and <http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/all/whatsnew/53B477C1C45E3FBDC2A2570D1001C37DF?OpenDocument>.

Financial Services Guide (FSG) Changes

- **Tailoring allowed** - amendments have been made to allow both licensees and authorised representatives to tailor their FSGs so they do not need to contain all of the information on all of the financial services or products that they are authorised to provide. Authorised Representatives can if they want, choose to only include information on the licensee they are providing the relevant service for instead of all licensees. Nothing stops a single FSG containing all relevant information on all services and licensees etc from being provided. Changes have been made to the original draft regulation to make the relief more flexible.
- **FSG Exemption** - A new FSG exemption has been included where certain information otherwise required to be contained in an FSG is instead included in a Product Disclosure Statement (**PDS**) and a statement given at the same time. This is not likely to be used except in very specialised distribution arrangements. Changes have been made to the original draft regulation to make the relief more flexible.
- **FSG Time Critical relief** – despite submissions by NIBA requesting relief from the oral FSG disclosure content obligations similar to those provided in relation to the PDS, no changes have been made. The timing for subsequent delivery of the FSG in the time critical exemption has however been changed to 5 business days.
- **FSG Remuneration content requirements** – Substantial changes have been made since the original draft regulation to these requirements and members will need to update their

FSGs (and oral FSG time critical telephone scripts) to take account of these new remuneration disclosure requirements.

Remuneration and other benefits must still be disclosed in all cases if ascertainable when the FSG is provided (which will be rare as this isn't possible unless the broker knows its commission rate and the premium amount).

Where it isn't ascertainable, and a broker *reasonably believes that no personal advice will be given*, a broker has a choice of disclosing:

- Particulars of the remuneration or benefits, including to the extent relevant, the rates and ranges of remuneration (existing FSG content should already do this); *or*
- General information about the remuneration and the manner in which it will be calculated (i.e. no need to include rates and ranges as above) *and* a statement that the client can request particulars of the remuneration, but that the request must be made writing a reasonable time after the client is given the FSG and before the financial service is provided. If requested within the required time, the broker must provide particulars, including, where relevant the rates and ranges.

Where it isn't known, and the broker *reasonably believes that personal advice will be given*, a broker must make the same disclosure as noted above where no personal advice is to be provided but must also make additional disclosure about the fact that if:

- the remuneration or benefits are calculable when personal advice is given, it will be disclosed when the advice is given or as soon as practicable after that time; or
- if not calculable, the manner in which it will be calculated will be disclosed when the advice is given or as soon as practicable after that time.

This statement is not something that is usually contained in existing FSGs and will need to be added going forward.

- **New FSG statement regarding record of advice** – For products still subject to the statement of advice requirements a new exemption applies. The FSG is required to include a new statement to take account of this new SoA relief. We discuss this SoA relief and the FSG statement requirements under the Statements of Advice section below.
- **Secondary Services Relief** – This provides that in cases where a licensee or authorised representative (e.g. underwriting agent) (secondary services provider) causes or authorises the provision of financial services (e.g. advice) by another licensee or authorised representative of that other licensee (e.g. insurance broker) (intermediary) to a retail client, the secondary services provider does not have to give the client its FSG if they have a agreement (in writing) with the intermediary that the intermediary will make the secondary service provider's FSG available to the retail client or tell them how to obtain it. The original draft regulations have been substantially changed.

Statements of Advice (SoA) Changes

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SoAs are no longer required for any general insurance product other than consumer credit insurance (CCI) and sickness and accident insurance. In the draft regulations, the SoA exemption had applied to all general insurance products but Government has brought CCI and sickness and accident insurance back into the SoA regime.

Instead of giving a Statement of Advice the financial services provider must provide the client with the information that would, but for the exemption, be required to be in the Statement of Advice, about:

- any remuneration (including commission) or other benefits that the provider and certain other specified persons are to receive; and
- any other interests, whether pecuniary or not and whether direct or indirect that the provider or other specified persons may have;

that might reasonably be expected to be or have been capable of influencing the financial service provider in providing the advice.

The above information must be provided when or as soon as practicable after, the personal advice is provided.

In addition, financial service providers are still required to have a reasonable basis for the advice that they provide and for risk management purposes they may still wish to document this in writing. There is a technical drafting flaw in this exemption but Treasury has confirmed to NIBA that the above is how it is intended to operate and that the flaw will be amended.

Accordingly, members will still need to provide a SoA for these two types of general insurance products and life insurance products.

For all products still subject to the SoA requirements, some new SoA relief has been provided to relieve the burden of having to provide a new SoA in every instance. In circumstances where:

- the client has received a SoA previously or received personal advice from a person before that person obtained their licence or became an authorised representative of a licensee; and
- the client's relevant personal circumstances in relation to the further advice have not significantly changed since the last personal advice was provided; and
- the basis on which the further advice is given is not significantly different from the basis of the last personal advice (e.g. all significant personal circumstances relevant to the new advice were also covered in the last advice),

a new Statement of Advice will not be required but as soon as practicable after the further advice is given, the client must be given statements about remuneration and associations and consequences of switching products which would have been required by the SoA. A record of the further advice must be kept in any recordable form (e.g. tape recording) for 7 years after the date it was provided.

It must also set out:

- the advice given and any product switching information required by sub sections 947D(2) (i.e. charges to be incurred and significant consequences of switching) and (3) (i.e. warning of fact there will or may be charges, losses or consequences but they are not known); *or*

- brief particulars of:
 - the recommendations made and the basis on which they are made; and
 - the 947D(2) information and an acknowledgement that the section 947D(3) statement has been given.

An FSG given by a person providing personal advice is also required to meet the following requirements to take account of the above change:

- it must include a statement that the client may request a record of further advice that is provided to them if they have not already been provided with it;
- the statement must set out particulars of how the client can request such a record;
- any limitation in the particulars regarding the time in which the client can request it must meet any requirements of the Act (if any) and if there are none, it must be such as to allow the client a reasonable opportunity to request a record of the advice.

Product Disclosure Statements (PDS) Changes

- **Change to time critical relief requirements** - The time critical relief has been amended to require a lesser form of oral PDS disclosure for general insurance products. The time for the subsequent delivery of the written PDS has also been amended to 5 business days.
- **Change to PDS content requirements** –For general insurance products, the content requirements of general insurance PDSs have been changed. Existing PDSs that comply with the current requirements of the law can continue to be given for an 18 month transition period. After that the new form of PDS must be given. Insurers can opt in earlier if they want. For non general insurance products a short form PDS option has been introduced. The original draft regulations have been changed in order to fix some technical problems.

Retail wholesale client definition Changes

Changes to the definition of retail client have been made. For general insurance, where the client buying the relevant general insurance product is a wholesale client, any related body corporate that is also party to the contract will be treated as a wholesale client even if they are a small business and would otherwise be seen as a retail client. For non general insurance products changes have been made to broaden the definition of professional investor "net assets" and "gross income".

New general advice exemption

Certain limited persons providing general advice which is not about a "particular product" are not seen to be providing general advice, subject to meeting certain other tests.

Cooling off Period change

The reference to the cooling off period starting no later than 5 days from issue has been amended to 5 business days.

Authorised representative Changes

All types of authorised representatives are now able to sub authorise individuals to provide financial services on behalf of the licensee. Previously, only body corporates could sub authorise individuals. A sub authorised individual cannot sub authorise other individuals.

Certain sub authorised individuals are not required to be notified to ASIC provided they meet certain requirements i.e. they are in a specified class of individuals that the licensee has authorised another authorised representative to sub authorise, are employees of that authorised representative and only provide general advice and/or dealing services. The relevant authoriser must also provide information about the relevant individual sub authorised if requested, for example, by a member of the public. Members need to determine if they want to restructure existing AR arrangements to take advantage of this. Nothing stops existing arrangements staying as they are.

Jurisdictional Changes

There are a number of jurisdictional exemptions which have been introduced that will be relevant to certain overseas providers of financial services.