



National Insurance Brokers Association.



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Dear Kelly

Consultation Paper 121 Facilitating Online Financial Services Disclosure

The National Insurance Brokers Association (NIBA) is pleased to make this submission in response to ASIC's Consultation Paper 121 *Facilitating online financial services disclosures*. NIBA's members represent the interests of insurance policyholders and in this submission NIBA is speaking not only on behalf of its members but also on behalf of consumers that purchase insurance.

NIBA strongly supports the delivery of financial services disclosures electronically and **generally** supports;

- Online delivery of PDSs, FSGs and SOAs via hyperlinks and references to website addresses.
- ASIC's good practice guidelines on the delivery of disclosures online (see detailed comments below).
- ASIC providing relief so as to enable online disclosure without first having to obtain the client's express agreement. This would mean that disclosures would be delivered electronically unless a retail client requested paper delivery.

The above should yield significant cost savings for insurers, insurance brokers and insurance policyholders. It should also facilitate increased user-friendly disclosure methods and practices for those wishing to receive and read disclosures online.

NIBA is not able to provide quantitative information in relation to the dollar savings resulting from the adoption of ASIC's proposal as it does not collect relevant data from

its members but NIBA is confident that these will be considerable. Not only will there be significant dollar savings to NIBA members but the new arrangements should lead to better informed consumers and hence a more effective market.

Specific comments on particular issues raised in the Discussion Paper follow.

Proposed relief for PDSs, FSGs and SOAs - proposal B1

NIBA supports the proposed relief.

NIBA believes the relief should apply to SOAs irrespective of ASIC's concern in B1Q1 that they are private disclosures.

NIBA believes that licensees will by reason of commercial common sense and legal reasons (e.g. privacy, general duty of care and confidentiality), put in place appropriate procedures in relation to SOAs to manage such issues (e.g password protection).

For the above reasons, NIBA does not see any point in not including SOAs or in imposing restrictions.

Proposed Good Practice Guidance - proposal B2

NIBA supports the provision of such guidance, as if done well it can reduce ambiguity and compliance costs for industry.

Guidance point 1

NIBA supports this point.

Guidance point 2

NIBA supports this point.

Guidance point 3

This notes that providers should be satisfied on reasonable grounds that the relevant client or their agent has received a copy of the FSG, SOA or PDS.

NIBA believes consideration should be given to whether this needs to be taken into account in the relief in B1 above.

ASIC notes that a provider may not be aware that a retail client has not received a disclosure that the provider delivered by making it available on the website. The same issue would appear to arise in relation to a hyperlink.

ASIC suggests that the provider should send an email or a paper notice to an address provided by the retail client notifying the client when the disclosure becomes available online.

Is ASIC expecting persons relying on the relief in B1 for a written (paper or electronic) notice with a reference to a website address where the disclosure can be found email, to have to do the above as an additional step in all cases or only if the information is not available when the initial notice is sent? The position is unclear.

Is ASIC of the view that:

- a secondary notice at least for situations where the information is not available when the notice was sent;
- an initial notice where the information is available when the notice is given, will in fact comply with the reasonable grounds requirement?

It may be better to deal with the issue in the relief to avoid ambiguity as to what is actually required to comply.

Guidance point 4

This notes that retail clients should be able to keep a copy so that they can access the disclosure in the future and proposes that the licensee should make the disclosure accessible from the link at the website address or through the electronic facility, for a period that the provider considers is reasonable for that information.

ASIC proposes a period of two years as being reasonable for most disclosures unless the disclosures have been superseded or updated sooner or have become out of date.

This seems a reasonable approach given the requirement in point 5 where the provider must retain a copy of all versions of the disclosure and use technology, where possible, to maintain records of when each version was available.

Guidance Point 5

NIBA supports this point.

Guidance Point 6

NIBA supports the proposition that providers must make it easy for retail clients to unsubscribe from receiving disclosures online and to request paper copies of the disclosures at no cost to themselves, subject to the qualification in relation to "fully online products".

Further clarity is required on what is meant by fully online products.

By way of example, a product may be available online and by other facilities (e.g. telephone) but the online version may be priced differently depending on whether the client agrees to receive the information electronically or not.

While such a product might not be fully online given it can be provided in a number of ways it seems fair not to include such products within the concept.

In addition, is it ASIC's intent that for fully online products:

- no change in delivery process can be requested at all? or
- a client who wants a change is entitled to ask for it but must pay an amount for this right?

Some clarity in this regard will be useful.

Guidance Point 7

NIBA supports this point.

Client Consent to Online Disclosure - Proposal C1

NIBA does not necessarily agree with the views of ASIC in relation to the fact that the law requires express agreement as discussed in paragraphs 37 to 39.

It seems that in appropriate circumstances a retail client may in fact nominate a relevant address or agree to disclosures being made available other than in express form. Obviously express consent is preferable for client protection.

NIBA is of the view that relief should be given to allow providers to deliver disclosures online without first having to obtain express client consent, subject to this process being made clear to the client in the relevant information provided prior to issue and the client being given an opportunity to opt out of online delivery.

NIBA notes that in relation to fully online products, if ASIC is proposing that retail clients are not able to change their mind about receiving disclosures online, this will need to be addressed in the relief - See NIBA comments on Guidance Point 6 above.

The savings in cost and time for industry participants and retail clients who take advantage of the above are likely to be of real value.

NIBA does not see any reason why private disclosures (e.g SOA) or notices of significant changes or events should be exceptions to the rule and be in paper form as a default.

However the default should be made subject to a requirement to make the online disclosure process clear to the client in the relevant information provided prior to agreement on the services being reached and the client being given an opportunity to opt out of online delivery (subject to an exception for online only transaction arrangements).

In this way is it left to the parties to decide what best suits their needs.

Is it proposed that the option to opt out only be available at the beginning or on an ongoing basis throughout the life of the transaction? This is not clear to NIBA.

In relation to question C1 Q5 as to whether the provider should send a paper notice rather than an electronic notice, NIBA believes that provided the client has consented to receiving an email notice in compliance with the SPAM Act 2003 where appropriate, this should not be an issue and both electronic and written and disclosure are appropriate.

NIBA is of the view that oral notice of a right to opt out will be sufficient in time critical telephone call situations, provided the client has the ability to change their response and opt out afterwards.

If I can be of any further assistance to you 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