



## **NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA (NIBA)**

### **SUBMISSION ON ASIC'S PROPOSAL FOR RECORD KEEPING OBLIGATIONS**

#### **ABOUT NIBA**

NIBA is the voice of the insurance broking industry in Australia. NIBA represents 400 member firms and over 3000 individual Qualified Practising Insurance Brokers (QPIBS) throughout Australia.

Brokers handle almost 90% of the commercial insurance transacted in Australia, and play a major role in insurance distribution, handling an estimated \$18 billion in premiums annually and placing around half of Australia's total insurance business. Insurance brokers also place substantial insurance business into overseas markets for large and special risks.

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. The 400 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.

NIBA appreciates the opportunity to be able to provide comments on ASIC'S proposed record keeping obligations.

#### **ABOUT INSURANCE BROKERS**

##### **The role of insurance brokers**

The traditional role of insurance brokers is to:

- assist customers to assess and manage their risks, and provide advice on what insurance is appropriate for the customer's needs;
- assist customers to arrange and acquire insurance; and
- assist the customer in relation to any claim that may be made by them under the insurance.

In doing the above the insurance broker acts on behalf of the customer as their agent. Insurance brokers offer many benefits to customers and consumers:

- assistance with selecting and arranging appropriate, tailored insurance policies and packages



- detailed technical expertise including knowledge of prices, terms and conditions, benefits and pitfalls of the wide range of insurance policies on the market;
- assistance in interpreting, arranging and completing insurance documentation;
- experience in predicting, managing and reducing risks; and
- assistance with claims and a higher success rate with settlements (about 10 per cent higher than claims made without a broker).

In limited cases insurance brokers may act as agent of the insurer not the insured but where such a relationship exists the customer is clearly advised up front.

## **NIBA RESPONSE TO ASIC’S PROPOSED RECORD KEEPING OBLIGATIONS**

In ASIC draft *Regulatory Guide 175: Licensing: Financial product advisers—Conduct and disclosure (RG 175)* ASIC indicates that:

*“RG 175.402 We do not expect the record-keeping requirements in [CO 14/xxx] to change the way in which AFS licensees have been keeping records of personal advice provided to clients by their authorised representatives and advice providers in accordance with licence condition 57(b) of PF 209, which applies to personal advice provided before 1 July 2013. Under the current industry model, authorised representatives that are geographically spread across different locations generally maintain the client files, while licensees have a contractual right to access these client files. We consider that this practice will comply with the new requirements.”*

Prior to 1 July 2013 ASIC imposed a licence condition under section 914A of the *Corporations Act 2001* (Cth) (**Corporations Act**) requiring AFS licensees to keep certain records of personal advice that the AFS licensee or its representatives provide to clients in accordance with the ‘reasonable basis for advice’ obligation in section 945A of the *Corporations Act* (see condition 57(b) in PF 209).

The requirements in sections 945A and 945B for AFS licensees and their authorised representatives to have a reasonable basis for advice ceased to apply on 1 July 2013 as a result of the FOFA reforms.

Under FOFA, these requirements have now been replaced by the best interests duty and related obligations in Div 2 of Pt 7.7A.

ASIC expressed its view that, it is important to retain the substance of the standard AFS licence condition on record keeping for personal advice.

ASIC is therefore proposing to update the record-keeping obligations for AFS licensees, by way of class order, to require licensees to keep records of personal advice that the licensee or its representatives provide to retail clients.



This obligation will refer to the new conduct obligations in Pt 7.7A of the Corporations Act, rather than s945A.

In the light of the ongoing discussions in relation to the changes to the FOFA legislation (including the regulations which may or may not be disallowed) and related matters, NIBA considers it premature for ASIC to be finalising the record keeping obligations which may be impacted by the decisions being made.

As such, NIBA would suggest that ASIC defers this matter for at least 3 months, or at least until the legislative position is clear and Stakeholders are able to assess the potential impact of the final FOFA legislation on their businesses.

A key issue NIBA would like to engage in discussions with ASIC on is whether special provisions should be included in relation to representatives of product issuers that provide scaled personal advice to the client in relation to their product issuer principal's products given the significant conflict issues that can arise.

If you would like to discuss any aspect of this matter further do not hesitate to contact us.

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**National Insurance Brokers' Association of Australia**