

30 January 2015

Mr John Trowbridge
Chairman
Life Insurance and Advice Working Group

Email: submissions@trowbridge.com.au

Dear Mr Trowbridge,

Submission in response to the Life Insurance and Advice Working Group Interim Report on Retail Life Insurance

The National Insurance Brokers Association (NIBA) appreciates the opportunity to provide this submission to the Life Insurance and Advice Working Group in response to the Interim Report on Retail Life Insurance.

NIBA represents around 350 insurance broking firms across Australia, including large multinational companies, large Australian companies, and over 90% of the medium and smaller insurance brokers who serve clients in the cities, towns and regions across the country. While most of the work undertaken by NIBA is in relation to general insurance, many NIBA Members provide broking services and advice in relation to life insurance. This submission is provided on behalf of those Members.

Indeed, the NIBA Board of Directors has provision for a director representing the interests of insurance brokers who provide broking services and advice in relation to life insurance products. The position is currently vacant, and the Board is giving consideration to filling this position.

What is the real problem?

The ASIC Report, *Review of retail life insurance advice*, outlined a number of very serious issues and concerns in relation to the quality of personal advice being provided to retail customers. Unfortunately, because of the potential for further regulatory and enforcement action, there is little information in the ASIC report as to who was providing the poor advice, and the circumstances in which poor advice was being provided.

Before looking at possible options to address the concerns, we believe that it is necessary to develop a far better understanding of the facts, circumstances, pressures, incentives, directions and failures that led to the provision of poor advice, and a thorough analysis of the oversight, compliance and control and enforcement mechanisms that exist – or should exist but don't - in relation to life insurance advice.

NIBA strongly believes this is critical, because unless and until the research and analysis on the root causes of the problems is undertaken, it is difficult – we would suggest almost impossible – to determine:

- What are the realistic options for dealing with the problem?
- What are the costs and benefits likely to arise under each of those options?
- What is the likely result of implementing those options: will they actually address the problems that have been identified, will the outcomes produce better financial advice for the community, will the benefits of the proposals outweigh any costs of implementing the proposals?
- What is the likelihood of any unintended consequences if the proposals are implemented?

In addition to understanding the issues and the causes of the concerns that have been identified by ASIC, we believe that it is also necessary to review the current legislative, regulatory and self-regulatory frameworks, and seek to identify any issues, concerns, gaps or deficiencies in the provisions of the legislation, regulations and industry codes, and in the application, oversight and enforcement of those provisions and frameworks. In other words, are the regulatory frameworks sufficient, does the legislation need to be enforced and applied in a more efficient and effective manner, is there a role for a more effective self-regulatory approach, does stronger leadership need to be provided by insurers and licensees, and so on.

Finally, it is important to recognize that life insurance is distributed –

- Directly by life insurance companies and their agents;
- Through group schemes via employers and superannuation funds; and
- Through the advice networks.

It is also important to understand that life insurance policies can and do differ in material respects, and it is important that insureds and their families are aware that this is the case.

NIBA is concerned that there has not been sufficient analysis of the causes of poor advice (this concern also applies to the broader issues which FOFA seeks to address).

The net result is an ongoing debate about the relative merits of a range of regulatory proposals and reforms, with little or no discussion or analysis of the options for reform, the costs and benefits of each of those options, and the likelihood of any of those options achieving better outcomes for consumers and the community.

The current Federal Government has strongly committed to a robust policy development process, with a requirement for comprehensive regulatory impact statements during the policy development phase, and the reduction and removal of all unnecessary “red tape” wherever possible.

NIBA strongly endorses the Government’s commitment in this area. We believe that it is only through a proper policy analysis and development process that proposals will be developed that have a high probability of improving the situation, without adding unnecessary cost and complexity to the process.

Adviser Education

On page 16 of the Interim Report, the question is asked: how can licensees and other stakeholders ensure that they have the knowledge, skills and tools to provide quality strategic personal life insurance advice?

There is currently a widespread and ongoing debate about the need for financial advisers to have university degrees. In addition, the Chairman of ASIC has been promoting the need for financial advisers to undertake a national examination similar to the exam which operates in the United States.

NIBA has a more fundamental view. This approach follows many years’ experience in the operation of NIBA College, a Registered Training Organisation that provides a range of accredited training courses for insurance brokers in Australia.

NIBA College courses and qualifications are designed having regard to the student’s level of experience when coming into the industry, their level of experience, the nature and complexity of the advice they are providing to their clients, and their roles and responsibilities within the insurance broking firm.

In this way, NIBA College provides a structured education and training approach which –

- Provides an “educational pathway” for those entering the industry and who wish to make a career in insurance broking;
- Matches the education and training of staff to the nature and level of complexity of the work they undertake, and the nature of advice and

support they will be giving to clients;

- Ensures Broker Principals and business owners have a clear strategy for the development and training of their staff.

More importantly, NIBA College is audited and accredited by the Australian Skills Quality Authority, the national regulator for Australia's vocational education and training sector. In addition, NIBA College courses are developed and provided in accordance with nationally endorsed standards and qualifications for recognizing and assessing people's skills in a specific industry. The Financial Services training package, which informs the content of NIBA College courses, is developed by the national Industry Skills Councils.

Rather than simply requiring completion of a university degree which may or may not be relevant to the life insurance sector, and the skills, knowledge and capabilities needed to give advice on life insurance, NIBA believes it is far more appropriate to provide education, training and continuing professional development in accordance with the nationally developed and approved vocational educational training framework. It is only through the development and delivery of courses under this framework that employers, industry bodies, regulators and government can be confident that proper training is being provided, knowledge, skills and levels of competence are being developed, with a greater likelihood of quality advice being provided to customers.

Using this framework in relation to life insurance, NIBA College offers the Diploma of Life Insurance, full details of which are available at:

<https://www.niba.com.au/html/compare-courses.cfm?p=viewCourse&formDataId=194644&courseID>

We note that completion of only part of the Diploma of Life Insurance satisfies ASIC requirements for Tier 1 life insurance advisor accreditation. We firmly believe that in order to have the full knowledge, skills and capacity to provide life insurance advice, and to understand the professional framework within which advice is given, a full Diploma of Life Insurance is needed and should be completed by those wishing to provide advice on life risk insurance.

We also note that Module 2 of the Diploma of Life Insurance also specifically relates to **professional skills** needed to be understood so that the person can apply a range of professional standards and interpersonal skills to managing the distribution of life risk products within a financial services organisation.

The NIBA College Diploma of Life Insurance is readily available to be undertaken by general insurance brokers, general insurance advisers and financial planners seeking to extend their advisor services to cover life risk

insurance. NIBA College is keen and willing to assist licensees, their advisers and representatives, with their training, development and continuing professional development needs in relation to life insurance products and services.

Finally, NIBA believes there is no need for additional legislative requirements in this area, as there is already a direct statutory obligation on financial services licensees in relation to adviser education.

Specifically, section 912A of the *Corporations Act 2001* places a direct obligation on the licensee. The licensee must –

- (d) have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence and to carry out supervisory arrangements; and
- (e) maintain the competence to provide those financial services; and
- (f) ensure that its representatives are adequately trained, and are competent, to provide those financial services;

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In other words, licensees already have a direct statutory obligation to ensure that advisers are trained and competent to provide the advice they wish to offer to their clients. The obligation exists today, and through NIBA College (and other training bodies) there are nationally accredited courses that teach the knowledge, skills and competence to provide sound and professional personal life insurance advice.

NIBA is not aware of any university course that teaches the areas of learning covered by the Diploma of Life Insurance. We are therefore very hesitant to support recommendations that advisers be required to obtain a university degree or equivalent qualification.

Professionalism

During 2012 and 2013 NIBA undertook a major review, in close consultation with all major stakeholders, of the Insurance Brokers Code of Practice. Following that review, a new and revised Insurance Brokers Code of Practice was developed and approved by the NIBA Board of Directors. The revised Code of Practice is binding on all Members of NIBA as from 1 July 2014.

The new Code of Practice is available at:

<https://www.niba.com.au/codeofpractice/index.cfm>

The Code of Practice sets out 12 core Service Standards that insurance brokers commit to meeting. Those Service Standards are:

1. We will comply with all relevant law.
2. We will transparently manage any conflicts of interest that may arise.
3. We will clearly tell you if we do not act for you.
4. We will clearly tell you about the scope of our covered services.
5. We will discharge our duties diligently, competently, fairly and with honesty and integrity.
6. We will clearly tell you how our covered services are paid for before we provide them and answer any questions you have.
7. We will handle any money received in accordance with relevant law and any agreement with you.
8. We will ensure that we and our representatives are competent and adequately trained to provide the relevant services and will maintain this competence.
9. We will respond to catastrophes and disasters in a timely, professional, practical and compassionate manner in conjunction with any industry-wide response.
10. We will ensure that we have an internal complaints and disputes handling process that meets the Code Complaints and Disputes process standards.
11. We will support NIBA in promoting the Code and make information on the Code (including how to make a complaint) and our Covered Services readily available to you.
12. We will not engage in activity or inactivity that is reasonably likely to bring the insurance broking profession into disrepute.

Most of these Service Standards have more detailed statements to give meaning and clarity to the standards and commitments contained in the

Code of Practice. In particular, Service Standard 5 contains a substantial level of detail regarding the steps the insurance broker will take to act in the best interests of the client, help them understand and assess their insurance needs, and communicate effectively and in a timely manner on the insurance cover that has been put in place on their behalf.

NIBA has appointed the Financial Ombudsman Service to monitor, administer and oversee the implementation of the Code of Practice by insurance brokers who are bound by the Code. External monitoring and oversight of the Insurance Brokers Code of Practice has been in place for some years.

More recently, NIBA and the Financial Ombudsman Service have jointly established a new Code Compliance Committee. The Code Compliance Committee has two roles – to oversee the monitoring and oversight of the Code by the Code Administrators, and to act as the judicial body which will determine whether there has been a breach of the Code of Practice, and to make orders and impose sanctions on the insurance broker as may be appropriate in the circumstances. Any determination by the Code Compliance Committee is binding on the insurance broker but is not binding on the complainant, who retains their full legal rights at all time.

The Code Compliance Committee consists of an independent Chair, jointly appointed by the Board of the Financial Ombudsman Service and the Board of NIBA, an industry representative appointed by the Board of NIBA, and a consumer representative appointed by the Board of the Financial Ombudsman Service.

NIBA is firmly committed to taking responsibility for the professional and ethical conduct of its Members, and has established a comprehensive Code of Practice, with external monitoring and supervision, to ensure confidence and integrity in this process.

In addition to the Insurance Brokers Code of Practice, the Insurance Council of Australia has adopted and implemented a recently revised General Insurance Code of Practice.

Hence, in the general (non-life) insurance sector, insurance companies and their appointed distribution agents are covered and bound by the industry code, and insurance brokers acting on behalf of clients are covered and bound by the brokers code. The brokers code also applies to NIBA members when they are acting for and giving advice to clients in relation life insurance.

At the present time, there is only one industry body representing the interests of insurance brokers: NIBA.

For the broader financial advice sector, there are a number of industry associations, and this presents a complicating factor when industry standards and codes of practice are being considered. We note that one major association – the Financial Planning Association of Australia – does not appear to be participating in the Life Insurance and Advice Working Group. This would appear to be unfortunate.

At the present time, Australian financial services licensees are required to be a member of an external dispute resolution scheme. NIBA is examining the desirability of asking the Federal Government to mandate membership of an industry professional body that is recognized by ASIC as having appropriate requirements for professional standards and behavior, and an industry code of practice that requires members of the industry to act in the best interests of the client at all times.

But having a professional body and an industry code of practice is not sufficient if the professional standards are not adopted, applied and enforced, with an appropriate and independent oversight body.

We note that to their credit, both the AFA and the FPA have adopted codes of professional conduct. This again raises the question of the circumstances in which ASIC found poor advice being given. Were the advisers who gave the poor advice members of the AFA or the FPA (or some other industry body)? Were the relevant codes being applied and enforced? If not, why not, and what can or should be done to ensure the codes are applied and enforced in the future?

Professional Qualifications

The recognised professional qualification for insurance brokers in Australia is Qualified Practising Insurance Broker (QPIB). The rules of NIBA College state that applicants for the QPIB qualification must satisfy the NIBA Board of Directors in relation the following:

- They have a Diploma of Insurance Broking or a Diploma of Life Insurance with NIBA College or another registered training organisation or equivalent;
- They have a minimum 4 years' experience as an insurance broker;
- They have participated in continuing professional development as required by the NIBA Board of Directors in the 12 months prior to the date of his or her application;

- They can overcome any written objection lodged by any member relating to his or professionalism and business ethics; and
- They have been nominated by an insurance broker of QPIB or similar status.

NIBA has higher levels of professional qualification – Certified Professional Insurance Broker and Fellow of NIBA College – for insurance brokers with higher levels of learning and longer periods of practice as an insurance broker.

Each of these professional qualifications require insurance brokers to continue to meet their Continuing Professional Development obligations under the NIBA College rules.

Adviser Remuneration

Chapter 4 of the Interim Report contains a detailed analysis of options for reform of adviser remuneration and other incentives.

Importantly, the Interim Report notes that any collective industry action in this area would need to be authorized by the ACCC under the Competition and Consumer Act 2010.

NIBA has carefully noted the issues and concerns that have been expressed in relation to traditional methods of remunerating advisers in relation to life insurance products and services.

Importantly, we now have major legislative obligations, set out in the “FOFA” legislation, which requires licensees and advisers to act in the best interests of their clients, and to carefully manage any conflicts of interest that may arise under remuneration or other practices. In some cases, certain forms of remuneration have been prohibited.

NIBA supports the suggestions in the Interim Report that any remuneration structures should be –

- Sustainable over time for insurers, licensees and advisers; and
- Supportive of innovation and competition in both the life insurance industry and the advice industry.

NIBA also strongly supports the need to ensure that consumers have ready access to quality advice on life insurance and related issues, and that arrangements and frameworks promote improved insurance coverage for the community.

With strong legislation now in place in relation to the best interests duty and the management of conflicts of interest, NIBA is concerned that any steps to further regulate remuneration arrangements could have implications for the broad objectives of access to advice and improved insurance coverage. Great care is needed in this area, and it may be that other initiatives, including the application and enforcement of the recent FOFA reforms, will achieve the desired outcomes without the need to regulate remuneration.

Please do not hesitate to contact me if you require further information in relation to any matter covered in this submission.

Yours sincerely,

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