

Submission on draft Corporations Amendment (Life Insurance Remuneration Arrangements) Regulation 2016

The National Insurance Brokers Association of Australia (NIBA) appreciates the opportunity to make a brief submission on the Government's Life Insurance Remuneration Reform Regulations.

NIBA represents over 300 insurance broking firms across Australia, the majority of which are small to medium businesses. Insurance broking firms provide traditional insurance broking and risk management advice in the areas of property and liability insurance, and in many cases broking firms also provide advice in relation to life risk insurance (as opposed to life investment products).

NIBA is grateful for the opportunity to provide these brief comments on the draft Corporations Amendment (Life Insurance Remuneration Arrangements) Regulation 2016 and related documents.

Draft Regulation

We have previously provided comments and suggestions regarding the inclusion of circumstances where the proposed 'clawback' arrangements will not apply.

We have previously indicated that the clawback provisions give our Members strong concern, and that concern continues to be in place under the current draft Regulation. Insurance brokers, including life risk brokers, seek to act at all times in the best interests of their clients. The experience of our Members is that there are a large number of circumstances and situations where a client's situation changes in the first 12 months of the policy, and it is in the client's interest to make appropriate changes at the first annual review of the policy. The introduction of the clawback provisions could well create a potential conflicted environment whereby changes which might be needed for the client could well cause the broker to lose the remuneration earned when establishing the policy.

In addition to the circumstances outlined in previous submissions, we have been advised of a further example where it is entirely appropriate for a policy to be cancelled within the clawback period. This would occur, for example, where a company takes out a "keyman" policy on an employee, and it is only needed for a period of 6 – 18 months. For example, the business might be sold, or the "keyman" leaves the business, etc. In these circumstances, an adviser may end up with no or minimal remuneration if circumstances such as this fall within the clawback provisions, despite there being no fault or inappropriate conduct by the life risk broker or adviser.

NIBA would like to submit that in addition to the stated circumstances where clawback will not operate, there should be an over-arching provision to the effect that clawback should not operate where any change or cancellation of the policy during the clawback period satisfies the "acting in the best interests of the client" tests outlined in section 961B of the Corporations Act. Clearly, if the life risk broker or adviser is acting in the best interests of the client, they should not be penalized for any changes they may need to make on behalf of the client during the clawback period.

A provision such as this would preclude the need for every valid change or cancellation of a policy to be listed in the regulation.

For the sake of completeness, we would like to reiterate previously identified circumstances where, we believe, clawback should not apply. They were:

- Where there has been a claim under the policy - there should be no clawback when there has been a claim under the policy in the first 12 months;
- Where the insured becomes bankrupt, and changes need to be made to the policy;
- Where joint lives are insured, and there is a separation of the parties within the first two years.

As previously stated, there are likely to be a wide variety of situations where the clawback provisions may operate in an unintended manner.

Thank you for the opportunity to provide these brief comments on the draft Life Insurance Reform Regulation.

4 November 2016