LEGAL AND REGULATORY PREDICTIONS FOR 2017

By Mark Radford, Radford Lawyers

NIBA National Insurance Brokers Association

With government inquiries and reforms proposed for the financial and insurance sector, what will brokers have to be aware of for 2017? Radford Lawyers principal Mark Radford tells NIBA.

1.1. ASIC focus

The most important issues arise in relation to ASIC and its increased focus on insurance. Its recent reports on motor add-on insurance, home insurance and life claims are examples of what is to come.

ASIC's Corporate Plan identifies a number of areas of real relevance to brokers that cannot be ignored.

ASIC identifies the key risks for 2016/17 as:

- gatekeeper culture and conduct in financial services and credit resulting in poor outcomes for investors and consumers [brokers are gatekeepers whether acting for the insurer or the client]
- gatekeeper culture and conduct in markets undermining good governance practices and risk management systems [this is a new focus on the role of management and Board in developing a good compliance culture – any issues and ASIC will go up the chain]
- misalignment of retail product design and distribution with consumer understanding
- digital disruption [this is the key area for insurers in 2017]
- cyber threats [this is a good opportunity for brokers]
- cross-border businesses, services and transactions [can be relevant to multinational brokers]

ASIC has identified its key Financial Advice Surveillance projects for 2016/17 as:

- advice compliance at the big five financial advice firms
- conflicted advice at the big five financial advice firms
- fee-for-no-service
- life insurance statement of advice
- quality of financial advice
- accountants – limited licence
- professional indemnity insurance held by smaller licensees

- insurance churn by advisers.

While the above are generally life and investment advice focused, this can spread to general insurance and is a key risk for 2017. In particular, brokers who are acting for clients who provide financial advice need to make sure they are obtaining the required level of professional indemnity insurance specified by ASIC.

ASIC also outlines its view of ‘what good looks like’ for gatekeepers (that is, brokers and insurers and their agents):

Deposit takers, credit and insurance, banking, credit, insurance and electronic payments providers:

- act professionally and treat consumers fairly
- provide good quality products and services that are developed, marketed and managed in a way that serves customers well
- ensure that consumers are fully compensated when losses result from poor conduct.

Financial advisers:

- act professionally, avoid conflicts of interest and treat consumers fairly
- deliver strategic financial advice that is aligned with consumer needs and preferences
- ensure that consumers are fully compensated when losses result from poor conduct.

ASIC has warned that it will act through its ‘detect, understand and respond’ approach, which is:

- detect wrongdoing through surveillance, breach reports, and reports from the public and whistleblowers
- understand the environment by continually scanning to identify issues and manage risks
- respond to wrongdoing or the risk of wrongdoing using a number of tools, including education, guidance, enforcement and policy advice to government.

ASIC’s additional funding support announced by the government will help it detect misconduct through more proactive surveillances that target poor practices at the individual firm and industry level, within the financial advice, superannuation and managed funds, credit, and insurance sectors.

1.2. The future of product development and claims handling practices

ASIC's "Report 498 - Life insurance claims: An industry review" is a significant report of general relevance. NIBA has issued already updated members on this.

In effect, it shows ASIC's attempts to move industry towards FSI recommendation 21 that tried to address the failings of our current product disclosure regime. The recommendation can be summarised as follows:

Product design:

- identify target and non-target markets, taking into account the products intended risk/return profile and other characteristics where the nature of the product warrants it
- issuers should stress-test to assess how consumers may be affected in different circumstances and to make key features clear and easy to understand.

Product distribution:

- issuers should agree with distributors on how a product should be distributed to consumers. Where applicable, distributors should have controls in place to act in accordance with the issuer's expectations for distribution to target markets
- after sale, issuer and distributor should periodically review whether product still meets the needs of the target market and whether its risk profile is consistent with its distribution. Review results should inform future product design and distribution processes.
- requirements scalable depending on nature of product.

ASIC's report adopts a similar approach, noting for example: "Fairness should be given greater consideration by insurers. Not all insurance claims will be successful, but an issue arises when a policyholder's **reasonable expectations** about policy coverage do not align with the technical wording in the policy." [our bold]

ASIC also recommends the removal of the claims handling exemption in the Corporations legislation and that more significant penalties for misconduct are applied (not limited to life insurance). This would have a significant cost impact on the market.

1.3. General Insurance Industry Inquiry

The Senate Economics Committee is also conducting a review of the industry focusing on home, strata and car insurance and issues such as the increase in the cost of cover over the past decade, transparency, the concept of and independent comparison service.

In addition, the government is finalising how industry will fund ASIC's regulatory activities which will result in new licensing costs for the industry.

1.4. Review of EDR schemes

The Federal Government is reviewing the current range of external dispute resolution (EDR) schemes, including FOS which applies to brokers, to ensure that the framework effectively meets the needs of users.

A final report is due 31 March 2017. The risk for brokers and NIBA's focus is to ensure that:

- a proper cost benefit exercise is carried out
- there is no unreasonable extension of the FOS terms of reference or limits
- insurance industry sectors do not cross-subsidise poor performing sectors
- appropriate expertise is maintained
- the proposed statutory compensation scheme of last resort be limited to problem sectors
- any increase/modification of ASIC's role and powers regarding EDR is reasonable and appropriate.

1.5. Conclusion

These are only the key examples of what will likely be a regulator intensive year in 2017.

It is expected ASIC will focus on general insurance markets beyond add-on motor insurance.

Brokers entering into new arrangements that ignore the above issues do so at their own peril. Existing arrangements should be reconsidered in light of the above ASIC approach as well.

NIBA will continue to make sure the clear differences in performance between general insurance and life and investment insurance are pointed out but there must be real differences in order for it to succeed.

Want to know what other trends to look out for in 2017? Check out the December 2016/January 2017 edition of Insurance Adviser.