



12 April 2019

**Submission from the National Insurance Brokers Association of Australia**

**To the Australian Competition and Consumer Commission**

**In response to the First Interim Report under the Northern Australia Insurance Inquiry**

The National Insurance Brokers Association of Australia (NIBA) appreciates the opportunity to make this submission to the ACCC in response to the First Interim Report (the Report) under the Northern Australia Insurance Inquiry.

NIBA represents over 90% of insurance brokers in Australia, operating in the cities, towns and regions across the country. Many insurance brokers working in the regions covered by the Report are members of NIBA.

This submission briefly addresses the recommendations, draft recommendations and the focus areas for 2019. The submission then goes on to propose ongoing engagement with the ACCC as the inquiry continues.

NIBA is keen to assist and support this important inquiry. For reasons noted in the Report, the insurance markets in northern Australia are extremely difficult, and insurance brokers work very hard on behalf of their clients to find insurance cover at affordable prices. Insurance brokers have also provided extensive support and advice to their clients when claims need to be made, especially following major weather events.

Insurance brokers have extensive knowledge and experience with the issues being examined by the ACCC. Insurance brokers are keen to make that knowledge and experience available to the ACCC, both directly and via their industry association, NIBA.

This submission will now address the **Recommendations** set out in the First Interim Report.

### Recommendation 1: Abolish stamp duty on home, contents and strata insurance products

The governments of Western Australia, the Northern Territory and Queensland abolish stamp duties on home, contents and strata insurance products. State and territory revenue needs could be more equitably met through other means.

NIBA strongly supports this recommendation.

Policyholders in northern Australia pay double taxation on their insurance premiums – GST and stamp duty. These taxes increase the cost of insurance by around 20%.

It was extremely disappointing when the Queensland Government increased the rate of stamp duty taxes at the same time as the insurance industry increased premiums to cover the true cost of claims being incurred in the region. This amounted to a double burden for policyholders in the northern areas of Queensland.

### Recommendation 2: Re-base stamp duty, use stamp duty revenue and mitigation

If stamp duties on insurance are maintained, the Western Australia, the Northern Territory and Queensland governments should reduce their burden on consumers in higher risk areas by levying stamp duties for home, contents and strata insurance with reference to the sum insured value, rather than the premium level.

In any case, they should also direct a portion of revenue from stamp duties on insurance products towards measures to improve affordability for low income consumers or to fund mitigation works

NIBA strongly supports this recommendation. NIBA agrees with the findings in the Report that Governments have received and continue to receive windfall gains from the growth of insurance premiums in northern Australia.

NIBA supports recommendations to find alternative bases for raising State and Territory revenue in a fair and equitable manner across northern Australia.

### Recommendation 3: Insurers to report their brands and where they are writing new business

The Insurance Contracts Act should be amended to require insurers to report regularly to ASIC on the brands that they underwrite, and in which postcodes new business has been written for home, contents and strata insurance products

It is not clear how this recommendation will improve the availability and affordability of general insurance policies in northern Australia.

The main providers of general insurance products to consumers are Insurance Australia Group and Suncorp Group. Both corporates have insurance companies authorised by APRA that do not trade publicly. They trade via their brands.

It is not clear how this recommendation will provide better choice to consumers, who are no doubt already aware of the limited supply of cover being offered in a number of markets across northern Australia.

NIBA firmly believes that in difficult market circumstances (which includes most product areas in northern Australia) consumers and policyholders should be encouraged to seek advice on the nature and range of insurance available in their area from qualified experts in this field – their local insurance broker.

#### Recommendation 4: Standardise definitions of prescribed events

The Treasury's review of the standard cover regime should develop a proposal to standardise the definitions of prescribed events (including 'action of the sea', 'impacts' and 'storm') to enable greater certainty for consumers and comparability of products

NIBA is participating actively in the Treasury review of the standard cover regime under the Insurance Contracts Act and related regulations.

It is important to note that while standardization of cover has real benefits in terms of certainty for consumers, consumers and property owners often face differing forms or risk of loss, and it is always important that the insurance markets be able to retain the capacity to provide appropriately tailored cover for the risks being faced by the Australian community.

It is also important that standardization should not preclude the development of new and innovative forms of insurance cover to better meet the needs of the community.

#### Recommendation 5: Review and mandate standard cover

The Treasury's review of the standard cover regime should develop a proposal to mandate that insurers offering home insurance/contents insurance products should also offer a home insurance/contents insurance product that does not deviate (through inclusions/exclusions) from the revised standard cover terms in the Insurance Contracts Regulations

NIBA supports the review of the standard cover regime currently being undertaken by Treasury.

Recommendation 6: Unfair contract term protections should apply to insurance The unfair contract term protections in the Australian Securities and Investments Commission Act should apply to insurance contracts regulated by the Insurance Contracts Act.

NIBA supports and has actively contributed to work being undertaken by Treasury in relation to the extension of the unfair contract term protections to insurance policies.

Recommendation 7: A link to MoneySmart should be on new quotes and renewal notices

The Insurance Contracts Regulations should be amended to require insurers to clearly inform consumers about the Australian Government's MoneySmart website ([www.moneysmart.gov.au](http://www.moneysmart.gov.au)). A link to MoneySmart using uniform text should be provided on new quotes and renewal notices

NIBA has previously drawn attention to the report released by the Insurance Council of Australia entitled *Too long; Didn't Read – Enhancing General Insurance Disclosure*. The report is available at: <http://www.insurancecouncil.com.au/issue-submissions/reports/too-long-didnt-read-enhancing-general-insurance-disclosure>

Given the important findings in this report that virtually all current disclosure frameworks do not work effectively or efficiently, NIBA is reluctant to support any further disclosure obligations unless and until extensive market research and testing has been undertaken to prove the true worth of any such initiatives.

We also note the ongoing work by Treasury on the area of Disclosure in general insurance, and NIBA is actively supporting and contributing to that work.

Recommendation 8: Better understand information that falls within 'general financial advice'

The Insurance Council of Australia should engage with ASIC to gain a clearer understanding about the nature and type of information insurers can give to consumers within the meaning of providing general financial advice

NIBA notes the recent report by ASIC entitled *Financial advice: Mind the gap* (Report 614, March 2019).

NIBA shares the concerns expressed in many areas regarding the potential confusion between "general advice" and "personal advice", and is concerned that consumers may well believe they are receiving advice when in reality they are only receiving product information that may or may not be relevant to their personal financial and risk circumstances and needs.

NIBA supports further work being undertaken in this area, including the work being undertaken by Treasury on disclosure and on standard form contracts.

In the meantime, NIBA firmly supports the position that any consumer who is uncertain about the cover they need, the cover available in the market and the best value for money should seek advice from a qualified expert in the field – their local insurance broker.

#### Recommendation 9: Disclose costs that count towards 'sum insured'

The Insurance Contracts Regulations should be amended to require that insurers clearly disclose the types of costs that will count towards the sum insured amount for buildings (such as the costs of demolition, debris removal or for professional fees) where these are not provided for through a separate allowance under the policy. This information should be provided on any sum insured calculators used by the insurer and alongside the sum insured figure

NIBA supports the provision of relevant and useful information to consumers, but in view of the findings in the Insurance Council's report *Too long; Didn't Read*, any new disclosure obligations should be thoroughly tested via extensive market research to determine whether they will in fact achieve their intended purpose.

Determining an appropriate sum insured is critically important, especially in areas subject to major weather events and natural disasters. This is because of the risk of total loss being much greater than in other areas of Australia.

At the same time, having an appropriate sum insured will often result in a premium the policyholder may be reluctant to pay, thereby resulting in a trade off between the level of cover and the level of premium. Where this occurs, the policyholder may well be exposed to significant levels of "self insurance", especially when a total loss occurs. This raises the issue of underinsurance more broadly.

#### Recommendation 10: Disclose the premium, sum insured and excess on a renewal notice

The Insurance Contracts Regulations should be amended to require that renewal notices for home, contents and strata insurance clearly disclose the premium, the sum insured and any excess of the expiring policy. Insurers should also provide this information upon request

NIBA is not aware of the benefit likely to be provided by the provision of information of this nature.

At the time of renewal, the key question to be considered is the nature of the ongoing risk, and whether the policy continues to be appropriate for coverage of that risk – both in terms of policy terms and conditions and sum insured.

It is important that consumers consider the nature of their risks, and the extent of cover being provided by policies they are considering or are renewing. Provision of a price comparison focuses attention on price, rather than on the cover being provided and the adequacy of that cover.

**Recommendation 11: Extend the ban on conflicted remuneration to insurance brokers**

The Corporations Regulations should be amended to remove the exemption for general insurance retail products from the conflicted remuneration provisions as they apply to insurance brokers

NIBA strongly opposes this recommendation, and notes there is no evidence provided in the Interim Report to the effect that “unacceptable conflict of interest” is in fact happening in the delivery of advice, support and services by insurance brokers to their clients across northern Australia.

NIBA notes that despite being fully within the scope of the Terms of Reference of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, no evidence of misconduct by insurance brokers was provided to the Royal Commission, and there were no case studies demonstrating how insurance broker remuneration structures were leading to undesirable outcomes for clients.

NIBA notes Royal Commission recommendations 2.3 and 2.6 relating to the review of a number of matters in three years’ time, including a review of the exemption to the ban on conflicted remuneration in relation to general insurance products. NIBA notes that both the Government and Opposition have accepted recommendations 2.3 and 2.6, and NIBA looks forward to making a positive contribution to the review when it is undertaken.

In the meantime, NIBA notes that the ASIC submission in response to the Round 6 hearings of the Royal Commission noted that “conflicts in remuneration in financial services should be prohibited or removed as a general policy”, the ASIC submission went on to acknowledge that there could well be reasonable circumstances where the costs associated with the removal of the exemption could well outweigh any reduction in perceived consumer harm, so that ongoing exemptions may well be justified.

NIBA will be arguing that there is no evidence of consumer harm arising out of current remuneration arrangements, that the remuneration arrangements provide significant consumer benefit by promoting access to information and advice, and that it is not at all clear that the removal of the exemption would provide a net benefit to the community. We look forward to discussing these matters further with the ACCC as part of the current inquiry.

NIBA questions the fact that the recommendation seeks the abolition of commissions paid to insurance brokers, but is silent on the issue of commissions paid to distributors acting on behalf of insurance companies, especially where it was these distributors who have attracted the attention of ASIC and the Royal Commission for charging excessive commissions and delivering poor client outcomes.

### Recommendation 12: Better information for consumers lodging a claim

The General Insurance Code of Practice should be amended to require that at the time a consumer lodges a claim, an insurer or its agent must clearly inform the consumer of the insurer's claim handling policy, and expressly refer to:

- how the insurer will assess the validity of the consumer's claim
- the insurer's preferred repairer policy and in what circumstances a consumer can use their preferred repairer
- how decisions are made on cash settlements
- who will be managing the claim (for example, the name and contact details of a contracted claims company if relevant)
- the fact that the loss adjuster is acting on behalf of the insurer and not the consumer
- the consumer's right to make a complaint to the insurer and the Australian Financial Complaints Authority

NIBA notes that the Insurance Council of Australia is currently undertaking extensive work on the development of a new General Insurance Code of Practice.

### Recommendation 13: ASIC approval for the General Insurance Code of Practice

The Insurance Council of Australia (ICA) work with ASIC to obtain its approval for the General Insurance Code of Practice.

NIBA notes that the Insurance Council of Australia is currently undertaking extensive work on the development of a new General Insurance Code of Practice.

### Recommendation 14: Public mitigation works and expected premium reductions

The insurance industry should work with governments to identify specific public mitigation works (e.g. flood levees) that could be undertaken and insurers should provide estimates of the premium reductions they anticipate should the works proceed

NIBA notes the extensive engagement by the insurance industry in relation to the need for mitigation of natural disaster risk in Australia, and for the development of more resilient communities.

The pricing response to mitigation works would be a matter for individual insurers.

### Recommendation 15: Building code changes to better protect interiors and contents

The Australian Building Codes Board expressly consider measures that better protect the interiors and contents of residential buildings from damage caused by natural hazard risk (such as, wind-driven water ingress around doors and windows during and following storms).

NIBA supports any improvements that will reduce the nature and extent of damage and loss that occurs during major weather events. Ultimately, it is only by reducing the nature and cost of claims that insurance premiums can be maintained at levels acceptable to the community.

## Draft Recommendations

NIBA would now like to offer the following comments on the draft recommendations set out in the Report.

*Draft recommendation 1: Insurers should estimate a sum insured for customers*  
*The Insurance Contracts Regulations should be amended to require insurers to estimate an updated sum insured for their home insurance customers and advise them of this estimate on their renewal notice.*

NIBA notes this is a matter for insurance companies to address.

*Draft recommendation 2: Prominently publish PDSs and KFSs online with product offerings*  
*The Insurance Contracts Regulations should be amended to require insurers to publish key facts sheets and product disclosure statements online in a prominent manner and alongside the relevant products.*

NIBA does not object to this proposal, but in view of the strong evidence of the failure of Product Disclosure Statements and Key Fact Sheets to properly inform consumers and assist them to make reasonable decisions about the nature, level and cost of their insurance, we do not see any likely benefit from the proposal.

This is unlikely to improve the availability and cost of insurance across northern Australia.

*Draft recommendation 3: Disclose premium impacts of optional inclusions or exclusions*  
*The Insurance Contracts Regulations should be amended to require that insurers disclose the premium costs or saving for each optional inclusion or exclusion they offer to a consumer. Insurers should also indicate the premium cost or saving associated with incremental changes in excess levels and sums insured. This information should be provided to a consumer with a quote for a policy and upon its renewal.*

NIBA is concerned that any proposal along the lines of the draft recommendation should be thoroughly tested by extensive market research prior to implementation. There is a real risk that the provision of this level of detail would be likely to result in very real confusion for most consumers, and would be extremely difficult to understand or follow.



*Draft recommendation 4: National home insurance comparison website*

*The government should consider developing a national home insurance comparison website. It should require the participation of all insurers active in relevant markets, allow consumers to compare policies by features, and make it quick and easy for consumers to act on the results.*

NIBA has major reservations in regard to insurance comparison web sites. Where they have been implemented to date there has been a primary emphasis on price comparison, with little effective disclosure of policy terms and conditions.

General insurance policies vary considerably, including in areas of normal consumer need such as home, contents and strata insurance.

NIBA firmly believes that consumers should be encouraged to seek advice on these matters from qualified experts in this area – their local insurance broker. This will enable them to understand the risks they need to insure, identify policies that are likely to cover those risks, and determine a cost effective insurance cover. Insurance brokers also provide invaluable support to their clients when an insured event has occurred and a claim has to be made.

*Draft recommendation 5: Renewal notices should give 28 days notice*

*The Insurance Contracts Act should be amended to require insurers to provide renewal notices for home, contents and strata insurance no less than 28 days before the expiration of their insurance coverage*

NIBA supports this draft recommendation. This would be common market practice at the present time.

*Draft recommendation 6: Disclosure where premium increases are capped*

*The Insurance Contracts Act should be amended to require insurers that have capped premium increases for particular risks (to slow the rate of adjustment to a higher technical price or other pricing objective), to disclose this to an affected policy holder and provide an estimate of the timing and extent of premium increases that the insurer intends to apply in future.*

This draft recommendation is a matter for insurers to respond to.

*Draft recommendation 7: Consider likely insurance costs before purchasing real estate*

*States and territories should implement measures to prompt consumers to investigate insurance costs when they are considering purchasing real estate*

NIBA does not oppose this recommendation, but sees little merit in the proposal. Most real estate purchases would be supported by home loans, and the loan provider invariably requires the borrower/purchaser to take out appropriate home insurance as a condition for approval of the loan. Insurance cover is therefore an inherent part of the transaction at the present time.

*Draft recommendation 8: Requesting personal information held by insurers**The Insurance Contracts Regulations should be amended to require insurers to provide clear notice to consumers that they can obtain a copy of the information that the insurer holds about them, and contact details for doing so. This notice should be provided on a certificate of insurance and any renewal notices*

This is a matter for insurance companies to respond to.

Where consumers have the support and advice of an insurance broker, the insurance broker has no difficulty obtaining all relevant information from the relevant insurance company.

*Draft recommendation 9: Strata managers to be remunerated by body corporate only**State and territory legislation governing strata managers should be amended to prohibit strata managers from accepting payments in relation to arranging strata insurance other than those agreed to, and made by, their body corporate*

NIBA supports the full disclosure of strata manager remuneration structures by strata managers to their body corporate clients. It is also important that the strata manager make it very clear to the body corporate client who they are acting on behalf of when arranging insurance cover for the body corporate.

*Draft recommendation 10: Clear disclosure of products considered and remuneration**The Corporations Regulations should be amended to require comparison websites and insurance brokers to disclose a complete list of what home, contents, or strata insurance products they will consider when making a comparison or providing a recommendation to a consumer*

Insurance brokers are familiar with the nature and level of cover being offered by insurance companies for risks faced by property owners across Australia.

In the case of property in northern Australia, the supply of cover is often very limited, and in some cases there can be difficulties obtaining any cover at all. The choice of cover can therefore be very limited in certain circumstances.

Insurance brokers also work with insurance companies to develop specific insurance policy terms and conditions which invariably provide better levels of cover than the standard policies offered by the insurer. In these circumstances, it is inevitable that the insurance broker will offer the policy that provides better cover, suitable to the needs of the client.

At all times, the insurance broker is under a statutory duty to act in the best interests of the client, and remedies are available to the client where this does not occur.

Insurance brokers are already required to disclose remuneration arrangements to their clients.

*Draft recommendation 11: Giving consumers more control over how claims are settled*  
*The Insurance Contracts Act should be amended to provide consumers with the right to choose whether their home insurance claim is settled through a cash settlement or by proceeding with a repair/rebuild managed by the insurer*

This is a matter for insurance companies to respond to.

NIBA does note that where the insured is represented by an insurance broker, the insurance broker becomes their advocate in the handling of the claim. It is also widely accepted that insurance brokers achieve better outcomes for their clients than occurs where the policyholder is dealing directly with the insurer. This is inevitable, as the broker is fully aware of the full benefits provided under the policy.

This is another reason why consumers should be encouraged to seek the support and advice of their local insurance broker.

*Draft recommendation 12: Clearly stated mitigation discounts*  
*The Insurance Contracts Regulations should be amended to require insurer quotes and renewal notices for a property to expressly show what discounts have been applied (if any) to reflect mitigation measures undertaken on that property*

This is a matter for insurance companies to respond do.

*Draft recommendation 13: Information on mitigation works that could reduce premiums*  
*The Insurance Contracts Regulations should be amended to require insurer quotes and renewal notices for home insurance to provide a schedule of mitigation measures which customers of the insurer have undertaken for properties with similar characteristics in order to improve their risk rating*

This is a matter for insurance companies to respond to.

## **Focus Areas for 2019**

This submission will now comment on the proposed focus areas for investigation during 2019.

Focus area 1: Measures to further improve insurance affordability and availability

The Report quite correctly identifies the problems associated with exposure of northern Australia to extreme weather events, the high insured cost of those events, and the relatively small number of policyholders contributing to the insurance pool for those losses. The net result is very high premiums, if cover can in fact be found.

Insurance for property damage is voluntary in Australia. Insurance companies determine the risks they are prepared to insure and the terms and conditions of the cover they are prepared to offer. Property owners determine whether they will finance their risk of loss via insurance, via other funding mechanisms or whether they will self insure their risk of loss.

Finally, fundamental principles of insurance dictate that through the pooling process, those bring risk into the pool do so at a premium commensurate to the nature and level of the risk that is being insured.

As a result of these factors, it is not possible to spread the cost of claims arising in northern Australia across the rest of the population. An insurer providing cover in northern Australia who sought to reduce premiums in that region by charging higher premiums elsewhere would be uncompetitive in those markets, against an insurer not providing cover in the north.

This suggests it may well be desirable to examine the potential need for some form of government intervention which would take some of the high cost of extreme weather events out of the insurance pool. These costs would need to be met by some alternative funding mechanism, in such a way that the underlying insurance market could continue to operate in an efficient and competitive manner. This tends to indicate some form of reinsurance solution to cover the high cost of extreme weather, while leaving more routine risks to be insured by the normal market.

NIBA would be pleased to participate in discussions along these lines. Extensive knowledge exists within NIBA members in relation to alternative risk funding mechanisms around the world.

Focus area 2: Detailed case studies on sub-regions in northern Australia

NIBA would be pleased to facilitate discussions with insurance brokers in sub-regions across northern Australia, as experiences can and do vary according to location. We strongly recommend engagement with insurance brokers operating in the areas of interest in order to obtain a first hand understanding of the operation of the insurance markets in those regions.

Focus area 3: Examination of premium adjustments

This is a matter for discussion with insurance companies.

Focus area 4: Identify and investigate barriers to expansion (or re-entry)

While this is essentially a matter for discussion with insurance companies, insurance brokers in northern Australia have had extensive experience in the past with the entry and departure of insurance companies in those markets. NIBA is keen to share those experiences with the ACCC.

Focus area 5: Understanding non-insurance and how it may be addressed

NIBA would be pleased to facilitate discussions with insurance brokers in northern Australia who have experience in assisting communities who have experienced difficulties accessing insurance markets.

### **The way forward**

NIBA has concerns about a number of comments in the Report, and in particular the reporting of a particular point of view without any further comment on the subject.

For example, on page 194 of the Report mention is made of the experience of an insurer which reduced broker commissions to 15%. A number of insurance brokers have reported to NIBA that at that time, the insurer changed its policy terms and conditions, and also its pricing structure. This led many brokers to consider alternative insurance providers in order to ensure the cover being purchased on behalf of clients was cost effective, appropriate and best met their risk needs.

Further, the Report consistently refers to broker remuneration as “incentives”, even though the level of commission paid by various insurers is relatively consistent, leaving little or no room for any form of so called incentive to deal with one insurer rather than another.

Overwhelmingly, insurance brokers seek to obtain insurance cover that meets the needs of their clients, at the best possible cost for the client. Time and again insurance brokers propose cost effective solutions to their clients, even when to do so could well mean lower commission for the transaction. They do this because they are committed to meeting the risk and insurance needs of their client. They also do this because they have statutory, common law, contractual and fiduciary obligations to act in the best interests of their clients at all times. The legal duties to the client totally outweigh any perceived conflict of interest that might theoretically arise under current remuneration arrangements.

Finally, insurance brokers regularly discuss their remuneration arrangements with their clients, and agree on reduced commission rates, fee arrangements or other structures. Very little of this is discussed in the Report.

NIBA would like to request a more effective process to identify issues and concerns in the operation of the insurance markets in northern Australia, and to develop and discuss options for addressing those issues and concerns, using the experience of insurance brokers operating in those markets.

We again issue an invitation to the ACCC to meet with insurance brokers operating in northern Australia, to gain a first hand understanding of the challenges they face, and the work they do on behalf of their clients.

More importantly, an understanding of the work of insurance brokers will give an appreciation of the importance of advice, and the need for the community to have ready access to advice on their insurance needs, especially in times when supply is limited and prices are high. Only insurance brokers are authorised by ASIC to give advice on general insurance matters, and they play a crucial role across northern Australia in both obtaining cover for clients and helping clients at times of loss.

We remain willing and ready to assist the ACCC as the inquiry into insurance issues in northern Australia continues.

Dallas Booth  
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