

3 October 2024

Australian Securities and Investments Commission  
Level 5/100 Market St  
Sydney NSW 2000

Via email: [rri.consultation@asic.gov.au](mailto:rri.consultation@asic.gov.au)

### **NIBA Submission: Changes to RG246: Conflicted and other banned remuneration**

The National Insurance Brokers Association (NIBA) welcomes the opportunity to provide feedback on the Australian Securities and Investments Commission's (ASIC) changes to RG246: *Conflicted and other banned remuneration*.

NIBA is concerned that the changes to RG246 do not reflect the intent of the Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act (the Act) and could potentially result in clients being left uninsured.

The Act requires general insurance brokers who provide personal advice to Retail Clients to obtain the clients informed consent prior to receiving a commission in connection with a general insurance product. Prior to gaining consent the broker must disclose;

- (i) the name of the insurer under the relevant product (if known);
- (ii) for a general insurance product—the rate of the monetary benefit, expressed as a percentage range of the policy cost for the product;
- (iii) if more than one monetary benefit will be given in connection with the issue or sale of the relevant product—the frequency of giving those monetary benefits and the period over which monetary benefits covered by the consent could be given, including any renewals; and
- (v) the nature of any services that the financial services licensee or representative will provide the client (if any) in relation to the relevant product.

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*ASIC's Information Sheet: Informed consents for insurance commissions* states that ASIC "generally expects that the insurer name will be known" at the time of disclosure. This guidance effectively reverses the important clarification (the inclusion of the words "if known") that was included by Treasury following consultation with industry.

Insurance brokers would likely gain client consent prior to taking the risk to market, when clients are most engaged in the placement process and have sufficient time to consider the information before them, and if necessary, allow time for the client and broker to negotiate a fee-for-service in lieu of commission or for the client to find an alternative broker. Except in very limited cases, the name of the insurer would not be known at this time.

The assumption that this information would be known, assumes that consent is not gained until after the risk has been taken to market and the brokers has received the final instructions from the client. NIBA is concerned that by shifting the consent to the end of the placement process, clients will not understand the importance of providing consent having already discussed the risk with their broker and may not respond, simply choosing to pay the invoice. This would leave the broker unable to place the cover, as doing so would trigger payment of commission, and the client uninsured.

Additionally, NIBA notes that under s58 of the *Insurance Contracts Act 1984 (Cth)* insurers are only required to provide renewal terms 14 days prior to the expiration of the original contract. If upon receipt of this notice, the broker identifies that it is necessary or in the Clients best interests to change insurers this leaves a limited period during which to find alternative cover and gain client consent, especially if as discussed consent cannot be obtained until just before placement.

This would result in clients feeling pressured to provide consent despite not having sufficient time to consider the information provided by the broker and come to an informed decision. We note that the name of the insurer is unlikely to be a material factor in the client's decision whether or not to consent to their broker receiving commission.

These concerns were raised during the consultation process for the Draft Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill. Recognising NIBA's concerns and the potential risk posed by the obligations, s963BB was amended to

reflect that the name of the insurer only needs to be disclosed if known at the time of disclosure- ASIC's guidance effectively removes this.

## Recommendation

To address this, NIBA recommends that the words "we generally expect that the insurer name will be known" be removed from the Information Sheet.

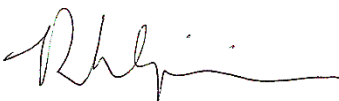
## About NIBA

NIBA is the peak representative body for the general intermediated insurance industry. NIBA serves as the collective voice of approximately 450 member firms and 15,000 individual brokers. Our membership encompasses a diverse range of entities, including large multinational insurance brokers, Australian broker networks, as well as small and medium-sized businesses located in cities and regional areas around Australia. NIBA advocates for the interests of general insurance brokers and their clients, ensuring that the general industry operates with integrity and professionalism.

NIBA's work is guided by our core pillars: community, representation, and professionalism. NIBA's mission is to enhance the professional standing of insurance brokers through robust advocacy, education, and ethical standards. By fostering a collaborative and innovative environment, NIBA aims to elevate the quality of service provided to consumers, strengthening trust and confidence in the insurance broking profession.

Should you have any queries in relation to our submission or wish to discuss any of the matters raised, please do not hesitate to contact Allyssa Hextell, Head of Policy and Advocacy, at [ahextell@niba.com.au](mailto:ahextell@niba.com.au).

Yours sincerely,



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