

7th March 2024

Mr Alan Raine
Committee Secretary
Senate Economics Legislation Committee

Via upload

NIBA Submission: Inquiry into the Competition and Consumer Amendment (Fair Go for Consumers and Small Business) Bill 2024.

The National Insurance Brokers Association (NIBA) welcomes the opportunity to provide feedback to the Senate Economics Legislation Committee's inquiry into the Competition and Consumer Amendment (Fair Go for Consumers and Small Business) Bill 2024.

NIBA is the peak representative body for the general intermediated insurance industry. NIBA represents approximately 450 member firms and more than 10,000 individual brokers, including large multinational insurance brokers, Australian broker networks, and small to medium-sized businesses located in cities and regional areas around Australia.

NIBA aims to promote insurance brokers and their role in supporting and advising clients on risk and insurance matters. NIBA provides this knowledge and expertise to governments and government agencies to facilitate understanding of the operation of general insurance markets.

Insurance brokers represent the interests of clients and not those of insurance companies. Consequently, comments made by NIBA are made on behalf of its members and the public that purchases general insurance, not on behalf of insurers.

NIBA supports reforms that promote healthy financial services markets and effective regulation. However, such reforms must be carefully considered to prevent unintended consequences for consumers and small businesses.

NIBA has several concerns about the proposed operation of the designated complaints regime, including the impact of the regime on the ACCC's identified enforcement priorities, the scope of the proposed legislation, and the absence of a formal review process to ensure the regime is meeting policy objectives.

Impact on ACCC Enforcement Activities

NIBA notes that the proposed legislation is intended to be budget-neutral. The explanatory materials raise concerns that the ACCC may not have sufficient resources to respond to designated complaints.

In order to fulfil the requirements of the Designated Complaints function, the ACCC would likely be required to allocate resources away from regular enforcement activities, leading to poor outcomes for consumers and small businesses.

This would create a two-tiered system for complaints whereby complaints relating to the same subject matter would be treated differently depending on whether or not the organisation that submitted the complaint was a '*designated complainant*', raising questions about fairness and impartiality.

The ACCC already has well-established mechanisms for consulting with consumer groups; therefore, the introduction of an additional mechanism through the designated complaints regime warrants careful scrutiny. There is a risk that the introduction of this regime may inadvertently impede the ACCC's broader enforcement activities, thereby compromising its ability to protect consumers and small businesses effectively.

It is essential to recognise that any diversion of resources from the ACCC's core enforcement activities to address designated complaints must be carefully managed to prevent adverse impacts on broader market oversight and enforcement. Ensuring that the ACCC has the necessary resources and capabilities to fulfil its mandate across all areas of its regulatory responsibilities is, in NIBA's view, critical.

Scope of proposed legislation

There are several avenues available to examine complaints and issues relating to the operation of insurance markets and the distribution of general insurance products, including parliamentary inquiries, the Insurance Brokers Code Compliance Committee (IBCCC), the Australian Securities and Investments Commission (ASIC) and the Australian Small Business and Family Enterprise Ombudsman (ASBFEO).

To prevent unnecessary duplication and ensure the effective operation of the designated complaints regime, operational guidance and principles must be implemented to ensure complaints made under the regime are evidence-based, comply with minimum content requirements and are not repetitive.

This includes the exclusion of complaints where the complaint is the subject of another inquiry, including a Royal Commission, government inquiry, or an inquiry undertaken by any of the previously mentioned agencies.

NIBA recommends that when a complaint is made under the designated complaint regime that is the subject of or has previously been considered as part of an inquiry or review within the past two years, the ACCC should be required to take no further action or provide their reasoning as to why the subject requires re-examination.

Similarly, the content requirements for designated complaints should be amended to include a requirement that the complaint is not the same or substantially similar to a complaint already reviewed by the ACCC. This amendment would prevent the repetition of complaints that have already been addressed or deemed to require no further action.

Such an amendment would prevent unnecessary duplication, conserving resources for the ACCC and other organisations that may be required to provide information as part of any investigation. This includes government agencies, regulatory bodies and financial firms.

Timeframe for ACCC response

NIBA notes that where a designated complaint is received regarding the financial services industry or a financial services licensee, the ACCC will likely require the cooperation of ASIC and other regulatory bodies.

Where assistance from other regulatory bodies, significant information gathering, or a technical assessment is required, the 90-day response timeframe is unlikely to be sufficient. It is essential to ensure that the timeframe for a response from the ACCC

strikes an appropriate balance between the need for timely resolution of complaints and the need for thorough and rigorous investigation processes.

In light of this complexity, NIBA recommends that the legislation be amended to include a provision for the ACCC to provide an interim notice advising that further investigation is being undertaken and detailing the steps the ACCC is or intends to take regarding the investigation if the complaint relates to an AFS License holder.

This would enable the ACCC to effectively manage expectations and communicate transparently with stakeholders throughout the investigation process.

Review of the designated complaint regime

As with all regulatory or legislative changes, it is imperative that the regime be periodically reviewed to ensure it is achieving policy objectives while addressing any unintended consequences that may have arisen.

NIBA recommends that the legislation be amended to include a requirement that the designated complaints regime be formally reviewed, with the review to commence no later than three years after the regime commences. This review should also have regard to the allocation of ACCC resources between identified enforcement priorities and the designation complaints regime, ensuring that resources are appropriately allocated to address emerging challenges and priorities.

NIBA appreciates the opportunity to contribute to this inquiry and urges careful consideration of our recommendations to ensure that the Designated Complaints regime strikes an appropriate balance between consumer protection and regulatory efficiency. Should you have any queries in relation to our submission, please do not hesitate to contact me or my office.

Yours sincerely,



Philip Kewin
Chief Executive Officer
National Insurance Brokers Association