NIBA
National Insurance Brokers Association.

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Competition in Australia's Financial System inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Lodged online: http://www.pc.gov.au/inquiries/current/financial-system/make-submission#lodge

NIBA SUBMISSION IN RESPONSE TO PRODUCTIVITY COMMISSION DRAFT REPORT – COMPETITION IN THE AUSTRALIAN FINANCIAL SYSTEM

The National Insurance Brokers Association of Australia (**NIBA**) appreciates the opportunity to make this submission in response to the draft report on Competition in the Australian Financial System released by the Productivity Commission on 7 February 2018.

NIBA is the industry association for insurance brokers across Australia. The association has around 350 member firms, employing over 4,000 insurance brokers in all States and Territories, in the cities, towns and regions of Australia. Insurance brokers process over $19 billion in general insurance premiums each year, around half of the Australian general insurance premium pool.

ABOUT INSURANCE BROKERS

Insurance brokers work with their clients to assist them to:

- understand and manage their risks, including the risk of loss of or damage to property as a result of adverse weather or other climate related events;
- obtain appropriate insurance cover for their risks and their property, and/or assistance with other risk financing mechanisms; and
- pursue claims under their policies when an insured event occurs, in which case the insurance broker becomes the advocate for the client during the assessment and resolution of the claim.

Insurance brokers act primarily for and on behalf of their client, and they owe legal duties to their clients for the nature and quality of the advice they provide and the work they perform on their behalf. When acting for and on behalf of the client, insurance brokers do not SELL insurance policies – they PURCHASE insurance policies on behalf of their clients from the markets available to them.

BACKGROUND

NIBA understands the Government is seeking to improve consumer outcomes, the productivity and international competitiveness of the financial system and the economy more broadly, and support ongoing financial system innovation, while balancing financial stability objectives.

NIBA is supportive of fair and reasonable improvements in competitive practices amongst insurers, the efficient operation of the direct and intermediated insurance markets, and transparency in information provided to consumers about the insurer, the cover being provided and cost of insurance products. There must however be a proper cost benefit analysis to show that the benefits of achieving the Commission's recommendations clearly outweigh any potential consumer or industry detriment.

The following summarises the main concerns NIBA has with the recommendations and provides detail on each recommendation in relation to general insurance.

NIBA note that life insurance is not being considered in this inquiry, given that more than 70% of life insurance is provided through superannuation, and the Commission is undertaking a separate review of the competitiveness and efficiency of Australia's superannuation system.

DRAFT RECOMMENDATIONS AND NIBA RESPONSE

DRAFT RECOMMENDATION 11.1 - COMPARATIVE PRICING INFORMATION ON INSURANCE RENEWAL NOTICES

Renewal notices for general insurance products should transparently include the previous year's premium and the percentage change.

NIBA RESPONSE

NIBA acknowledge that the Commission is of the view that including extra information on renewal notices regarding prior year's premium and percentage change in premium is intended to enhance competition in the general insurance market by providing consumers with additional information to consider whether their premium is competitive and whether to switch insurance.

NIBA has a number of concerns with this proposal that we recommend be considered further.

Whilst providing comparative pricing information may lead consumers to consider switching products, a switch decision that is made based on price alone may not be in the best interests of consumers where product features and benefits may (and almost always do) differ across products. For example, a cheaper product may not provide better cover and this could result in consumer detriment the consumer decides to switch on the basis of price alone.

NIBA is also concerned to understand who this obligation would apply to: insurers, their agents and/or insurance brokers. In our view such an obligation should be imposed on the insurer or their agents only and not insurance brokers when acting on behalf of the client.

NIBA would also like to understand the scope of products to which the proposal relates. It is not clear if this recommendation is proposed in relation to retail insurance products as defined under the Corporations Act 2001 (Cth) (Corporations Act) and/or eligible contracts under the Insurance Contracts Act 1984 (Cth) (Insurance Contracts Act) or all general insurance contracts more broadly - including commercial type insurance arrangements.

NIBA would recommend any changes in this regard be limited to eligible contracts of insurance as defined under regulation 2B of the Insurance Contracts Act as follows:

- motor vehicle insurance;
- home building insurance;
- home contents insurance;
- sickness and accident insurance;
- consumer credit insurance product; or
- travel insurance (annual policies only).

NIBA also recommends that any such proposal only applies to contracts of insurance that are:

- renewable contracts (for example not insurance contracts that run for a set period of time such as a single trip travel insurance policy or a consumer credit contract that may have a 5 year term and in not renewed annually, or other products of the type that are not usual to renew and for which renewal notices are not usually issued); and
- renewed on an annual basis or such other longer period (and not earlier timeframes such as contracts that are renewed monthly as this will create an administrative overload for all concerned).

Any implementation of such an arrangement needs to carefully take into account the costs of implementation and potential system constraints in doing so.

In some cases insurance arrangements may be administered by agents of insurers (which can include an insurance broker acting under a binder) and the financial implications of implementing such administrative and system changes may be onerous.

Likewise in a number of cases renewals via insurance brokers are system driven and it would require significant costs to implement such changes via all systems in the distribution chain to accommodate such a requirement.

These cost implications need to be balanced against the interests of consumers who can otherwise easily request details of their prior insurance costs from the insurer or their agent or an insurance broker if required.

A procedural change to simply inform consumers that they can ask for details on any changes to their premium at renewal if they want to may be a simpler and much more cost effective option to consider.

NIBA believes it is critically important to ensure that any cost comparison information is not misleading, and appropriate guidance is provided to avoid the risk to insurers, their agents and insurance brokers, in passing on information which may be misleading.

For example:

- if pricing increases at renewal as a result of additional benefits or increased sums insured being provided under the policy; or
- if pricing changes and benefits or sums insured have been reduced at renewal;

a price comparison in these scenarios will not be a true comparison of like for like products and could be misleading, especially if consumers base their decisions on price alone.

As such any price comparisons need either to be based on comparing like for like products only or allow for qualifications to note that the price differences do not take into account any changes to the underlying product, benefits, sums insured or other risk related factors and there should be an immunity from regulatory action in relation to such price comparisons for this reason alone.

In all cases consumers should be advised to select insurance cover based on their needs and risks as opposed to making price based decisions alone.

DRAFT RECOMMENDATION 11.2 TRANSPARENCY ON INSURANCE UNDERWRITING

On the same part of an insurance brand's website that contains the information about which insurer underwrites their product, a list of any other brands that are underwritten by the same insurer, for that particular form of insurance, should be included.

Insurers should provide an up-to-date list of the brands they underwrite to the Australian Securities and Investments Commission (ASIC). ASIC should publish this information as a transparent list on its website.

NIBA RESPONSE

Insurance products may be branded:

- with an insurer's brand or trading name that is owned and registered by the insurer (such as AAI Limited trading as Vero Insurance); or
- with the brand of the product distributor, intermediary or other third party that is not owned by the insurance group (such as products issued through Seniors Insurance Agency where the branding is that of the distribution partner as opposed to the insurer). Such distribution branding could also belong to an insurance broker or broking group as opposed to the insurer.

Websites which sell insurance directly already provide details of the relevant issuer (insurer) of the product, whether this is a website or distribution channel owned by an insurer or that of a third party.

Any requirement to list all brands prominently on a website should apply to direct websites that are owned by an insurer only, and not third party owned and branded websites.

In this regard we would recommend that:

- details of brands that are owned by the insurance group be displayed on the insurance group's (i.e. parent entity) website as the central point of information; and
- that a link to the parent entity website for further information on alternative brands is sufficient to be placed on a subsidiary website.

Such a process would provide a simple means of providing relevant information about brands owned by an insurer if customers wish to consider alternative insurance options available from the same insurer.

However, any website branding requirements should not be imposed on independently owned distributors or third parties who may sell an insurer's product, either under their own brand or that of the relevant insurer. Such a requirement would be overkill and would result in all distributors (of which there are most likely thousands)

effectively needing to continuously update their websites and in effect at the same time promote a competitors product where similar products may be available through competitor distribution channels. This would be akin to asking Coles to place a link on its website to Woolworths and IGA and vice versa where the supermarkets are competitors in the market as opposed to be owned within the same group. Such conduct may also be detrimental to competitors and in effect impose restrictions on a business that would not apply in any other commodity market.

In terms of a requirement for insurers to provide ASIC with an up to date list of brands underwritten and this list to be published on the ASIC website, once again this requirement should apply to brands owned by the relevant insurer only, and not products which are essentially white labelled and branded with that of a third party distributor.

Where an insurer has a registered trading name this information should already be available to consumers via the ASIC Professional Register details. Where an insurer is an AFSL holder the details of any trading names are already listed under its AFSL information. However, this will not be available for insurers that are wholesale insurance providers who may not be required to hold an AFSL.

There may also be issues in correlating data across various agencies where brands are registered as trademarks as opposed to business or trading names. This would require some co-ordination between IP Australia and ASIC to cross reference all branding information.

Given that APRA provide a centralised list of authorised general insurers on its website (and ASIC do not have such a centralised list at present) it may be more appropriate for such branding information to be placed on the APRA, as opposed to ASIC, website.

If branding information is provided via the relevant insurance company's parent website and a secondary list of information via ASIC (or APRA as suggested above) appears to be a duplication of information and reporting requirements for all concerned and if such requirements are to be imposed detailed cost/benefit analysis should be undertaken to consider whether the consumer benefit achieved is commensurate to the cost of compliance otherwise involved.

Overall, NIBA is having difficulty understanding just what benefit this recommendation is intended to achieve.

DRAFT RECOMMENDATION 11.3 PHASE OUT DISTORTIONARY INSURANCE TAXES

Consistent with the Commission's 2014 Natural Disaster Funding Inquiry (recommendation 4.8), state and territory taxes and levies on general insurance should be phased out. This should commence from mid-2018.

NIBA RESPONSE

NIBA fully supports the phasing out of all state and territory taxes and levies on all insurance products. Such imposts have a detrimental effects on consumers, create a "tax on tax" regime inflating insurance prices and can encourage both under insurance or the failure to obtain insurance at all, often resulting in losses being borne through community or government relief packages as a result.

DRAFT RECOMMENDATION 12.1 RENAME GENERAL ADVICE TO IMPROVE CONSUMER UNDERSTANDING

General advice, as defined in the Corporations Act 2001 (Cth), is misleading and should be renamed. The Commission supports consumer testing of alternative terminology to ensure that misinterpretation and excessive reliance on this type of promotional information is minimised.

The term 'advice' should only be used in association with 'personal advice' that takes into consideration personal circumstances.

NIBA RESPONSE

NIBA acknowledges the concerns raised in the Commission's draft report in relation to consumer reliance on, and confusion over, what is labelled as general advice.

Financial advice as a concept under the *Corporations Act 2001* (Cth) (Corporations Act) is a recommendation or statement of opinion intended to influence a person into making a decision in relation to a financial product, or could reasonably be regarded as intended to do so.

General advice is financial product advice that is given to a person without considering the individual's objective, financial situation or needs. This is broad and catches all forms of advice that is not tailored to an individual's needs, including general advertisements to the public at large.

In the case of retail clients a general advice warning must be provided when general advice is given to ensure consumers are aware of the limited nature of the advice being provided.

The difficulties in the current requirements of the financial product advice regime arise in relation to:

- the increased training and development required in order to provide personal advice to customers, even if this were very basic advice which could be scripted for use in common scenarios;
- the increased disclosure documentation that is required when personal advice is provided (although we note a number of carve outs apply in relation to general insurance products);
- the blurred line between when a person is giving general advice vs personal advice, especially when a customer has advised them of their personal situation and expects this will be taken into account in any recommendation situation which is not generally the case; and
- a regulatory regime which in effect constrains options to provide customers with additional advisory tools that would assist them in making more informed decisions (such as insurance calculators or tailored online applications that recommend a product based on information provided by a consumer) as this could be considered to be personal advice in some circumstances.

Renaming of general advice to something like “general information” or “general recommendations” or “public recommendations” is not likely to solve this consumer dilemma of understanding the nature of information being provided and may be of limited benefit other than in advertising or static content information documents.

A change in name of the service without any change in form or substance to the extent of service or information provided is unlikely to provide any real consumer benefits. Consumers will still think they are being provided with information or recommendations based on their personal situation where they provide personal information to an adviser or sales person regardless of any qualifications or warnings given regarding the limited nature of the advice or recommendation provided.

The greater issue therefore becomes consumer education and accountability to understand their financial requirements and make appropriate choices for their needs, including seeking independent professional advice from a licensed advisor such as an insurance broker before making decisions in relation to their insurance products.

Changes to the regime would need to take into account any potential changes to licensing and disclosure obligations under the Corporations Act that would apply to providers, such as insurance brokers, and strike a balance to ensure that further carve outs to the licensing regime (if applicable) do not create an unfair playing field so that, for example, only those providing personal advice need to be licensed or meet relevant training standards.

The full cost of compliance in amending the term general advice would need to be carefully considered and is likely to run into the millions. This would result in changes to nearly all insurance related documentation including Product Disclosure Statements and Financial Services Guides, website content and advertisements at a significant cost

to industry. We would expect a minimum of at least 2 years would be needed as a transition period in order to facilitate such changes and to allow for existing processes and documentation to be amended accordingly.

It may be appropriate to consider introducing a referral regime for those who do not provide personal advice whereby they are required to provide a consumer with information on where they can get personal advice if they require it before making a decision to acquire a product. For example, by mandatory referral to an insurance broker for advice if the customer requests personal advice.

DRAFT RECOMMENDATION 14.1 DEFERRED SALES MODEL FOR ADD-ON INSURANCE

The Australian Securities and Investments Commission should proceed as soon as possible with its proposal to mandate a deferred sales model for all sales of add on insurance by car dealerships.

Following implementation, the Australian Government should establish a Treasury-led working group to extend the deferred sales model to all add on insurance products in a practical timeframe.

NIBA RESPONSE

NIBA recognise the concerns raised by ASIC in its review into general insurance sold through car dealerships and the need for consumers to be clearly informed before they make a decision to acquire such add on insurance products.

Any such deferred sales requirement should be delayed until such a time as consultation on the proposed introduction of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Exposure Draft Bill* 2018 (Cth) ("Product Design Proposals") has been finalised to avoid any potential overlay or inconsistency in regulatory requirements relating to the sales practices for insurers and their distribution channels.

Given the recommendation for a Treasury led review in relation to any deferred sales model we recommend that any such consultation be merged and considered with both the Product Design Proposals and further recommend that these reviews be delayed pending the findings of, and any recommendations arising from, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry to streamline all resulting areas of recommendation and consultation and to reduce regulatory overload or any potential inconsistencies that may arise as a result of multiple inquires being undertaken.

Any deferred sales model that is proposed in relation to add on insurance products, either through car dealerships or in any other scenario, needs to be carefully balanced to take into account the risk to consumers if they are not able to purchase insurance

protection at point of sale. A mandatory deferred sales model could otherwise result in consumers being left uninsured and bearing a loss which they otherwise could have purchased protection for. For example, if a customer purchases a car which is financed and is not able to be offered gap cover they may be left exposed in the event of an accident. Likewise in relation to consumer credit insurance or other add on insurance products.

We would therefore recommend that any deferred sales model needs to be balanced if it is to be introduced so that:

- it only applies to those who are also involved in the sale of the motor vehicle (or other asset or product the subject of which the add on insurance relates);
- customers can still choose to acquire the insurance products through independent distribution channels or advisors, such as insurance brokers, who are not involved in the sale of the product to which the insurance relates if they wish to do so;
- an opt out mechanism is available so that consumers who wish to acquire a product can if they want to. This could be made available upon request by the consumer to avoid pressure sales tactics to obtain the customer's consent to opt out.

Prior to the introduction of any deferred sales model full consideration and analysis should be undertake to consider alternative options that may achieve similar customer outcomes such as:

- improving sales processes to ensure consumers are eligible for the relevant products (noted this is being considered as part of the Product Design Proposals);
- increasing the mandatory cooling off period on such products to a minimum period of at least 28 days instead of at least 14 days to give customers a longer timeframe in which to decide they do not want the product and obtain a full refund;
- implementing a mandatory reminder notice process to:
    - remind customers of their purchase and their rights to opt out prior to the end of the cooling off period;
    - send an annual reminder notice for products that are not annually renewable and have term which is of more than one year in case a customer's circumstances have changed and they no longer require the product; and
- improving consumer education and accountability in relation to insurance purchases. There remains a common concern that consumers say they do not understand insurance or read their insurance documentation and this underlying community issue needs to be addressed to raise consumer awareness and understanding of the importance of insurance as a means to managing their potential risk exposures.

CONCLUSION

NIBA would be pleased to have the opportunity to discuss these matters in further detail, and to explain our concerns regarding the increasing complexity of legislative and regulatory intervention in relation to general insurance products and services.

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