



SUBMISSION

ON THE

FINANCIAL SYSTEM INQUIRY

FINAL REPORT

NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA

March 2015

## TABLE OF CONTENTS

INTRODUCTION .....	4
EXECUTIVE SUMMARY .....	5
ABOUT NIBA .....	9
ABOUT INSURANCE BROKERS .....	10
The role of insurance brokers .....	10
THE FINANCING OF RISK .....	12
THE FINANCIAL SERVICES INDUSTRY IN AUSTRALIA .....	13
FSI Overview .....	15
THE AUSTRALIAN CONTEXT .....	15
A WELL FUNCTIONING FINANCIAL SYSTEM .....	15
RESILIENCE .....	16
FAIR TREATMENT .....	17
ROLES AND RESPONSIBILITIES OF PARTICIPANTS .....	17
CULTURE OF FINANCIAL FIRMS .....	18
GOVERNMENT PREREQUISITES .....	18
SECTOR SPECIFIC REGULATION IN THE FINANCIAL SYSTEM .....	19
FRAMEWORK FOR POLICY INTERVENTION .....	20
FSI RECOMMENDATIONS .....	21
RECOMMENDATION 14 – COLLABORATION TO ENABLE INNOVATION .....	21
RECOMMENDATION 15 – DIGITAL IDENTITY .....	21
RECOMMENDATION 16 – GRADUATED PAYMENTS REGULATION .....	21
RECOMMENDATION 19 – DATA ACCESS AND USE .....	22
RECOMMENDATION 21 – PRODUCT ISSUER AND DISTRIBUTOR ACCOUNTABILITY .....	22
RECOMMENDATION 22 – PRODUCT INTERVENTION POWER .....	23
RECOMMENDATION 23 – FACILITATE INNOVATIVE DISCLOSURE .....	24
RECOMMENDATION 24 – ALIGN THE INTERESTS OF FINANCIAL FIRMS AND CONSUMERS .....	24

RECOMMENDATION 25 – RAISE THE COMPETENCY OF ADVISERS .....	25
RECOMMENDATION 26 – IMPROVE GUIDANCE AND DISCLOSURE IN GENERAL INSURANCE .....	25
RECOMMENDATION 27 – REGULATOR ACCOUNTABILITY .....	26
RECOMMENDATION 28 – EXECUTION OF MANDATE.....	26
RECOMMENDATION 29 – STRENGTHEN ASIC’S FUNDING AND POWERS .....	26
RECOMMENDATION 30 – strengthen competition in the financial system .....	27
RECOMMENDATION 31 – COMPLIANCE COSTS AND POLICY PROCESSES.....	27
RECOMMENDATION 38 – cyber security .....	28
RECOMMENDATION 39 – technology neutrality .....	28
RECOMMENDATION 40 – general advice .....	28
appendix 2 – tax summary .....	28
CONCLUSION .....	29
FURTHER INFORMATION AND CONTACT DETAILS .....	30

## INTRODUCTION

The National Insurance Brokers Association of Australia (NIBA) welcomes the opportunity to provide this Submission in response to the Final Report of the Financial System Inquiry.

NIBA has a long history of commitment, on behalf of its Members, to the provision of professional, competent and expert advice and support to the clients of insurance brokers.

Following a major review of NIBA goals and priorities in late 2014, the NIBA Board of Directors has reaffirmed one of the three key corporate objectives of NIBA at the present time is:

### **Professionalism**

**Develop and promote high standards of professional practice for Insurance Brokers in Australia for the benefit of their clients and the community. This will be achieved through**

- **Education: industry relevant education and continuing professional development;**
- **Code of Practice: a membership that subscribes to the Insurance Brokers Code of Practice; and**
- **Professional Standards: a framework for high standards of ethical and professional conduct by Members.**

In addition to being the national industry body for insurance brokers in Australia, NIBA operates a Registered Training Organisation, NIBA College, which aims to provide opportunities to achieve and maintain high levels of professional competence in insurance broking from new entrant to management level.

NIBA also maintains and promotes the [Insurance Brokers Code of Practice](#), which features independent Code monitoring and oversight, and a recently established Code Compliance Committee. It is considered by many to be a leading Code in terms of increasing industry and consumer awareness and understanding by reason of its unique use of visual and web based tools.

One of the core commitments by NIBA Members in the Insurance Brokers Code of Practice is the following:

**We will discharge our duties diligently, competently, fairly and with honesty and integrity.**

We are pleased to have the opportunity to respond to the recommendations of the Financial System Inquiry.

## EXECUTIVE SUMMARY

NIBA respectfully makes the following submissions in response to the Final Report of the Financial System Inquiry.

### **The Financial Services Industry in Australia**

The Financial Services Industry includes a number of key sectors – capital markets, wealth management and related services, banking, payment services and last but by no means least, risk insurance.

Each of these sectors is different. The nature of the products and services are different. The goals and objectives of the client/customer/consumer are different. The risks to the client/customer in relation to the purchasing decisions they make are different. The conversation between the product supplier and/or adviser and the customer in each of these sectors is different.

Each sector should be regulated based on its own circumstances, and not on the basis of a “one size fits all” approach which always requires, as experience has shown, unsightly adjustments to take account of what are in reality very different industries. The issues which arose from such an approach under the Financial Services Reforms and regulatory regime of the early 2000’s and the more recent Future of Financial Advice reforms should be avoided.

Of real concern to NIBA is that there appears to be the common use of the catch all term “financial advisers” when discussing reform that in reality, is only needed in the financial planning and investment advice space. The use of the term catches all types of adviser. There should be a clear distinction made between general and life insurance risk insurance brokers and advisers, and financial planners who advise in the investment space.

### **The Role of Insurance Brokers**

The primary role of insurance brokers is to:

- assist customers to understand, assess and manage their risks;
- provide advice on what risk management activities and insurance is appropriate for the customer's personal or business needs;
- assist customers to arrange and acquire insurance where required;
- assist the customer in relation to any claim that may be made by them under their insurance program; and
- review and advise on the client’s ongoing risk needs.

**In doing the above the insurance broker acts for and on behalf of the customer as their representative.** When acting for and on behalf of their client, the insurance broker owes legal, contractual and fiduciary duties to the client, and must act in the client’s best interest at all times.

Submission on the Financial System Inquiry Final Report		
National Insurance Brokers Association of Australia	March 2015	5

## **The Financial Services Industry in Australia**

NIBA believes that any examination of the future operation of the Australian financial system must take account of the differing roles, products and objectives of the various sectors of the industry. We firmly believe care must be taken to determine whether a particular matter being examined pertains to the whole of the financial system, or relates to only a component sector of that system.

In recent discussions of future reform in the regulation of financial services (which arose principally because of failings in the wealth management sector (financial planning and investment advice)), there has been a very broad usage of the term “financial advisers”.

Often, this term has and is being used to describe only financial advisers operating in the area of wealth management (financial planning and investment advice) sector.

NIBA respectfully submits there are major and important differences between products, services and advice in the wealth management sector, and products, services and advice in the risk insurance sector. Unfortunately, from a regulatory perspective, the use of the term “financial adviser” catches both types of adviser.

The regulatory regime should recognise a clear distinction between general and life insurance risk advisers on the one hand, and financial planners and investment advisers who provide a very different form of advice in the investment space.

### **Professionalism and the Culture of Financial Firms**

NIBA has a long standing commitment to professionalism in insurance broking in Australia – extending over the past two decades, and is proud of the steps that have been taken over the years to promote a culture of professionalism to its Members. NIBA’s system of professional designations for individuals based on qualifications, annual professional development requirements and Code compliance has been in place since 1992.

### **Product Issuer and Distributor Accountability**

If this recommendation is to be taken forward, there will need to be very clear analysis and discussion of the form of the obligation, the extent to which it can be both targeted and universal, and the extent to which it can be clearly understood and capable of practical implementation whilst still remaining truly principles based.

NIBA also believes that it is critically important to be cognisant of the fact that the rights and obligations of insurers and policyholders – the very basis of insurance law – is built upon a foundation that does not exist in other areas of financial services i.e. the doctrine of utmost good faith. This doctrine has been a fundamental basis of insurance law for many years, and has been enshrined in the Insurance Contracts Act.

The development of a targeted product design and distribution obligation will have to be undertaken – at least in relation to its application to risk insurance products – with very careful regard as to how a new legal doctrine of this nature would operate alongside the long standing doctrine of utmost good faith.

### **Product Intervention Power**

Insurance brokers mostly act for and on behalf of their clients. If the clients of insurance brokers are sustaining “significant consumer detriment”, there would almost have to be systemic breaches of the broker’s duty to their client. Where this is the case, there are substantial existing remedies available to those clients.

For this reason, NIBA believes care will be needed in the formulation of a new regulatory power of intervention of this nature.

### **Innovative Disclosure**

NIBA believes the removal of regulatory impediments to innovative product disclosure and communication with consumers will be of real benefit in the risk insurance sector.

Insurance brokers have been aware for many years of the inadequacies of the existing Product Disclosure Statement, and NIBA has also expressed concerns to the Federal Government in relation to the more recent development of Key Fact Sheets and the practical issues the final content requirements have given rise to.

### **Align the Interests of Financial Firms and Consumers**

NIBA is strongly committed to the development and promotion of high standards of professional practice for insurance brokers in Australia for the benefit of their clients and the community. NIBA believes this is achieved by industry relevant education and training of insurance brokers, continuing professional development, and membership of a strong, independently monitored and enforced, Code of Practice.

NIBA is committed to exploring mechanisms to further develop and enhance the professionalism of insurance brokers through high standards of ethical and professional conduct.

### **Raise the Competency of Advisers**

NIBA believes those giving financial advice should have the training and qualifications which gives the knowledge, skills and competencies that are relevant to the advice being given. Very few tertiary degrees teach the knowledge, skills and competencies needed to be a professional and skilled insurance broker. Accordingly, simply mandating a university qualification will not, in NIBA’s view, raise the competency of advisers.

### **Improve Guidance and Disclosure in General Insurance**

NIBA is keen to work with representatives of consumer groups, regulators, government and insurers to develop more effective ways of communicating key features and exclusions in insurance policies.

However, NIBA also believes that advice will always be a critical component, and members of the community should always be encouraged to seek advice from a professional and qualified risk insurance adviser if they do not understand the products they are considering.

### **Regulator Accountability and Execution of Mandate**

NIBA welcomes the proposed Financial Regulator Assessment Board.

NIBA has no objections to the FSI recommendations in relation to the provision of more stable funding to financial sector regulators.

### **Strengthen ASIC’s Funding and Powers**

NIBA fully supports the commentary in the FSI Final Report to the effect that costs must be attributed fairly across different firms and industry segments, and the incidence of fees and levies must bear a close relationship to the cost of regulating relevant activity. NIBA believes the implementation of this recommendation must be tailored to different industry sectors.

### **Best Practice Regulation**

NIBA strongly urges the application of procedures for the development of any amended or new regulations as set out by the Office of Best Practice Regulation.

### **Cyber Security**

NIBA fully supports the recommendation to establish a formal framework for cyber security information sharing and the development of responses to cyber threats.

### **General Advice**

NIBA agrees that “general advice” in fact is not advice at all – it is product information. NIBA supports the recommendation to rename “general advice”, but recognises that there will be transitional costs if any such change occurs. Appropriate transition times will also be needed to implement this change.

### **Conclusion**

NIBA urges the Australian Government to carefully consider the potential impact of the FSI recommendations on the risk insurance sector, before applying those reforms to the sector. This is especially important where the recommendations are likely to have an impact on the duties and responsibilities of insurance brokers who are acting for and on behalf of their client.

NIBA respectfully submits that any proposed reforms should only occur after the application and observance of the key principles for best practice regulatory reform.



## ABOUT NIBA

NIBA is the peak industry body for the insurance broking profession in Australia. NIBA represents around 360 member firms, and over 3,000 Qualified Practising Insurance Brokers (QPIBs) throughout Australia. In total, NIBA represents an estimated 90% of all insurance brokers in Australia.

NIBA –

- represents and speaks on behalf of its members to governments, Members of Parliament, regulators, the media and other interested stakeholders;
- promotes the professionalism of insurance broking through industry based training and professional qualifications (NIBA College) and through a strong, independently administered and monitored Code of Practice for members;
- communicates the importance of insurance and the role of insurance brokers to the community;
- provides a number of services to its members, including member communications and an annual industry Convention; and
- liaises with equivalent foreign associations through its membership of the World Federation of Insurance Intermediaries in order to help maintain high standards for its members on an international basis.

The 360 member firms all hold an Australian financial services (AFS) licence, issued by the Australian Securities and Investments Commission (ASIC) under the Corporations Act, which enables them to deal in and/or advise on risk insurance products and other facilities through which people may manage financial risk. Importantly, these businesses hold a licence condition which authorise them to provide risk advice services as insurance brokers, which means they do so on behalf of the insurance buyer rather than represent the insurance product provider.

NIBA Members include large multinational insurance brokers, large Australian-owned insurance brokers, and around 350 small to medium sized insurance broker businesses located in the cities, towns and regions across Australia.

## ABOUT INSURANCE BROKERS

### The role of insurance brokers

The primary role of insurance brokers is to:

- assist customers to understand, assess and manage their risks;
- provide advice on what risk management activities and insurance is appropriate for the customer's personal or business needs;
- assist customers to arrange and acquire insurance where required;
- assist the customer in relation to any claim that may be made by them under their insurance program; and
- review and advise on the client's ongoing risk needs.

**In doing the above the insurance broker acts for and on behalf of the customer as their representative** or agent. Insurance brokers offer many benefits to customers and consumers, including:

- assistance in identifying risk requirements;
- assistance with selecting and arranging appropriate, tailored insurance policies and packages;
- detailed technical expertise including knowledge of prices, terms and conditions, benefits and limitations of the wide range of insurance policies on the market;
- assistance in interpreting, arranging and completing insurance documentation;
- experience in predicting, managing and reducing risks;
- assistance with claims and the resolution of claims; and
- assistance with the ongoing management of their risks.

In limited cases insurance brokers may act as agent of the insurer (not the insured) but where such a relationship exists the customer is clearly advised up front.

For larger corporations, public sector agencies, governments and other sophisticated purchasers of insurance services, insurance brokers play a key role in assisting with identifying and managing risks, and with assisting the organisation to finance risks via self-insurance, national and international insurance and reinsurance programs, or other risk financing mechanisms.

Insurance brokers handle around 90% of the commercial insurance transacted in Australia, and play a major role in risk assessment, risk financing and insurance distribution, handling over \$18.3 billion in premiums in the 12 months to 31 December 2014<sup>1</sup>, and placing around half of Australia's total

---

<sup>1</sup> Source: Australian Prudential Regulation Authority, *Intermediated General Insurance Statistics*, December 2014, issued 4 March 2015, available at [www.apra.gov.au](http://www.apra.gov.au)

insurance business. Insurance brokers place most insurance business with Australian authorised insurers, but also place substantial insurance business into Singapore, London and other overseas markets for large and special risks where the local markets are either unable to provide such insurance or provide it on unsatisfactory terms.

Insurance brokers perform another critical function as part of the insurance process: they provide the distribution mechanism for intermediated insurance companies, and in the course of doing so they constitute and operate the “market” for intermediated insurance in Australia. This occurs because insurance brokers can and do access the range of available insurance products and services provided by intermediated insurance companies, on behalf of their clients.

This dual role played by insurance brokers – advising and assisting the client on risk and insurance issues; providing a distribution mechanism for intermediated insurance companies – may give the appearance of potential conflict, but in fact this model has operated successfully in Australia and internationally for over 200 years<sup>2</sup>. **The key reason for this is the fact that when acting for and on behalf of their client, the insurance broker owes legal, contractual and fiduciary duties to the client, and must act in the client’s best interests at all times.**

As noted above, all insurance brokers in Australia must hold an Australian financial services (AFS) licence, issued by ASIC under the Corporations Act, which enables them to deal in and/or advise on risk insurance products, and provide insurance broking services. Brokers are trained for this unique role through broker specific training that extends from entry to the industry (Certificate III in Insurance Broking) through to the tertiary level for specialists (Graduate Diploma of Insurance Broking).

---

<sup>2</sup> Benjamin, R, 1988, A History of Insurance Broking in Australia, Craftsman Publishing, Melbourne.

## THE FINANCING OF RISK

Very little growth and prosperity occurs unless the owners and financiers of that activity are able to obtain insurance, or insurance like products and services, on competitive terms. The insurance industry in Australia helps provide the security that allows individuals, small businesses, large and multinational corporations and governments to undertake their normal day to day activities.

Risk is faced by individuals in relation to the property they own, the liabilities they incur to others, and their financial security in being able to earn income, support their family, fund their lifestyle and fund their retirement.

Businesses face risk in their daily operations, whether it be the risk of property loss, business interruption, product liability, public liability, employer liability, directors' and officers' liability, and so on. New and challenging risks are emerging at the present time, associated with developments in climate change, the digital economy and global trade.

Communities face risk through their exposure to natural disasters and catastrophes. These events often expose levels of uninsured risk in the community, with the potential for community disruption and permanent losses. Natural disasters and catastrophes also cause major damage to community infrastructure – losses that the community has to bear often via the taxation systems.

The growth and prosperity of Australia is therefore dependent on mechanisms by which risk is financed – whether by the transfer of risk via the insurance process, or other more sophisticated risk financing mechanisms adopted by larger corporations and governments.

Risk is financed in three ways:

- self insurance, whereby the individual, corporation or government (taxpayers) finance their own risks, thereby putting their own assets and income streams in jeopardy;
- risk transfer, whereby risks are transferred to an insurance pool, and the insurance pool and the insurer's capital carry and finance the risk; and
- community funding of risk and loss, which often occurs in Australia at the present time in respect of uninsured losses following natural disasters and other major events which affect numbers of people at the same time.

A modern society with a mature economy such as Australia should be entitled to assume that risks are being properly managed and mitigated, and that the financing of risk is operating in an optimum manner, for the benefit of all.

Insurance brokers are involved and are experts in all of the above areas of risk financing.

## THE FINANCIAL SERVICES INDUSTRY IN AUSTRALIA

The Financial Services industry in Australia provides a very wide range of products and services to the Australian community. The financial system includes the following key sectors:

- Capital Markets;
- Wealth Management and related financial services, including retirement savings and superannuation;
- Banking – savings and loans;
- Payment Services;
- Risk Insurance – general insurance, life insurance and reinsurance.

NIBA strongly believes that these areas of the financial system perform very different functions, have very different products and services, and have very different goals and objectives. In addition, there is little cross over – in terms of consumer interaction - between risk and insurance products and advice, and other areas of financial products and advice.

For this reason, NIBA believes that any examination of the future operation of the Australian financial system must take account of the differing roles, products and objectives of the various sectors of the industry. We firmly believe care must be taken to determine whether a particular matter being examined pertains to the whole of the financial system, or relates to only a component sector of that system.

Following the Wallis Report, the regulation of the financial system has been largely divided between:

- Prudential regulation, by the Australian Prudential Regulation Authority; and
- Market regulation, by the Australian Securities and Investments Commission.

The regulation of market conduct occurs via the Australian Financial Services Licence. In the insurance context, the services authorised under a licence will usually be:

- No advice type services - dealing or arranging services (usually a service performed by the product issuer or their agents); and/or
- “advice” type services, broken down conceptually into:
  - General advice - in effect nothing more than a general sales type recommendation which does not take into account the individual objectives, needs or financial

circumstances of the customer when made (a service performed by many issuers and their agents as well as insurance brokers); and

- Personal advice – where the “adviser” in making the recommendation will take into account the individual objectives, needs or financial circumstances of the customer (as service typically performed by insurance brokers when acting on behalf of the customer)

Unfortunately, the regulation of financial advice has fallen under the single umbrella of Chapter 7 of the Corporations Act, which attempted to apply a “one size fits all” approach to the regulation of financial services and advice. NIBA believes this approach has not been and is not appropriate for the area of risk insurance. The nature of the products, services and advice, and the goals and objectives of risk insurance products, are very different to products, services, goals and objectives in other sectors of the financial services system.

Following the implementation of the “Financial Services Reform Act”, significant tailoring to the legislation was required after the fact, once Government acknowledged the reality of these differences. The same issues arose in the implementation of the recent Future of Financial Advice reforms.

Of real concern to NIBA is that in recent discussions of future reform (which arose principally because of failings in the wealth management sector (financial planning and investment advice)), there has been a very broad usage of the term “financial advisers”.

Often, this term has and is being used to describe only financial advisers operating in the area of wealth management (financial planning and investment advice) sector.

NIBA respectfully submits there are major and important differences between products, services and advice in the wealth management sector, and products, services and advice in the risk insurance sector. Unfortunately, from a regulatory perspective, the use of the term “financial adviser” catches both types of adviser.

The regulatory regime should recognise a clear distinction between general and life insurance risk advisers on the one hand, and financial planners and investment advisers who provide a very different form of advice in the investment space.

NIBA therefore offers the comments and observations in this submission from this perspective.

NIBA recently provided a Submission to the Federal Government in response to the Parliamentary Joint Committee Report following the Committee’s Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry. The NIBA submission on the PJC Report also set out the key differences between the various sectors of the financial services system in Australia.

## FSI OVERVIEW

This section of the submission provides comments on a number of areas covered in the Overview chapter of the FSI Final Report.

## THE AUSTRALIAN CONTEXT

There is no doubt that Australia is an open market-based economy. This is certainly the case for most areas of risk insurance.

For domestic insurance, Australia has two major players dominating the market, operating under a number of brands. However, there have been a number of new entrants in recent years, utilising new forms of marketing and distribution, and providing increased competitive pressure to the incumbents.

For commercial insurance, there is a high level of interest in the Australian market from both local and overseas insurers. As such, insurance brokers have a range of markets to consider when developing insurance programs for their clients.

There is one area of risk insurance that does not have the benefit of market-based competition, being workers compensation. In this area, insurance coverage is provided via State government agencies in four of the 8 jurisdictions: Queensland, New South Wales, Victoria and South Australia.

## A WELL FUNCTIONING FINANCIAL SYSTEM

The FSI Final Report notes that the financial system plays a vital role in supporting sustainable economic growth and meeting the financial needs of Australians by facilitating funding, liquidity and price discovery, while also providing effective risk management, payment and some monitoring services.<sup>3</sup>

---

<sup>3</sup> FSI Final Report, page 3.

As noted in the preliminary comments in this submission, it is also critical that the financial system continues to efficiently finance the risks faced by Australians, as well as providing the funding for growth and prosperity.

Most areas of risk are successfully managed and financed via insurance and related processes. There have been challenges in recent years in relation to the cost of damage arising from weather and related events, especially in Northern Australia, and this is currently being addressed by the Federal Government. Australia has ongoing challenges in relation to the funding of terror related risks, and the Australian Reinsurance Pool Corporation continues to play an important role in this regard.

What is obvious in such circumstances is that the Government must play a role. For example risk mitigation by Government not only reduces the risk to consumers in relation to natural disasters such as flood but also makes it easier for the insurance industry to assist in the transfer of such risk where reasonably possible.

NIBA wholeheartedly agrees with the FSI Final Report conclusion that the financial system is most effective when it operates in an efficient and resilient manner and treats participants fairly.

In particular, insurance brokers are very aware of the importance of their roles and responsibilities to and in relation to the needs of their clients. For many years NIBA and its members have been striving to ensure insurance brokers are regarded as trusted advisers by their clients and the community. Our recently updated Code of Practice further demonstrates the transparency within which our Members work with their clients.

## RESILIENCE

In the past 7 years Australia has experienced the effects of the Global Financial Crisis, and a number of very major weather related events, causing major losses across many parts of the country.

The general insurance industry has been able to cope with such experiences, with substantial support from the world reinsurance industry.

NIBA is very comfortable with the prudential regulation of general insurance in Australia at the present time. The nature and extent of prudential regulation has required insurance companies to very carefully assess and manage the risks they underwrite, and to ensure they are able to meet their contractual obligations if and when they fall due.



## FAIR TREATMENT

NIBA is committed to building and maintaining professional competence and consumer confidence in insurance broking in Australia. Service standard 5 in the Insurance Brokers Code of Practice states:

**We will discharge our duties diligently, competently, fairly and with honesty and integrity.**

Insurance brokers are committed to the fair treatment of their clients, and to acting in their best interests whenever they are acting for and on behalf of the client.

## ROLES AND RESPONSIBILITIES OF PARTICIPANTS

NIBA recognises the importance of consumers being in an informed position to make financial decisions that meet their financial needs, and to be responsible for the outcomes of those decisions when they have been treated fairly.

It has been the experience of NIBA Members over many years that many consumers often have limited and, in some cases, little knowledge or understanding of the concepts of risk, and their exposure to potential loss in their personal, professional or business activities.

There is also limited understanding of insurance and of insurance products in the community. The widespread confusion in the community regarding the availability of insurance coverage for flood damage in 2010 and 2011 is an example of this.

NIBA strongly supports the work of ASIC in the area of financial literacy, and in particular the Money Smart web site. Financial literacy must continue to be a foundation on which financial decisions are made.

However, financial literacy initiatives are not sufficient. And recent experiences have shown that product disclosure obligations in insurance are also not sufficient to support sound decision making by consumers.

Financial literacy and product disclosure must be supplemented by the availability of competent, quality, professional advice at a cost that is likely to be acceptable to consumers. This is the role of insurance brokers in relation to the management and financing of risk.

## CULTURE OF FINANCIAL FIRMS

The FSI Final Report notes concern regarding the breakdown in financial firms' behaviour in failing to balance risk and reward appropriately and in treating their customers unfairly.

As noted earlier in this submission, when acting for and on behalf of the client insurance brokers have legal, professional and fiduciary duties to act in the best interests of their clients. This duty is reaffirmed in the Insurance Brokers Code of Practice, and has been further entrenched by the Future of Financial Advice reforms.

NIBA maintains regular contact with ASIC, the Financial Ombudsman Service and a range of government departments and agencies. There are no areas of systemic issues or concerns being raised regarding the conduct of insurance brokers or the culture of insurance broking firms.

We note that from time to time ASIC takes regulatory action against insurance brokers who have failed to maintain appropriate professional standards and who have broken the law or the conditions of their Australian financial services licence. This is appropriate.

NIBA has a long standing commitment to professionalism in insurance broking in Australia – extending over the past two decades, and is proud of the steps that have been taken over the years to promote a culture of professionalism to its Members. NIBA's system of professional designations for individuals based on qualifications, annual professional development requirements and Code compliance has been in place since 1992.

## GOVERNMENT PREREQUISITES

NIBA fully agrees with the FSI statement that “competitive markets need to operate within a strong and effective legal and policy framework provided by government, including the predictable rule of law”.

NIBA notes that there have been a number of respected legal commentators making comments in recent times regarding the difficulties now being encountered with the interpretation and application of the financial services legal and licensing framework. Many of the debates surrounding the Future of Financial Advice reform packages related to the interpretation and operation of the reform proposals in practice.

NIBA respectfully submits that any further reform of laws relating to the operation of financial markets in Australia, including the markets for general and life insurance, be undertaken in a manner that is clearly understood by firms operating in those markets, their legal advisers, the regulators and ultimately, the courts who will have to interpret and apply those laws.

## SECTOR SPECIFIC REGULATION IN THE FINANCIAL SYSTEM

The FSI Final Report states the important need for sector specific regulation in addition to broad, generic legal rules and obligations applicable to all areas of commerce. NIBA supports this position.

However, NIBA strongly submits that within the financial system, there are a number of different sectors where the products and services have different objectives, the nature of any advice would take account of differing factors and considerations, and the products and services are themselves very different.

The history of financial services reform in Australia has been characterised by the implementation of broad regulatory obligations followed by extensive carve outs and exemptions, because it is found that “one size fits all” laws and regulations are not effective in the wide range of products and services offered by financial services providers.

In the area of risk insurance, the Australian Law Reform Commission conducted a major review of insurance law in Australia in the early 1980’s, resulting in major reforms including the Insurance Contracts Act and the Insurance (Agents and Brokers) Act. This legislation was specifically designed for the risk insurance sector, having regard to the issues and considerations identified by the Law Reform Commission inquiry. It is unfortunate that legislation specifically designed for intermediaries operating in the risk insurance sector (the “Insurance Agents and Brokers Act”) was repealed as part of the broader financial services reform program, even though there was no evidence of any particular issues or concerns with the earlier legislation. Many would argue that the earlier legislation was achieving its intended goals effectively.

NIBA strongly submits that any legislation intended to apply to specific issues and concerns should be limited to the sectors where those concerns reside, and should not operate across the financial system unless there are clear and cogent reasons for doing so.

## FRAMEWORK FOR POLICY INTERVENTION

For the reasons stated in the previous section, NIBA strongly supports the FSI Final Report statements that intervention in the financial system should only occur where its benefits to the economy as a whole outweigh its costs.

In addition, NIBA submits that the intervention should have a clearly stated objective, the intervention should have a high likelihood of achieving that objective, and there should be post implementation reviews to determine whether the intervention is actually achieving the stated objectives and that there are net benefits accruing to the economy.

## FSI RECOMMENDATIONS

In the following sections NIBA provides comments and observations on a number of the recommendations in the FSI Final Report, particularly as they relate to risk insurance products, services and advice.

### RECOMMENDATION 14 – COLLABORATION TO ENABLE INNOVATION

NIBA welcomes the recommendation to establish a permanent public-private collaborative committee to facilitate financial system innovation, including the timely and coordinated policy and regulatory responses.

NIBA believes this initiative could benefit the risk insurance industry, and would be pleased to participate and support the process where appropriate.

### RECOMMENDATION 15 – DIGITAL IDENTITY

NIBA believes this recommendation has the potential to provide real benefit for the insurance industry as it would minimise costs and regulatory burden for the industry, facilitate innovation, reduce e-frictions in the digital economy, help prevent crime, improve security and enhance privacy.

### RECOMMENDATION 16 – GRADUATED PAYMENTS REGULATION

Whilst this is not of direct relevance to the risk insurance sector, NIBA supports measures that provide increased certainty and accommodate innovation. The recommendation may also provide the insurance sector with the opportunity to lower compliance costs, enhance competitive neutrality and allow for participation from non-traditional financial institutions.

## RECOMMENDATION 19 – DATA ACCESS AND USE

NIBA welcomes this recommendation, as it has the potential to broaden access to de-identified or aggregated public sector, private sector and personal information data and be of benefit to the insurance industry and its customers.

There has been a major focus on community data on flood exposures in recent years. Access to sound data has led to a better understanding of the risk of flooding, and the measures that might be undertaken to manage and mitigate those risks.

## RECOMMENDATION 21 – PRODUCT ISSUER AND DISTRIBUTOR ACCOUNTABILITY

The objectives of this recommendation include the desire to reduce the number of consumers buying products that do not match their needs, and to promote fair treatment of consumers by firms that design and distribute financial products.

As noted in the preliminary comments of this submission, in most cases insurance brokers act for and on behalf of the client. They have legal and fiduciary duties to act in the best interests of the client when providing personal advice, including an obligation to ensure that any product purchased on behalf of the client would meet their needs and is appropriate for their particular circumstances.

NIBA therefore believes that if implemented, great care will be required to determine how a recommendation of this nature would operate in respect of insurance brokers acting on behalf of their clients. There is a potential for a new legislative regime to confuse and ultimately conflict the rights and obligations that already exist in the broker – client relationship.

NIBA has a lesser concern in relation to the recommendation if applied to insurance brokers acting on behalf of an insurer. However, in those cases, the recommendation could well add considerable cost and complexity to the development of new insurance products.

The Final Report considered a number of options and concluded by recommending a “targeted product design and distribution obligation”. At the same time, the Report states that the obligation should be principles based and less prescriptive, but also universal in its nature.

There has been a long history of principles based financial services reform developing into detailed and prescriptive outcomes, many of which are not relevant or appropriate to all sectors of the financial services system. When this occurs, additional costs are incurred by industry, government and eventually the consumer.

It is clear that if this recommendation is to be taken forward, there will need to be very clear analysis and discussion of the form of the obligation, the extent to which it can be both targeted and universal, the extent to which it can be clearly understood and capable of practical implementation whilst still remaining truly principles based.

Finally, NIBA believes that it is critically important to be cognisant of the fact that the rights and obligations of insurers and policyholders – the very basis of insurance law – is built upon a foundation that does not exist in other areas of financial services i.e. the doctrine of utmost good faith. This doctrine has been a fundamental basis of insurance law for many years, and has been enshrined in the Insurance Contracts Act.

The development of a targeted product design and distribution obligation will have to be undertaken – at least in relation to its application to risk insurance products – with very careful regard as to how a new legal doctrine of this nature would operate alongside the long standing doctrine of utmost good faith.

NIBA is keen to participate in ongoing discussions with the Government in relation to the potential implementation of this recommendation in the context of insurance intermediaries.

## RECOMMENDATION 22 – PRODUCT INTERVENTION POWER

As noted previously, insurance brokers mostly act for and on behalf of their clients. If the clients of insurance brokers are sustaining “significant consumer detriment”, there would almost have to be systemic breaches of the broker’s duty to their client. Where this is the case, there are substantial existing remedies available to those clients.

For this reason, NIBA believes care will be needed in the formulation of a new regulatory power of intervention of this nature.

From the discussion in the FSI Final Report, the emphasis appears to be on product issuers and their distribution agents causing significant consumer detriment, and where this occurs, it is difficult to argue against the regulator having sufficient power to intervene on behalf of consumers.

NIBA notes that the FSI believes the regulator should be accountable for the use of any power of this nature, and that it should be subject to post implementation review. NIBA would support an appropriate accountability requirement in relation to a greater regulatory power of intervention.

## RECOMMENDATION 23 – FACILITATE INNOVATIVE DISCLOSURE

NIBA believes the removal of regulatory impediments to innovative product disclosure and communication with consumers will be of real benefit in the risk insurance sector.

Insurance brokers have been aware for many years of the inadequacies of the existing Product Disclosure Statement, and NIBA has also expressed concerns to the Federal Government in relation to the more recent development of Key Fact Sheets and the practical issues the final content requirements have given rise to.

It would appear many consumers believe all personal lines insurance policies offer the same or similar cover, but insurance brokers are fully aware that this is not the case. Better communication of the terms and conditions of cover, and the exclusions from cover, is warranted.

NIBA notes that the discussion relating to this recommendation in the Final Report appears to relate primarily to investment type products. NIBA would wish to be included in discussions regarding the potential application of a proposal of this nature to the risk insurance sector, and particularly in relation to its application to insurance brokers acting on behalf of the client.

## RECOMMENDATION 24 – ALIGN THE INTERESTS OF FINANCIAL FIRMS AND CONSUMERS

NIBA is strongly committed to the development and promotion of high standards of professional practice for insurance brokers in Australia for the benefit of their clients and the community. NIBA believes this is achieved by industry relevant education and training of insurance brokers, continuing professional development, and membership of a strong, independently monitored and enforced, Code of Practice.

NIBA is committed to exploring mechanisms to further develop and enhance the professionalism of insurance brokers through high standards of ethical and professional conduct.

NIBA's goal is consistent with that of the FSI: to build confidence and trust in insurance broking.

NIBA notes the comments in the Final Report regarding the ASIC report on life insurance. While commissions in relation to life insurance are widely accepted as being a major issue, NIBA has also suggested the importance of determining what were the circumstances that allowed poor advice to be given in relation to life insurance products.

For example, there is a clear statutory duty on licensees to ensure that people giving advice are appropriately trained and qualified for the advice they are giving. This is the current legal obligation in the Corporations Act.



If there is a concern that advisers are giving advice without adequate training, the question is why is this occurring when the legislation specifically states otherwise? In other words, there may not be a need for new legislation, but there may well be a need for the current legislation to be applied, monitored and enforced in a more effective manner. In addition, regulatory guidance should be in line with industry identified standards of competence and training, rather than artificial minimum standards for advisers in all sectors of the system.

#### RECOMMENDATION 25 – RAISE THE COMPETENCY OF ADVISERS

As noted above, NIBA is committed to high standards of professional practice for insurance brokers in Australia, and firmly believes this includes industry relevant education, training, and continuing professional development.

NIBA has been offering fully accredited industry education and training for many years, under the Australian vocational training frameworks. NIBA has also been requiring insurance brokers to undertake continuing professional development for many years.

NIBA believes those giving financial advice should have the training and qualifications which gives the knowledge, skills and competencies that are relevant to the advice being given. Very few tertiary degrees teach the knowledge, skills and competencies needed to be a professional and skilled insurance broker. Accordingly, simply mandating a university qualification will not, in NIBA's view, raise the competency of advisers.

NIBA has provided further detailed commentary on this issue in the submission to the Federal Government in response to the PJC Report of Professionalism, Education and Ethics in Financial Advice.

NIBA notes the work currently being undertaken by ASIC to establish a register of advisers.

#### RECOMMENDATION 26 – IMPROVE GUIDANCE AND DISCLOSURE IN GENERAL INSURANCE

NIBA has no objections to initiatives and recommendations which provide more effective information to consumers of risk insurance products. However, recent experience in the development of Key Fact Sheets shows that the "solution" may continue to perpetuate a level of confusion and uncertainty in the community.

NIBA notes the commentary in the Final Report which recognises recent work in the insurance industry to reduce complexity and facilitate consumer understanding of key features and exclusions.

NIBA is keen to work with representatives of consumer groups, regulators, government and insurers to develop more effective ways of communicating key features and exclusions in insurance policies.

However, NIBA also believes that advice will always be a critical component, and members of the community should always be encouraged to seek advice from a professional and qualified risk insurance adviser if they do not understand the products they are considering.

#### RECOMMENDATION 27 – REGULATOR ACCOUNTABILITY

In view of the FSI recommendations for greater regulator powers of intervention and enforcement, NIBA welcomes the proposed Financial Regulator Assessment Board.

NIBA accepts that an effective regulator operates in both an informal and a formal manner, and mostly in secret. It is therefore very difficult for an external party to gauge the operational effectiveness of regulators, or to determine the extent to which the regulator is achieving its mandate. The proposed Financial Regulator Assessment Board would be an appropriate body to oversee this work.

#### RECOMMENDATION 28 – EXECUTION OF MANDATE

NIBA has no objections to the FSI recommendations in relation to the provision of more stable funding to financial sector regulators.

#### RECOMMENDATION 29 – STRENGTHEN ASIC’S FUNDING AND POWERS

NIBA acknowledges the need for ASIC to have appropriate funding to implement its mandate.

NIBA fully supports the commentary in the FSI Final Report to the effect that costs must be attributed fairly across different firms and industry segments, and the incidence of fees and levies must bear a close relationship to the cost of regulating relevant activity. NIBA believes the implementation of this recommendation must be tailored to different industry sectors.

## RECOMMENDATION 30 – STRENGTHEN COMPETITION IN THE FINANCIAL SYSTEM

NIBA believes it is critical that the financial system has the capacity to innovate and develop in response to changes in the economy and the community, and in the operation of the Australian and international financial markets.

It is therefore valid that regulators be required to take account of the impact of their activities on the nature and extent of competition in the financial system.

## RECOMMENDATION 31 – COMPLIANCE COSTS AND POLICY PROCESSES

NIBA welcomes the recommendation to reduce costs, complexity and unanticipated negative implications associated with implementing regulatory change. NIBA strongly advocates the adoption of best practice policy development for financial services regulation, including –

- A clear statement of the issue or concern;
- Clearly identified options for addressing the issue or concern;
- A statement of outcomes that are to be achieved by any new reform or regulatory proposal;
- A thorough cost benefit analysis of each of the options for reform; and
- Proceeding with reform only if the objectives are highly likely to be achieved, and the benefits outweigh the costs associated with the reform.

Many commentators are now indicating that the statutory and regulatory provisions for financial services regulation are too complex, and difficult to interpret and apply. This makes it very difficult for firms to know whether they are in fact complying with the law, for the regulator to enforce the law, and for courts to determine and apply the law.

NIBA fully supports any initiatives to reduce complexity and compliance costs. After all, complexity creates cost, and costs are ultimately borne by the consumer.

## RECOMMENDATION 38 – CYBER SECURITY

The insurance industry is developing and offering products which cover costs associated with cyber attacks and related losses. At the same time, the industry has concerns about the full nature and extent of the risks that may be developing in this area, and the size of the potential losses that may occur.

NIBA fully supports the recommendation to establish a formal framework for cyber security information sharing and the development of responses to cyber threats.

## RECOMMENDATION 39 – TECHNOLOGY NEUTRALITY

NIBA supports the recommendation to identify, in consultation with the financial sector, priority areas of regulation to be made technology neutral.

## RECOMMENDATION 40 – GENERAL ADVICE

NIBA agrees that “general advice” in fact is not advice at all – it is product information. NIBA supports the recommendation to rename “general advice”, but recognises that there will be transitional costs if any such change occurs. Appropriate transition times will also needed to implement this change.

Another aspect of regulatory guidance to industry are the definitions of who can provide general advice to clients and in what circumstances. This includes the differing roles customer service officer, assistant adviser, and para-planners.

## APPENDIX 2 – TAX SUMMARY

NIBA fully supports the reform of insurance taxes, but acknowledges the need for States and Territories to obtain alternative revenue sources, given the volume of revenue currently generated by duties and levies on insurance policies.

## CONCLUSION

As stated in the NIBA Submissions to the Financial System Inquiry, the OECD, the Council of Australian Governments, the Productivity Commission and many others have identified, confirmed and agreed on the core principles that must be applied whenever consideration is being given to regulatory intervention in markets and the economy. They include:

- a clear statement of what actually is the issue being addressed
- is there a sound legal and empirical basis for this issue?
- have all potential options for dealing with the issue been identified and assessed, including the option of no further action?
- a clear statement of the proposed regulatory intervention, including the governing principles that will be used to guide the development of the regulatory intervention
- a sound legal and empirical basis for the proposed intervention, including a clear assessment of the nature and value of benefits to be derived, and the nature and level of costs (including compliance costs) that will be incurred as a result of the intervention
- a careful analysis and assessment that the proposed intervention will produce benefits that justify the costs, considering the distribution of effects across society, and taking into account economic, environmental and social impacts of the intervention
- assurance that the proposed intervention will minimise costs and market distortions
- strategies to ensure the regulation will promote innovation through market incentives and promote global approaches to strong and effective community outcomes
- be clear, simple and capable of practical adoption
- be consistent with other regulations and policies
- be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

The history of financial services regulation in Australia does not show strong and consistent observance of these key principles. A stated preference for principles based regulation has been followed by hundreds of pages of statutes, regulations, regulatory guides and other instruments. The “one size fits all” approach has resulted in regulations designed for one sector being applied inappropriately in other areas, where there were no issues or concerns in the first place.

NIBA urges the Australian Government to carefully consider the potential impact of the FSI recommendations on the risk insurance sector, before applying those reforms to the sector. This is especially important where the recommendations are likely to have an impact on the duties and responsibilities of insurance brokers who are acting for and on behalf of their client.

NIBA respectfully submits that any proposed reforms should only occur after the application and observance of the key principles for regulatory reform set out above.

## **FURTHER INFORMATION AND CONTACT DETAILS**

For further information or clarification of any matter in this Submission, please do not hesitate to contact:

Dallas Booth

Chief Executive Officer

National Insurance Brokers Association of Australia

Telephone: (02) 9964 9400

Email: [dbooth@niba.com.au](mailto:dbooth@niba.com.au)