

Submission to the ASIC Capability Review Panel

25 September 2015

The National Insurance Brokers Association of Australia (NIBA) appreciates the opportunity to make a brief submission to the ASIC Capability Review Panel.

We would also like to express our appreciation for the opportunity to meet with the Review Panel on 18 September 2015, where most of the matters discussed below were mentioned.

We have grouped our comments under four main headings.

POLICY AND GOVERNMENT

While ASIC operates as an independent regulatory agency, it does become involved in providing advice and information to Government when new proposals are being considered. It is not clear to NIBA whether this role is effective, as there is little visibility to external parties in this area.

We are therefore unable to determine whether ASIC advice is/was of high quality, and we are unable to observe whether ASIC advice was accepted and adopted, or not.

We are conscious that some areas of reform in recent times were highly political, and in many cases it was difficult to have rational discussions about proposed reforms. Where this has happened, we do not wish to express concerns or reservations in relation to any role ASIC may have played. The recent "FOFA" reforms and the development of Key Facts Sheets for general insurance policies are two examples here.

At our consultation meeting we mentioned the inability of NIBA to achieve resolution of longstanding concerns regarding the regulatory approach for Group Purchasing Bodies. NIBA has provided detailed background papers to ASIC and to Federal Treasury on this issue, but the concern remains unresolved.

We acknowledge and commend the work ASIC has been undertaking in relation to red tape reduction and in relation to recognizing the impact of the digital economy.

MONITORING AND ENFORCEMENT

NIBA has little visibility of the processes and procedures undertaken by ASIC in relation to monitoring and enforcement of the law. It is not clear to us how matters are identified for further investigation, and how issues and concerns are ranked in terms of priority.

Members have expressed concern to NIBA from time to time along the lines that where serious concerns are reported to ASIC, there is often little or no response, and no obvious action taken in relation to the concern.

NIBA recommends the Capability Review Panel examine ASIC processes and procedures for allocating resources in the enforcement area, and for determining which matters receive attention for investigation or enforcement action.

For example, are there internal performance indicators which might influence decisions regarding prosecutions or other activity, when alternative regulatory responses may have been more effective and produced a better result?

NIBA also recommends the Review Panel consider the need for key risk indicators in order to promote a consistent approach to investigation and enforcement activity, in each market segment, according to the identified risks and with a view to reducing and removing those risks as efficiently as possible.

There have been very few examples in the past 4 years where ASIC has expressed a concern to NIBA in relation to potentially undesirable activity, and has sought NIBA's support to convey concerns to our Members. NIBA is committed to high professional standards for insurance brokers in Australia, and is willing to work with ASIC to promote high standards of professional conduct to brokers at all times.

NIBA believes that in many cases where there are increasing concerns from a regulatory perspective, a light touch response with the support of the industry association might provide a very cost effective outcome in dealing with those concerns in a very timely manner.

During discussions with the Review Panel, questions were asked in relation to NIBA's awareness of international best regulatory practice.

We note the commentary in section SUP 1A.4 Tools of Supervision of the UK Financial Conduct Authority handbook. In this area, the handbook identifies key supervisory tools grouped as diagnostic, monitoring, preventative and remedial. NIBA is not sure a document as comprehensive as the FCA handbook is required in Australia, as the ASIC web site already contains extensive information in relation to its financial services regulatory obligations and approach. We have regular discussions with insurance broker associations in the Asia Pacific region, Europe, United Kingdom and North America, and we are not aware of what might be regarded as best practice regulatory activity.

EDUCATION AND GUIDANCE

ASIC aims to provide education and guidance to financial services licensees in the form of Regulatory Guides and related documents.

In June 2013 ASIC published Consultation Paper 212 "Licensing: Training of financial product advisers – Update to RG 146". In September 2013 NIBA provided a detailed response to that Consultation Paper, and outlined a number of areas where RG 146 was found to be seriously inadequate in relation to the education and training of people giving financial advice on risk and insurance products. The NIBA submission provided detailed recommendations regarding how these issues and concerns could and should be addressed.

To date, NIBA is not aware of any further developments in relation to the Consultation Paper. The issue of education and training of financial advisers then became a serious issue of concern to the Parliamentary Joint Committee on Corporations and Securities, leading to the publication of the PJC Report on professionalism, education and ethics in financial services in late 2014.

NIBA owns and operates NIBA College, a registered training college. NIBA has long had concerns regarding education levels specified by ASIC for those giving risk and insurance advice. NIBA made strong recommendations to the Federal Government earlier this year in order to enhance the quality of education and training of insurance brokers in Australia.

In the meantime, we have concerns that there appears to be little or no monitoring or enforcement of the current education requirements.

At a more general level, the totality of requirements set out in the Corporations Act and Regulations, ASIC Regulatory Guides and other regulatory instruments has become a very substantial burden for AFS licensees in Australia.

Every licensee invests considerable time, effort and expense in compliance monitoring and auditing, in order to ensure they are not breaching the law or ASIC expectations. This is adding very real cost to the overhead expenses of providing financial advice in Australia.

One result of this regulatory compliance burden is the clear trend for insurance brokers to operate as Authorised Representatives of an AFS licensee. The recent Consultation Paper on industry funding of ASIC is highly likely to provide further incentives in this regard.

The regulatory and compliance burden is not, apparently, achieving broader policy objectives of high quality financial advice for consumers and investors in Australia. NIBA has recently attended industry roundtable meetings where ASIC representatives have indicated they have no shortage of issues, concerns and complaints to investigate. Concerns have been expressed to the Parliamentary Joint Committee and to other forums regarding the extent to which poor financial advice has resulted in very substantial losses by many Australians.

To date, neither ASIC nor FOS have expressed concern regarding serious or systemic problems with advice provided by insurance brokers in Australia.

However, issues and concerns with financial advice provided in other sectors of the financial services industry would tend to raise the question as to whether the overall regulatory framework, and the application, adoption and enforcement of that framework, is effective. It is not clear to NIBA whether the major issues and concerns expressed in the past 2 years are a result of a poorly structured legal framework, or poor application and enforcement of an otherwise well designed legislative structure. We hope the Review Panel is able to assess this issue.

CONSULTATION

NIBA aims to meet with the Deputy Chairman of ASIC, and his key executives, at least twice each year, and from time to time as needs permit. NIBA normally initiates this contact.

In the early days of Financial Services Reform, NIBA had regular contact with ASIC executives and managers in order to ensure there was a sound understanding of the intermediated insurance market within the regulator. There has been little contact of that nature in recent years.

NIBA remains ready and willing to consult regularly with ASIC representatives in order to ensure ASIC has a sound understanding of market developments and trends in insurance, and intermediated insurance in particular.

Conclusion

NIBA remains ready and willing to continue to assist the Review Panel as it completes its deliberations on these important matters.

Please do not hesitate to contact us if you require further information in relation to any of these matters.

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