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NIBA Submission: Treasury Laws Amendment (2024 Measures No. 1) Bill 2024: Quality of Advice Tranche 1

The National Insurance Brokers Association (NIBA) welcomes the opportunity to provide feedback on the Treasury Laws Amendment (2024 Measures No. 1) Bill 2024: Quality of Advice Tranche 1.

While NIBA continues to support the government's response to the Quality of Advice Review Final Report, our review of the draft legislation and explanatory materials has identified several concerns that could potentially leave consumers at risk of being uninsured. NIBA's concerns are set out below.

About NIBA

NIBA is the peak representative body for the intermediated general insurance industry. NIBA represents approximately 450 member firms and 9,000 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 the role they play in supporting and advising their clients on risk and insurance matters. NIBA provides this knowledge and expertise to governments and government agencies to promote understanding of the operation of general insurance markets.

Insurance brokers represent the interests of the purchasers of insurance policyholders 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.

Feedback on Draft Legislation

Part 3: Financial Services Guide
NIBA does not support restricting the changes to the requirement to provide a Financial Services Guide to personal advice. NIBA notes that while the original recommendation limited the change to personal advice, this was based on an earlier recommendation that would significantly expand the types of advice caught by the personal advice definition. As the government has yet to announce their view on this and a number of other significant recommendations, NIBA does not believe that limiting the change to personal advice, as

currently defined in the Corporations Act, is consistent with the intent of the original recommendation.

NIBA recommendation: Remove sections 5A(a) “the financial service provided to the client is personal advice” and 941F(1)(b)(i) “provides personal advice to the client”.

Part 5: Consent to receive insurance commissions.

Application to general and advice
The explanatory materials provided with the draft legislation state “Part 5 of this Schedule of the Bill: Implements recommendations 13.7, 13.8 and 13.9 of the Review by amending the Corporations Act to provide that a person who provides personal advice to a retail client about a life risk insurance product, general insurance product or consumer credit insurance and receives a commission in connection with the issue or sale of that product must obtain the client’s informed consent before accepting the commission.” (emphasis added) however, the proposed new s.963BB does not limit the requirement to personal advice.

If the intent is to limit the obligation to obtain client consent prior to receiving commissions to personal advice, consistent with the recommendation of the Quality of Advice Review, the legislation should be amended to reflect this. If, contrary to the explanatory materials and the recommendations of the Quality of Advice Review, the intent of the legislation is to apply the consent obligations to both general and personal advice NIBA is concerned that the proposed requirements of such disclosure could potentially leave clients uninsured.

Disclosure requirements
In particular, NIBA is concerned that the requirement to inform clients of the name of the insurer under the relevant product is not feasible based on current practice.
Brokers would likely acquire client consent prior to taking the risk to market. Except in very limited cases, the broker would not know the name of the insurer at this stage. In order to satisfy this requirement, brokers would have to go back to the client and gain consent prior to placement, or alternatively wait until this stage to gain client consent.

NIBA is concerned that clients will not understand the importance of providing this having already discussed the risk with their broker and may not respond, leaving the broker unable to place the cover and the client uninsured. While NIBA supports the disclosure of commissions to retail clients and has already implemented greater disclosure than that recommended by the Quality of Advice through the 2022 Insurance Brokers Code of Practice, it is vital that the disclosure of commissions does not come at the cost of leaving clients uninsured. NIBA would welcome the opportunity to discuss how best to implement the disclosure obligations in a way that encourages transparency and does not leave clients at risk of being uninsured.

Implementation period
NIBA notes that the proposed Bill only provides for a three-month implementation period after the Bill gains royal assent. In light of the significant changes to existing systems and processes that would be required to ensure compliance with the legislation NIBA believes that a six-month implementation period would be more appropriate.

S963B(1)(a): The inclusion of the words "(which is about informed consent for commissions)" is unnecessary and not consistent with the language used in other parts of the Act.
NIBA recommendation: remove "(which is about informed consent for commissions)"

S963B(1)(b): see above.
NIBA recommendation: remove "(which is about informed consent for commissions)"

S963B(1)(c): see above.
NIBA recommendation: remove "(which is about informed consent for commissions)"

Impact of changes
While the Bill has been described as removing red tape, the proposed reforms are unlikely to meaningfully reduce the cost of providing general risk advice. NIBA notes that a number of key reforms that were originally scheduled for stream one have been delayed, most notably the changes to Statement of Advice requirements and the removal of the "Safe Harbour" steps from the Best Interest Duty. Of the reforms originally slated for phase one, these are likely to have the biggest impact on the cost of providing advice. NIBA encourages the government to finalise these reforms as a matter of urgency to provide relief to advisers struggling with increasing costs of business.

NIBA notes that a number of recommendations that are slated to be addressed in tranche 3 would have a significant impact on the proposed, in particular the recommendation to expand the definition of personal advice. While NIBA understands the need for further consultation, delaying these provisions may have unintended consequences on the changes proposed in the draft legislation.

Should you have any queries in relation to our submission, please do not hesitate to contact me or my office.

Yours sincerely,

[redacted]

Philip Kewin
Chief Executive Officer
National Insurance Brokers Association