

Submission on ASIC Consultation Paper 245 Retail life insurance advice reforms

The National Insurance Brokers Association of Australia (NIBA) appreciates the opportunity to make a brief submission in response to ASIC Consultation Paper 245: Retail life insurance advice reforms.

NIBA represents over 300 insurance broking firms across Australia, the majority of which are small to medium businesses. Insurance broking firms provide traditional insurance broking and risk management advice in the areas of property and liability insurance, and in many cases broking firms also provide advice in relation to life risk insurance (as opposed to life investment products).

NIBA is grateful for the opportunity to provide these brief comments on ASIC CP 245.

Setting a maximum level of commission

The proposed approach (Proposal B1) appears to assume the life insurance will be relatively static during in the early years of cover. NIBA understands that circumstances can change, and insurance cover may need to change, including in the early years.

In response to feedback questions B1Q1 and B1Q2, we would suggest that the regulatory approach should make appropriate allowance for changing circumstances requiring changes to the policy terms, conditions and cover. We suggest ASIC consult further with life insurers and advisers as to how this might best be achieved.

Clawback arrangements

As noted above, NIBA understands that there can be a range of valid circumstances where the nature and level of life insurance cover might need to change. The proposed regulatory approach does not appear to allow for the fact that this might occur.

For example, a person may wish to take out life insurance to cover an amount borrowed under a mortgage of real estate. If the property is sold, and the mortgage is discharged, the life insurance may no longer be required. If this occurs in the first two years of the policy, under the proposed approach there would be clawback of 100% (year 1) or 60% (year 2) of the commission, even though the adviser played no part in the reason for the cancellation of cover. This would appear to produce an unfortunate outcome for the adviser.

Another example is where “key person” life insurance is taken out in relation to a senior executive of an organisation. If that person leaves the role, the life insurance is no longer required and would normally be cancelled. Once again, if this occurs in the first two years of the policy, substantial clawback would apply, to the detriment of the adviser, even though they played no part in the reason for the cancellation of the cover.

In response to feedback question C1Q1, we would suggest that ASIC hold further discussions with life insurers and advisers in relation to appropriate clawback arrangements where there have been genuine changes in circumstances requiring changes to the nature and level of cover in the first two years of the policy.

Ongoing reporting to ASIC

We note the proposal to require information from life insurers. NIBA expects life insurers will respond in detail to the proposed approach for the collection of data.

NIBA observes that the nature and the level of detail proposed to be collected in relation to each and every life insurance policy will virtually require insurers to provide a duplicate copy of their full policy file, with the life insured and policy beneficiary deleted. This will result in a massive collection of data by ASIC, and we would have to question whether that amount of data is likely to be assessed and understood in any realistic manner.

We also note that the proposed collection of data is intended to be retrospective in its operation.

NIBA suggests that ASIC needs to take careful account of the likely cost of supplying this data, as well as the likely cost of receiving, storing, analyzing, and reporting on the data.

Again, while it is a matter for the life insurers, we question whether an initial supply of data, covering current and previous years, will be achievable by 1 July 2016.

Regulation Impact Statement

We note the Consultation Paper does not contain a Regulatory Impact Statement, even though it is likely to have a substantial impact on life insurance companies, life insurance advisers, customers consumers and the community, and ASIC itself.

The Regulation Impact Statement contained in the Explanatory Memorandum published with the draft legislation identifies implementation costs associated with updating IT systems as well as costs associated with monitoring the implementation of the reforms. The increased compliance cost for the industry as a whole is stated to be \$18.2 million. The RIS states that a “regulatory offset” has been identified within the Treasury portfolio, which reduces the regulatory impact of the amendments to \$0. No information is provided in relation to the nature and operation of the regulatory offset. As a result, NIBA was not in a position to provide an informed response to the commentary in the Explanatory Memorandum RIS.

From discussions with our Members, these reforms are likely to result in significant changes to the structure of life insurance advice businesses, including insurance brokers who provide life risk advice services to their clients. There are a range of business models under which insurance broking and advice services are provided in relation to life risk policies, and it is likely that the owners of those businesses will change the way in which the businesses operate, and the way in which the businesses seek to be remunerated for the advice they provide to their customers.

There was no discussion in the Explanatory Memorandum RIS in relation to the potential behavioural changes that are likely to occur as a result of this legislation. Equally, there has been no discussion of the likely changes, and the costs and benefits associated with the changes, that could well occur as a result of the implementation of the regulatory approach set out in the ASIC Consultation Paper.

The ways in which these businesses operate, and the ways in which the businesses seek to be remunerated for the services they provide, differ from business to business. It is therefore difficult for an industry body such as NIBA to predict the likely outcome of these amendments on business operations, and/or remuneration arrangements in life risk broking.

More importantly, it is difficult for NIBA to assess whether the clients will have access to better, more cost effective advice, or will be faced with higher costs associated with seeking advice in relation to life risk insurance.

From discussions with our Members, the following issues and concerns have been identified:

- If advisers introduce fee for service charges to make up for the lost revenue, customers may prefer to purchase life insurance directly from insurers or via their superannuation fund, invariably without seeking advice as to whether the cover is appropriate and the cost is reasonable.
- If this occurs, there is likely to be a reduction in the level of advice being given to consumers in relation to life insurance cover.
- This will result in lower numbers of advisers providing advice to the community. We note strong concerns that the recently announced “professionalism” legislation requiring higher education standards for life insurance advisers is also likely to see many advisers leave the profession.
- We are advised that life insurance purchased directly from insurers is often more expensive than cover obtained via a life risk broker. We understand a significant number of life insurance disputes at FOS arise from direct sales of life insurance, where no advice was provided. Any reduction in the provision of advice may well result in higher costs of life insurance and higher levels of disputation being reported to FOS.
- We have seen industry estimates that the number of redundancies in the life adviser sector may well be as high as 17,000 staff, which could result in lost salaries and wages in the order of \$850 million.

It would appear these proposals will result in significant cost burdens for life insurance advisers and their clients. In addition, there are likely to be non-financial impacts across the community as a result of these reforms. It is unfortunate there has been no regulatory impact statement to assess the benefits – and most importantly, the costs – of the proposed regulatory approach.

It will indeed be an unfortunate outcome for the community if fewer clients seek advice as a result of the amendments to the Corporations Act and the proposed regulatory approach for the implementation of that legislation by ASIC.

Thank you for the opportunity to provide these brief comments on ASIC Consultation Paper 245.

29 January 2016