



Regulatory Burdens Review
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Review of Insurance Regulation

Introduction

The National Insurance Brokers Association (NIBA) welcomes the opportunity to provide comments to the Regulatory Burdens Review of the Productivity Commission. NIBA's submission focuses on the regulation of risk insurance and insurance brokers.

There is nothing in this submission that is confidential.

Insurance is almost a basic necessity in a modern economy. Without it banks and other financial institutions would be reluctant to lend and new investment by individuals and companies would come to a standstill. Any unnecessary regulatory burden on the insurance industry has a flow through effect on the cost structure of the whole of the Australian economy. For this reason NIBA is highly supportive of reviews of the regulatory burden on insurance.

The insurance industry in Australia is by and large well regulated and highly competitive. Many of the regulations have been specifically designed to cater for particular and unusual features of insurance.

Apart from two issues which have already become the focus of Government attention namely:

- the multitude of taxes and charges that apply to insurance, and
- the complex disclosure requirements when dealing with "retail clients"

NIBA is far more concerned with the potential burden emanating from possible new and additional regulations than it is with the existing requirements. Changes, whatever they are, involve costs and disruption to industry. This also applies to changes that are intended to reduce regulation.

NIBA's prime concern is that solutions to problems identified in other industry sectors or jurisdictions might be applied inappropriately to the risk insurance industry.

The National Insurance Brokers Association (NIBA)

NIBA is the voice of the insurance broking industry in Australia. NIBA represents 500 member firms and over 2000 individual Qualified Practising Insurance Brokers (QPIBs) throughout Australia.

The 500 member firms all hold an Australian Financial Services (AFS) Licence under the Corporations Act that enables them to deal in or advise on risk insurance products.

NIBA members are responsible for the placement of around 80% of all insurance for commercial purposes in Australia.

Insurance brokers represent the interests of the purchasers of insurance, the policy-holders, and not those of insurance companies. Consequently the comments made in this submission are made **not on behalf of insurance companies** but on behalf of the public that purchases insurance.

The Regulation of the Insurance Industry

The insurance industry has many industry specific regulatory requirements. These can be divided into three basic areas, namely;

- **Prudential regulation** of insurance companies in order to ensure that they have sufficient assets to satisfy all legitimate claims.
- **Financial services regulation** of all those advising and dealing in insurance products.
- **Contractual regulation** so as to ensure that there is a reasonable balance between the interests of insurance companies and all of those that they insure.

In addition to the industry specific requirements there are a host of more general requirements that have to be satisfied by insurance industry participants.

Recently there have been calls for insurance regulation change as a result of potential adjustment to the regulations relating to other products or jurisdictions. Yielding to such calls will simply add to the regulatory burden on insurance with few or no offsetting benefits. Examples of NIBA's concerns in this regard follow.

Prudential Regulation

The risk insurance industry world wide performed well during the Global Financial Crisis (GFC) and this was particularly so for Australia. The prudential regime in Australia for risk insurance remains strong and insurance companies are in a solid financial position to meet their obligations to policyholders. The successful performances of Australia's prudential regulatory requirements during the GFC, confirms that significant additional prudential requirements are not needed in Australia and suggestions for change in prudential requirements coming from international organisations should not be adopted for the Australian risk insurance industry without specific reference to the conditions and arrangements that currently exist in Australia.

Financial Services Regulation

The highly complex and legalistic financial services reform changes implemented a few years ago have led to a significant upgrading of licensing requirements for insurance brokers. Those changes boosted standards and the professionalism of insurance brokers and there is no evidence to suggest that any further change in licensing requirements for insurance brokers is warranted at the present time.

Recently the Parliamentary Joint Committee on Corporations and Financial Services held an Inquiry into the issues associated with financial product and services provider collapses, such as Storm Financial, Opes Prime and other similar collapses and made a number of recommendations for changes to AFS licensing arrangements that are currently being considered by the Government.

The financial product and services provider collapses, the subject of the Committee's inquiry, were associated with managed investment products which fall outside the scope of the necessary AFS licence for insurance broking. As a result NIBA members generally have not been involved with the products or services of concern to the Committee.

NIBA would be most concerned if solutions to perceived problems with managed investment schemes or advice given to the public about such schemes were to be automatically applied to risk insurance products. Investment and risk insurance products are very different and regulatory changes to overcome recent management investment scheme collapses would indeed be inappropriate for insurance and insurance broking.

Contractual Regulation

The Insurance Contracts Act 1984 was developed by the Australian Law Reform Commission with the specific intention of ensuring that insurance contracts and the practices of insurers in relation to such contracts operated fairly. By all accounts the legislation has been successful. This was acknowledged by Alan Cameron and Nancy Mill in their 2004 review of the Act.

Section 15 of the Insurance Contracts Act provides an exemption of insurance contracts from the impact of universal unfair contracts terms legislation. The section was recently the subject of vocal criticism from consumer advocates when the Senate considered the Trade Practices Amendment (Australian Consumer Law) Bill that provides for national law on unfair terms in standard-form contracts.

The Senate Economic Committee considered the issue and recommended that a review be made of what changes are (if any) required to the Insurance Contracts Act to ensure consumers receive equivalent protection to that under the unfair contracts legislation. The Government is yet to respond to the Committee's recommendation.

NIBA believes that the Insurance Contracts Act already provides effective consumer provisions, including a requirement for insurance companies to act in good faith, and that there is no necessity for any change to the Insurance Contracts Act. Removing section 15 of the Act would lead to confusion as to which piece of legislation would apply and it would add an unnecessary complication to the existing arrangements.

Insurance Taxes and Charges

There is no doubt that the multi taxes and charges that apply to insurance in Australia add significantly to the cost of insurance products and that the current system is badly in need of reform. This proposition by NIBA is well supported by a number of recent reviews by well know and well respected authorities.

The Commonwealth Treasury in the August 2008 Discussion Paper (page 293) for the review of the Australia's Future Tax System (AFTS) which recently reported to the Treasurer, stated;

“The narrow base of many transaction taxes and their interaction with other taxes can have an impact on resource allocation in the economy. For example, insurance products are subject to GST, insurance transaction taxes and, in some States, insurance companies can also be required to contribute directly to the funding of fire services. The interaction of theses taxes increases the cost of premiums relative to other products, which may encourage people to take up less insurance than otherwise.”

There are three taxes and charges that may apply to the insurance policies taken out by Australian residents and businesses, namely:

- Fire services levy (levied by the governments of NSW, Victoria and Tasmania in order to fund their fire services).
- GST (levied by the Commonwealth Government which distributes the funds to the states and territories).
- Stamp duty (levied by state and territory governments).

These three taxes and charges are cascading. That is, one tax is applied to another tax. There are in fact taxes on taxes on taxes!

The cascading effect of the various taxes and charges can be seen by considering the taxes and charges levied on the property insurance policies of businesses in NSW. For every \$100 dollars of basic insurance premium that is paid by a NSW business a further staggering \$66.66 is paid in taxes and charges. The calculation is as follows:

\$100.00	Basic premium
<u>39.00</u>	39% Fire services levy
139.00	
<u>13.90</u>	10% GST
152.90	
<u>13.76</u>	9% NSW stamp duty
<u>166.66</u>	Total

The rate of fire services levy varies between states and territories, so too does the rate of stamp duty. NSW is not, however, the highest taxing state in relation to insurance. This award goes to Victoria in relation to non-metropolitan business insurance. The taxes and

charges applicable are an incredible \$122.64 for each \$100 of basic premium charged.

It should also be noted that the NSW Government has decided that it will fund its Emergency Services by a similar arrangement to that used to fund fire services. The measure is expected to raise an additional \$39 million a year from insurance policyholders.

Having a single broad-based tax such as the GST applying to insurance is reasonable. Having three taxes (two of which are specific insurance taxes), on top of one another, is inappropriate and places an unjust burden on those who are prudent and insure.

Such a system of cascading taxes and charges is inequitable and cannot be justified on any economic or efficiency grounds. It penalises those people who take positive action to protect themselves and their assets by way of insurance. No other industry or activity is treated in such an unfair way. Such an archaic system requires urgent adjustment and NIBA is pleased that this is being reviewed as part of the AFTS process.

NIBA expects that the AFTS report, which is now with the Treasurer, will contain recommendations in relation to the taxes and charges that are levied by both Commonwealth and State Governments on insurance.

Complex Disclosure Documents for Retail Clients

Since the introduction of Financial Services Reform and the associated changes to the Corporations Act, NIBA has been concerned about the complexity of the disclosure documents that insurance brokers are required to make available to “retail clients”. Many of the documents are large, expensive to produce and poorly understood by clients. More recently Governments have indicated their concern and a process has begun to simplify disclosure documents.

With a view to making FSGs and PDSs simpler, Senator Nick Sherry together with Lindsay Tanner, the Minister for Finance and Deregulation, established in February 2008, the Financial Services Working Group made up of representatives from Treasury, Finance and ASIC. The Working Group was charged with developing financial service disclosure documents that are brief, simple and allow consumers to easily compare products.

The Working Group’s first task was to develop a concise four page PDS for the Government’s new financial product, the First Home Saver Account. The Working Group has also considered *Simple Superannuation Advice* documents.

The Working Group is yet to consider risk insurance disclosure documents. NIBA suggests that it is important for decision makers to distinguish between the various types of financial products and provide disclosure documents that satisfy the requirements for each type of product. Products sold in the banking and funds management sectors have marked differences from the products sold in the general insurance sector and policy settings need to be applied to take account of these differences.

NIBA is keen to work with the Commonwealth Government in identifying those aspects of PDSs for risk insurance products that can be improved to assist clients of insurance brokers to be better informed about the insurance policies that they may purchase.

Recommendations

NIBA recommends the Productivity Commission;

1. Support the review of the taxes and charges on insurance undertaken by the Review of the Australia's Future Tax System.
2. Support the work being undertaken by the Financial Services Working Group in respect of simple financial disclosure documents and encourages the Working Group to distinguish between the many and varied products in the financial system and to develop requirements that have regard to different types of products.
3. Encourage Governments to separately consider the implications for the insurance sector when developing general requirements for the finance sector.

If you would like further information about any of the issues covered by this submission please do not hesitate to contact me.

Yours sincerely

Noel Pettersen
Chief Executive Officer