6 December 2022

Ms Michelle Levy
C/- Quality of Advice Review Secretariat
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Levy

Re: Quality of Advice Review – Conflicted Remuneration Paper

I write in relation to the Conflicted Remuneration Paper released as part of the Quality of Advice review, in particular the proposal to:

> Retain the existing exemptions for benefits given in relation to general insurance products and consumer credit insurance, but require financial advisers (relevant providers), insurance brokers and other intermediaries who provide personal advice to retail clients in relation to general insurance products or consumer credit insurance to obtain their client's informed consent, in writing, to receive a commission or other benefit in connection with the issue of the general insurance product or consumer credit insurance.

The Australian Competition and Consumer Commission (**ACCC**) believes the current exemption from the conflicted remuneration provisions in relation to general insurance products should be removed for insurance brokers.

The ACCC's Northern Australia Insurance Inquiry

The role and remuneration of insurance brokers in relation to home, contents and strata insurance was a prominent issue throughout the ACCC's Northern Australia Insurance Inquiry (**NAII**). Our focus on this issue was prompted, in part, by stakeholder concerns at our early public consultation.[1]

The ACCC's final report[2] noted that insurance brokers can serve an important role in assessing risk, sourcing quotations, and in claims management. However, there is a significant conflict of interest between an insurance broker's obligations to act on behalf of a consumer and the fact that it is being remunerated by an insurer. Disclosure of the conflict does not overcome the conflict.

Commissions paid to intermediaries in northern Australia can have a significant effect on the final premium that consumers are charged. Base commission rates of 15 to 20% are common, and total incentive payments can reach in excess of 30% of the cost of the premium. GST and stamp duty are then applied on the commission-inclusive amount.

The final report notes that there appears to be no relationship between the size of the commission and the work undertaken by an intermediary. While commission payments can increase in line with rapidly rising base premiums, the consumer does not receive any change to the level and quality of service being offered.

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1 The ACCC held eight public forums throughout northern Australia, and released an issues paper in late 2017.

2 ACCC, Northern Australia Insurance Inquiry – Final Report, November 2020, chapter 19.

Limited incentive exists for intermediaries to secure a lower premium for their client or recommend products on which they don't receive a commission, as this will also reduce their own remuneration.

The NAII final report contained 38 recommendations to industry and governments, including the following recommendation in relation to the broker remuneration:

> Recommendation 19.1
>
> **Extend the ban on conflicted remuneration to insurance brokers**
>
> **The Corporations Regulations should be amended to remove the exemption for general insurance retail products from the conflicted remuneration provisions as they apply to insurance brokers.**
>
> Commissions and other benefits given to insurance brokers can give rise to an unacceptable conflict of interest. As is already the case for other financial products, insurance brokers should be prohibited from receiving commissions and other benefits where these create a conflict with a broker's obligation to act in the best interest of their clients. Disclosure alone is insufficient to address these conflicts.

Conflicted remuneration leads to poorer outcomes

The ACCC considers that continuation of conflicted remuneration arrangements – even with additional disclosure requirements – will perpetuate sub-optimal outcomes for insurance brokers' clients. Insurance brokers' advice and product recommendations will continue to be influenced by the payments they stand to receive from insurers.

Most conflicted remuneration is set with reference to underlying premium amounts, particularly in the form of commissions. As such, there is an inherent financial disincentive for insurance brokers to seek more affordable cover for their clients, or to consider alternatives that pay lower (or no) commissions.

Where a broker's remuneration takes the form of a profit-sharing arrangement, a potential for conflict arises from these arrangements if the insurance broker will be rewarded by the minimised or reduced success of their clients' claims.

Disclosure of a conflict does not resolve the conflict

As noted in the Conflicted Remuneration Paper, an insurance broker is an intermediary who has undertaken to provide advice in the best interests of their client. The paper also notes that current remuneration arrangements that are permissible because of the exemption:

> create a conflict for the adviser (or other recipient) and that this conflict creates a real risk that the quality of the advice provided by the adviser is not as good as it would be if they were paid a fee by the client for their advice.

That said, the paper also considers:

> That risk is diminished by a number of recent changes to the law: anti-hawking, deferred sales of addon insurance, design and distribution obligations, and the caps on commissions payable in respect of consumer credit insurance and life risk insurance products. The risk should be further diminished by the proposals outlined in the Proposals Paper. These proposals will limit the opportunity for insurance products to be distributed using general advice and they will impose an obligation for a person who gives personal advice to give 'good' advice.

In the ACCC's view, the disclosure of a conflict as proposed in the Conflicted Remuneration Paper would not adequately address the conflict. Even if conflicted remuneration is fully disclosed (and the disclosure is understood by consumers), the remuneration is still conflicted. There remains a misalignment between the financial incentives of brokers and the best interests of their clients.

We note that the recent changes to the law cited are not generally applicable to home, contents and strata insurance. Further, the proposals outlined in the Proposals Paper would seem to weaken insurance brokers' nominal requirement to act in the best interests of their clients when arranging home, contents or strata insurance.

Transitioning away from conflicted remuneration

Throughout the NAII, the ACCC acknowledged the positive role that insurance brokers can have in assisting their clients, and agreed that brokers should be remunerated for the services they provide.

In the absence of conflicted remuneration, insurance brokers would need to charge a fee for service. If the services an insurance broker provides are valued by clients, those clients will normally be willing to pay an appropriate fee (as is now the case with most other financial services). However, under current remuneration arrangements, the brokers' remuneration is not generally linked to the level of service they are providing to a client (instead being related to a percentage of the underlying policy premium).

Some clients may indeed elect not to pay an up-front fee equivalent to the commissions and other payments currently built into their premiums. They may only be willing to pay a lower amount for the services provided by a broker, or they may elect not use a broker at all.

The ACCC does not consider the challenges involved in transitioning away from business models reliant on conflicted remuneration justify the ongoing acceptance of such conflicts.

Removing the conflicted remuneration exemption will improve competition in insurance markets.

Insurance brokers do enable consumers to access a range of insurers and products, although generally only those where there is a remuneration arrangement in place with the broker.

More transparent and non-conflicted remuneration would encourage brokers to consider a wider range of insurers, brands and products. For example, of the eight major insurers operating in northern Australia in 2016-17, only four supplied their home and contents insurance products through insurance brokers.

As noted above, insurance brokers face a financial disincentive to source cheaper insurance premiums for their clients, even from insurers that pay commissions to brokers. Insurance brokers also generally receive the same commission for new and renewing business. As such, they generally have limited or no remuneration incentive to search for alternative products for their clients at the time of renewal.

The role of insurance brokers in driving competition in the interests of their clients can only be fully realised if their remuneration is not conflicted.

We trust that these observations are of assistance as you finalise your report, and would be pleased to discuss them with you.

Yours sincerely

G Cass-Gottlieb

Gina Cass-Gottlieb

Chair