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23 April 2025

Mr Phil Khoury
Independent Reviewer
cameron. ralph. khoury

By email: niba_code_review@crkhoury.com.au

Dear Mr Khoury

Re: Independent Review of the 2022 Insurance Brokers Code of Practice

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to provide this submission to the Independent Review of the 2022 Insurance Brokers Code of Practice.

The role and remuneration of insurance brokers in relation to home, contents and strata insurance was a prominent issue throughout the ACCC's 2017-2020 Northern Australia Insurance Inquiry.¹ Throughout the inquiry, the ACCC acknowledged the positive role that brokers can have and agreed that brokers should be remunerated for the services they provide.

However, we found that commissions and other benefits paid by insurers to brokers create conflicts of interest which can be very detrimental to consumers and to the competitiveness of insurance markets. Limited incentive exists for brokers to seek a lower premium for their client or recommend policies on which they don't receive a commission, meaning consumers might be paying more than necessary. Effective competition relies on brokers considering a wider range of insurers, brands and products, without being conflicted by their own remuneration opportunities. We recommended the ban on conflicted remuneration be extended to insurance brokers.

We note this independent review of the code is considering conflicts of interest, including in relation to remuneration, and we offer our relevant findings and recommendations to inform the review.

The ACCC's roles in general insurance

By way of background to this submission, the ACCC has a limited direct role in general

¹ ACCC, Northern Australia Insurance Inquiry – Final Report, November 2020

insurance, which is primarily regulated by the Australian Securities and Investments Commission (ASIC). However, we have general competition law oversight and have undertaken a number of specific insurance-related roles when directed by government.

The ACCC is currently fulfilling a government direction to monitor the prices, costs, and profits of home, contents, strata and some small business insurance products, before and after the introduction of the government's cyclone reinsurance pool. We commenced this monitoring role in 2022 and it will conclude in mid-2026. To date we have released three reports and our fourth report will be released this year.²

Previously, in 2017, we were directed by the government to conduct a broad ranging inquiry into the affordability and availability of home, contents and strata insurance across northern Australia. We concluded this inquiry with our final report in 2020, which contained 38 recommendations to governments and industry which we considered would improve competition and consumer outcomes in northern Australian insurance markets.³

Whilst the terms of reference for the Northern Australia Insurance Inquiry limited our examination to home, contents and strata insurance markets in northern Australian, we believe that many of the recommendations we made could also benefit consumers and insurance markets nationally, if more broadly applied.

Conflicts of interest in relation to remuneration

The role and remuneration of insurance brokers in relation to home, contents and strata insurance was a prominent issue throughout the Northern Australia Insurance Inquiry. Our focus on this issue was prompted, in part, by stakeholder concerns during our early public consultation.

The ACCC's 2020 final report 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 while 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. We found that base commission rates of 15 to 20% were common, and total incentive payments could reach in excess of 30% of the cost of the premium. GST and stamp duty are then applied on the commission-inclusive amount.

Our 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.

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.

² The ACCC's monitoring reports are published on the ACCC website, www.accc.gov.au/by-industry/insurance/insurance-monitoring

³ Further information about our Northern Australia Insurance Inquiry, and all reports, are published on the ACCC website, www.accc.gov.au/insurance

The Northern Australia Insurance Inquiry final report includes 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 will perpetuate sub-optimal outcomes for insurance brokers' clients.

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.

Commissions that are calculated as a percentage of the base premium result in properties with a higher exposure to risk paying more for the services of an insurance broker than less risk exposed properties. In this regard, commissions can have a compounding effect on affordability concerns. It is clear from our current price monitoring role that the affordability of insurance premiums is an ongoing concern for northern Australia insurance consumers.

Disclosure of a conflict does not resolve the conflict

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

Transitioning away from conflicted remuneration

Throughout the Northern Australia Insurance Inquiry, 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 their clients, those clients will normally be willing to pay an appropriate fee (as is now the case with most other financial services).

We acknowledge concerns that some consumers may choose not to pay an upfront fee equivalent to the commissions and other payments built into their premiums. They may wish

to pay less upfront, or they may choose not to use a broker if the fees are more transparent. However, we do not consider that any challenges involved in transitioning away from business models reliant on conflicted remuneration justify maintaining an exemption which allows it. Other financial services have already transitioned away from conflicted remuneration, improving transparency and ensuring providers are working in the best interests of the consumers they act for.

Insurance brokers can serve an important role in assessing risk, sourcing quotations, and claims management and consumers will still place value on brokers to provide this service.

Insurance brokers that are signatories to the Insurance Brokers Code of Practice are already required to disclose to the consumer the dollar amount of any commissions that will be received, so to the extent that consumers are aware of this disclosure and still take out the insurance product, it suggests that consumers may continue to pay a comparable fee.

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.

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.

Updating/aligning customer protections

We note the independent review is inviting stakeholders' feedback on aligning consumer protection aspects of the Insurance Brokers Code of Practice with other 'leading' financial sector codes, such as the 2020 General Insurance Code of Practice (currently being revised).

In June 2024, the ACCC made a submission to the Initial Consultation Paper for the Independent Review of the 2020 General Insurance Code of Practice, which is published on our website.⁴ Our submission to that review also drew on findings and recommendations we made in the Northern Australia Insurance Inquiry to comment on proposals being considered as part of that review.

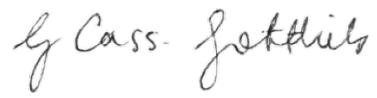
Whilst the recommendations the ACCC proposed in our inquiry were predominantly centred around regulatory reform, we noted in our submission to the review of the general insurance code that it remains open to general insurers to voluntarily commit to proposals which would seek to raise standards and improve outcomes for insurance consumers.

To the extent practical and relevant, we support consideration of whether the broker code could maintain a closer alignment with the relevant provisions of a revised general insurance code.

⁴ The ACCC's submission to the Initial Consultation Paper for the Independent Review of the 2020 General Insurance Code of Practice is published on the ACCC's website: www.accc.gov.au/inquiries-and-consultations/accc-submissions-to-external-consultations#toc-insurance

We trust that these observations are of assistance as you undertake your review.

Yours sincerely

A handwritten signature in black ink, reading "Gina Cass-Gottlieb". The signature is written in a cursive, flowing style.

Gina Cass-Gottlieb
Chair