

Submission

11 February 2026

Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via online portal: consult.treasury.gov.au/c2025-727795
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NIBA Submission: Enhancing the Effectiveness of Financial Service Professional Indemnity Insurance

Dear Sir/Madam,

The National Insurance Brokers Association (NIBA) welcomes the opportunity to provide this submission on the Treasury consultation paper on enhancing the effectiveness of professional indemnity insurance (PII) for financial services licensees.

NIBA is the peak body for the insurance broking profession in Australia, representing around 450 member firms and over 15,000 individual brokers across the country. NIBA brings a unique perspective to this consultation: our members engage with the PII framework as holders of PII policies in their own right, as specialist brokers who arrange PII cover for other financial services licensees, and as members of a profession governed by the Insurance Brokers Code of Practice. No other stakeholder brings all three perspectives.

NIBA supports the objective of strengthening PII as a first line of defence for consumer compensation. When PII operates effectively, consumers receive timely compensation through the licensee's insurance rather than relying on the CSLR. The broking profession's role in arranging effective PII cover is itself a direct consumer benefit.

Our submission makes 13 recommendations across five themes:

Proportionality: Reforms must be calibrated to sectoral risk profiles. The consultation paper identifies insurance broking as the lowest-risk sector for PII access. Uniform requirements would impose unnecessary costs on low-risk sectors without improving consumer outcomes.

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External administration and run-off: The primary PII failure points—evaporation of cover during external administration, blanket insolvency exclusions, and inadequate run-off—require targeted reform, including mandatory seven-year run-off cover and prohibition of blanket insolvency exclusions.

Exclusions and minimum requirements: Exclusion creep has undermined PII's effectiveness as a consumer compensation infrastructure. Treasury should commission a review to establish a prohibited exclusions list, and index the \$2 million coverage floor to CPI.

Oversight and data: Risk-based ASIC oversight, enhanced data sharing between APRA, ASIC, and the CSLR, and nationally consistent third-party recovery legislation are essential to identifying at-risk licensees before failures crystallise.

Structural reform: Longer-term reforms, such as ABN-level PII requirements and Professional Standards Schemes, should be examined to address root causes, including phoenix activity, and to link professional standards to PII market stability.

NIBA's detailed submission is attached. We welcome the opportunity to discuss these recommendations further.

Yours sincerely,



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Context

Many of the structural deficiencies in PII effectiveness identified in this consultation were documented over a decade ago in the 2012 St John Review (*Compensation arrangements for consumers of financial services*), commissioned by Treasury as part of the Future of Financial Advice reforms. The St John Review recommended strengthening PII and the regulatory platform as a necessary precondition to any last-resort compensation scheme, concluding that the regulatory platform for financial advisers and other licensees needed to be made more robust and stable before a safety net, funded by all licensees, was suspended beneath it. The Government proceeded with the CSLR without first implementing those reforms.

This consultation represents an overdue but welcome opportunity to address longstanding gaps that have directly contributed to CSLR's sustainability pressures. While the market has evolved since 2012, the structural problems identified by St John—including inadequate run-off cover, limited ASIC oversight, gaps in third-party recovery mechanisms, and the need for risk-targeted rather than uniform regulation—remain substantially unchanged.

The broking profession plays a critical role in this framework. Independent research shows that 40 per cent of clients were underinsured before engaging a broker, and small and medium-sized businesses that use a broker are more than twice as likely to be fully covered for their claims compared to direct purchasers. These capabilities are directly relevant to PII: brokers help licensees accurately present their risk profiles to insurers, ensure that coverage terms are understood, and advocate for them during the claims process. Where licensees arrange PII without professional guidance, the result is often coverage gaps and disputes that leave consumers uncompensated.

Proportionality and Sector Differentiation

NIBA emphasises the critical importance of proportionality in any reform design. The consultation paper recognises that PII accessibility varies significantly by sub-sector, with insurance brokers facing the lowest difficulty in obtaining adequate cover. The St John Review established the same principle: reforms should target the licensees most at risk and not impose a significant regulatory burden across the board.

NIBA supports reforms that address the failures identified in this consultation. However, effective reform requires precise targeting. The consultation paper's own analysis demonstrates that the failures driving the CSLR's sustainability concerns are overwhelmingly concentrated in the financial advice sector. The cases of Dixon Advisory, United Global Capital, Shield and Guardian, Interprac, and MWL represent systemic failures in financial advice. Insurance broking has a fundamentally different risk profile, supported by the IBCOP's professional standards—including prohibitions on contingent and preferential remuneration—and the nature of general insurance products themselves.

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Applying uniform PII requirements across all AFSL and ACL holders would be inequitable and counterproductive. Consumer access to professional advice depends on a viable broking sector, and disproportionate regulatory costs directly reduce the affordability and availability of that advice—particularly for small and medium enterprises and consumers in regional areas. Sole traders and boutique firms, which serve many of these communities, are least able to absorb additional compliance costs. NIBA's "Ready or Reacting?" report confirms that regulatory burden is already a significant concern for the profession, with smaller firms most exposed.

External Administration, Run-Off Cover, and Insolvency Exclusions

The consultation paper identifies PII's failure to respond during external administration as the primary reason consumer compensation is lost. When a licensee enters external administration, PII coverage frequently evaporates at precisely the moment consumers most need it. The St John Review identified run-off cover as a weakness in 2012, noting that ASIC had attempted but failed to require automatic run-off provisions during the development of Regulatory Guide 126.

NIBA's consultations with specialist PII brokers confirm that run-off cover is a standard feature of the current PII market. Insurers typically include run-off clauses in their policies, with cover activated and priced when a licensee ceases trading or relinquishes its licence. Run-off premiums follow a sliding scale—approximately 95 per cent of the expiring premium in the first year, reducing to around 80 per cent in the second year, and continuing to decrease annually. Cover can be purchased for durations of up to seven years, either as a single upfront payment or negotiated on a year-by-year basis. Given the claims-made nature of PII and the fact that consumers may lodge negligence claims for up to seven years after a business ceases trading, specialist brokers recommend the full seven-year period as standard practice. This evidence is significant: the market barrier ASIC identified when developing RG 126—that insurers were generally not willing to provide run-off cover—no longer applies. The product exists, is routinely offered, and has an established pricing methodology.

Mandating runoff cover would not require insurers to develop new products or pricing models; it would simply make an existing market capability a minimum standard. The principal gap is not product availability but rather the absence of a regulatory requirement ensuring licensees actually purchase it. NIBA recommends that mandatory run-off cover be available for a minimum of seven years after licence cancellation or cessation of business, consistent with AFCA membership requirements. Separately, minimum requirements should prohibit blanket insolvency exclusions that preclude any claim once a licensee enters external administration, while permitting narrow exclusions for losses arising directly from the insolvency event, distinct from professional service failures. This is consistent with the UK Financial Conduct Authority's approach.

NIBA also supports measures to prevent the automatic cancellation of PII coverage when a licensee enters external administration. Consumers whose complaints are in progress or yet to crystallise should not lose access to PII coverage solely because the licensee has entered external administration. At a minimum, policies should continue to respond to claims arising from professional services provided before the administration event. NIBA notes that other key stakeholders share this position in the financial services sector.

PII policies should also be required to permit the CSLR operator to claim under the policy, consistent with the UK Financial Services Compensation Scheme model. This would reduce the cost burden on compliant licensees who currently fund the CSLR through levies.

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Exclusion Creep

Drawing on the broking profession's expertise in arranging PII for financial services licensees, NIBA identifies significant concerns about the expansion of policy exclusions beyond historical norms. Specialist PII brokers with over 30 years of market experience report that a range of exclusions have emerged in recent years that were not present in earlier policy wordings. These include exclusions for managing discretionary accounts, margin lending and gearing, ATO reclassification of investment status, advice on products not on an approved product list (despite APLs having no legislative basis), financial interest thresholds, and overly broad bodily injury exclusions.

When exclusions remove coverage for a licensee's core professional activities, the policy ceases to function as a meaningful first line of defence. NIBA recommends that Treasury commission a comprehensive review of PII exclusions that have expanded beyond historical norms, with a view to establishing a prohibited exclusions list in revised minimum requirements.

ASIC Oversight, Data Collection, and Minimum Requirements

Risk-Based Oversight

NIBA supports enhanced ASIC oversight of PII compliance, provided it is proportionate and risk-based. The St John Review recommended annual certificates of currency, insurer notification to ASIC of policy cancellations or downgrades, and proactive, risk-targeted monitoring in 2012. These recommendations were not implemented, and the consequences are evident in the cases that have driven CSLR costs.

NIBA recommends that ASIC develop a risk-based PII monitoring framework to verify licensees displaying elevated risk indicators, including sample-based policy verification for licensees with elevated IDR and EDR complaint volumes. Consistent with the proportionality principle outlined above, oversight costs should be allocated in proportion to sectoral risk.

Enhanced Data Collection

NIBA supports improved data collection and sharing between APRA, ASIC, and the CSLR operator. Cross-referencing PII data with CSLR claims data and AFCA complaint volumes would allow regulators to identify at-risk licensees before failures crystallise. The broking profession is well-positioned to support enhanced reporting requirements, as brokers already facilitate the detailed exchange of risk information between licensees and insurers. NIBA notes broad stakeholder support for this reform across the financial services sector.

Minimum Requirements

NIBA supports CPI-indexing of the \$2 million minimum PII coverage floor to the 2007 base year, ensuring the minimum retains its intended protective value without a sudden step change. Minimum requirements should also include excess parameters linked to licensee revenue, with a minimum of \$5,000 and a maximum cap determined through actuarial analysis. The consultation paper notes that some insurers set excesses above \$15,000 to exceed AFCA fees—a practice inconsistent with the consumer protection purpose of mandatory PII.

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NIBA notes concerns regarding each and every claimant excess structures, which can erode the policy limit before any consumer receives compensation, where multiple claims arise from the same conduct. Treasury should examine whether minimum requirements should specify that excesses apply on a per-event or common-cause basis.

NIBA cautions against mandating specific policy terms beyond prohibited exclusions. The UK FCA concluded that doing so would likely make PII either unavailable or unaffordable, with broader implications for the availability of advice. Consumer access to professional advice depends on a viable PII market.

CSLR Recovery and Third-Party Rights

NIBA supports nationally consistent legislation enabling the CSLR operator to pursue recovery directly from PII insurers, regardless of the licensee's jurisdiction of incorporation. The St John Review recommended extending the Insurance Contracts Act 1984 third-party rights provisions to PII policies for this purpose—a reform that remains unimplemented. As NIBA noted in its February 2025 submission to the CSLR Post-Implementation Review, the CSLR should be empowered to enforce subrogation rights rather than imposing levies on compliant sectors.

Structural Reforms

ABN-Level PII Requirements

NIBA recommends that Treasury consider restructuring PII requirements from the AFSL level to the ABN level, consistent with the approach taken in engineering, accounting, and law. Under the current model, PII attaches to the licence rather than the practice, creating several perverse outcomes.

The current structure facilitates phoenix activity: directors of a collapsed licensee can establish a new entity with a new AFSL. At the same time, authorised representatives transfer across, leaving the old PII policy and claims history with the defunct entity. The St John Review specifically identified this problem. An ABN-level model would tie insurance to the practice entity and its principals, making it significantly more difficult to avoid claims history through corporate restructuring. The AFSL-level model also creates accumulation challenges for representative networks, in which insurers assess the aggregate risk of the entire network rather than pricing each practice independently. It can also produce coverage gaps or overlaps for representatives operating across multiple licensees.

NIBA acknowledges that this would require an amendment to section 912B of the Corporations Act and recommends that Treasury commission a feasibility study into this structural reform.

Professional Standards Schemes

The broking profession's commitment to professional standards, as embodied in the IBCOP, directly contributes to consumer trust and reduces the incidence of complaints and claims. PII claims ratios in financial services have dropped from a long-run average of approximately 60 per cent to approximately 30 per cent, suggesting that improvements in professional standards are contributing to lower claim incidence. NIBA's Ready or Reacting? report found that 77 per cent of brokers anticipate

the profession will evolve into a more strategic advisory role by 2035, reflecting active investment in skills and professional standards.

Professions covered by Professional Standards Schemes—such as lawyers and accountants—benefit from greater PII market stability and the ability to limit civil liability. NIBA encourages Treasury to explore extending such schemes to financial services as a longer-term structural reform.

Interaction with the AFCA Framework

NIBA observes that PII effectiveness cannot be assessed in isolation from the dispute resolution framework. Member feedback identifies the interaction between PII coverage and AFCA's determination process as a significant factor affecting insurer appetite and PII market stability. In particular, insurers may assert that an AFCA investigation does not trigger a notification obligation under the PII policy, while simultaneously pleading prejudice if the licensee fails to notify in a timely manner—creating a practical catch-22 that can defeat otherwise valid claims. NIBA notes these concerns for Treasury's consideration within the broader CSLR review.

Recommendations

NIBA makes the following recommendations:

Recommendation 1: Proportionate, sector-differentiated reform design. Any changes to PII minimum requirements or regulatory oversight should be calibrated to reflect sectoral risk profiles to avoid imposing unnecessary costs on low-risk sectors, ultimately reducing consumer access to professional advice.

Recommendation 2: Mandatory run-off cover availability. PII minimum requirements should include mandatory run-off cover availability for a minimum of seven years after licence cancellation or cessation of business, but at a minimum consistent with AFCA membership requirements.

Recommendation 3: Reform of insolvency exclusions. PII minimum requirements should prohibit blanket insolvency exclusions that preclude any claim once a licensee enters external administration, while permitting narrow exclusions for losses arising directly from the insolvency event, distinct from professional service failures.

Recommendation 4: Prohibition on CSLR operator exclusions. PII policies should be required to permit the CSLR operator to claim under the policy, consistent with the UK FSCS model.

Recommendation 5: Prevention of automatic PII cancellation upon external administration. PII policies should be required to continue to respond to claims arising from professional services provided before the administration event.

Recommendation 6: Comprehensive review of exclusion creep. Treasury should commission a review of PII exclusions that have expanded beyond historical norms, with a view to establishing a prohibited exclusions list that ensures coverage responds to the core professional activities of the licensee.

Recommendation 7: CPI indexation of minimum coverage. The \$2 million minimum PII coverage floor should be indexed to the CPI from the 2007 base year.

Recommendation 8: Excess parameters linked to revenue. Minimum requirements should include excess parameters linked to licensee revenue, with a minimum and maximum cap to be determined through actuarial analysis.

Recommendation 9: Risk-based ASIC oversight. ASIC should develop a risk-based PII monitoring framework that focuses on verifying licensees with elevated risk indicators, rather than imposing uniform reporting burdens across all sectors.

Recommendation 10: Enhanced PII data collection and sharing. Improved data collection and sharing between APRA, ASIC, and the CSLR operator should enable cross-referencing of PII coverage data with complaint volumes and CSLR claims data. This reform has broad stakeholder support across the financial services sector.

Recommendation 11: Nationally consistent CSLR recovery legislation. Nationally consistent legislation should enable the CSLR operator to pursue recovery directly from PII insurers, including by extending the Insurance Contracts Act 1984 third-party rights provisions to PII policies.

Recommendation 12: ABN-level PII feasibility study. Treasury should commission a feasibility study into restructuring PII requirements from the AFSL level to the ABN level, to address phoenix activity, accumulation challenges, and coverage gaps for representatives operating across multiple licensees.

Recommendation 13: Professional Standards Scheme feasibility study. Treasury should explore extending Professional Standards Schemes to financial services as a longer-term structural reform, noting the demonstrable PII market stability benefits observed in the legal and accounting professions.