



2025 Independent Review

NIBA Insurance Brokers Code of Practice

Consultation Issues Paper

Context

The National Insurance Brokers Association (NIBA) Insurance Brokers Code of Practice ("The Code") is an industry self-regulatory code, the latest version of which was put in place in 2022 (effective 1 November 2023). Under its terms, it must be independently reviewed every three years with input from industry and other stakeholders. Phil Khoury of CRK has been appointed to complete the Review. Links to the Code, the Terms of Reference for the Review and further information are available at <https://nibacodereview.crkhoury.com.au/>.

The Code is intended to be a key element of the conduct of insurance broking in Australia. It applies to all NIBA members and non-member signatories.

The 2022 Code was substantially rewritten and structure and style are less important for review than ensuring that the Code continues to be supported strongly by the broking profession and continues to meet community expectations of them.

This review is also conducted against a backdrop of a rapidly changing insurance environment. This includes climate change-driven increases in disaster events and claims, increasing construction costs and the consequently increased premiums. There have also been a number of other more or less concurrent reviews that will need to be taken into account.

Consultation Objectives

Following initial briefings, document review and a handful of discussions with a few key stakeholders, this paper is intended to mark the start of the Review consultation stage. We have identified issues that we think are key, however this does not limit the ability of stakeholders to raise other matters – indeed, perhaps our most important question is "what have we missed?"

Review Process

Once this Issues Paper has been circulated, the subsequent stages of the Review are planned to include the following. (Note that any suggestions for more effective or efficient ways of obtaining stakeholder input would be welcomed.)

1. Written submissions may be sent to the Reviewer at contact details below. They are due by April 11th. We are conscious that the current demand for

consultation input and written submissions to other processes is particularly high. Written submissions would be most helpful but not essential.

2. The Reviewer will invite interested stakeholders to attend small roundtable consultations during April and early May. Stakeholders are welcome to request additional group meetings or individual discussions. Every effort will be made to accommodate these additional requests.
3. Our aim is to draft our report during June and, depending on the issues raised, some additional targeted consultation may be conducted on specific findings or recommendations.

A final Report is expected to be published as soon as practicable after this, however there are many variables, including possible other developments beyond this Review that may result in a later completion.

Issues

The following initial prompts for response are based on our briefings, a document review, our early analysis of the Code and a small number of initial discussions held with stakeholders by the Reviewer. The list is not exhaustive and additional matters are expected and welcomed.

High-level matters

Our early investigations suggest six high level groupings of issues that stakeholders expect the Review to address:

- a. Dealing with potential or actual conflicts of interest. The conflicts issue was raised with us in relation to:
 - Disclosure of remuneration
 - Remuneration models
 - Transparency of business structures
 - Authorised representative models
- b. Aligning consumer protection aspects of the NIBA Code with other 'leading' financial sector Codes such as the Banking Code and more particularly the General Insurance Code of Practice (currently being revised)
- c. Ensuring that the Code remains relevant and aligned with developments in the environment, in public policy, in legislation and directions emerging from the General Insurance Code of Practice Independent Review the various Inquiries into the 2022 Floods, responses to the strata insurance controversy, etc.
- d. Whether the Code is producing genuine benefits for consumers, for the professionalism and reputation of the sector and levelling the playing field for standards across a disparate sector – at a reasonable cost.

- e. Whether the apparently low level of consumer complaints about insurance broking being referred to AFCA is a reliable indicator of a relatively problem-free sector or alternatively if it is an indicator of low consumer awareness or under-reporting.
- f. Although not directly within our Terms of Reference, stakeholders raised doubts as to whether compliance monitoring and enforcement of the Code is sufficiently resourced and empowered.

In the sections below, we discuss further and ask specific questions as a prompt for reaction/feedback.

1. *Have we understood the key issues confronting the sector and the Code of Practice and what have we missed?*

1. Objectives of the Code

The Code begins with a Foreword from the NIBA President specifying that the purposes of the Code are building professional competence and consumer confidence. A more fulsome statement of objectives in the Code itself (as for the General Insurance Code of Practice) may be helpful. Any changes to the Code will involve some level of trade-off. Without that clarity of purpose, it is virtually impossible to bring disparate views together to have a constructive debate about where and which trade-offs are worth making.

Drawing from the Code itself, from NIBA communications, from interviews and from our own experience we suggest the following could be adopted.

- a. A promise to consumers of the approach that will be taken by signatories to treat them fairly and with integrity
- b. To help safeguard the reputation of the profession and lift professional standards
- c. To retain the social license to self-regulate aspects of the conduct of signatory brokers by providing regulators, government, media and consumer advocates with confidence in the sector's standards and compliance monitoring
- d. To provide a level competitive playing field within the sector, requiring minimum standards irrespective of size, sophistication and structure of the broking firm
- e. To provide these benefits in a way that is practical, implementable and cost-effective

2. *Would you support these objectives? Is anything missing or need changing? Do you have a view about their relative importance? If they were agreed, would they assist you to form a view about potential changes to the Code?*

2. Conflicts of interest

This issue will be unsurprising to most readers. The business of the sector is intermediation and much is made of the primary relationship being between the broker and the client.

As with other financial sector intermediation, insurance broking is built on trust. From the least to the most sophisticated, the client is relying on the broker's skills, deep knowledge, commercial relationships and commitment to the client's interests to help them to obtain the right insurance at the right price.

That said, the ownership, business and licensing arrangements and remuneration models in the industry are varied and complex. There are numerous ways in which potential conflicts may arise. In general the Code deals with this through disclosure of the potential conflict to the client and through undertakings to 'manage' the conflict with the client's consent. The Code does, however, recognise the possibility that a broker may not be able to advise or act for a client due to a conflict that cannot be managed. In this case, the client must be notified.

We have heard some suggestions that the Code is weaker than consumer protections in other parts of the financial sector to the extent that it does not articulate clearly circumstances in which a conflict cannot be 'managed' and where instead the conflict should be prohibited by a commitment to 'avoid' certain potential conflicts.

3. *Are the current arrangements under the Code that are intended to manage potential or perceived conflicts sufficient? If not, how could they be strengthened through the Code?*

Remuneration

In this sector, although it is an advice sector, remuneration is only in small part directly from the client. Much comes from commissions paid by insurers and other service providers, which has been generally accepted practice for many years.

Concerns have been raised with us that some of the remuneration is transparent to the end-client and some is not. The structures and ownership of the brokerage and firms involved in supply may also not be transparent to the end client. The risk being that hidden incentives may be or appear to be, compromising what is recommended or offered to the client.

4. *Are you aware of or concerned about areas of remuneration or ownership where the potential for a conflict of interest in recommending insurance cover should be dealt with differently by the Code? Can you provide examples?*

5. *If the Code went further in requiring disclosure or limiting remuneration or ownership structures, what would the practical implications be for broker firms? Can you suggest practical solutions that could be implemented?*

Claims

Although less of an issue, we also heard concerns about potential conflicts when the broker is assisting with a claim on behalf of the client.

In some cases, a broker may be carrying out a significant part of the insurer's claims process, an efficiency measure permitted under the Code but potentially seen as beginning to act as an agent of the insurer rather than the client. The Code recognises this and provides that where a broker is acting under a claims authority from the insurer that is relevant to a client's claim, the client will be contacted and engaged with, and reasonable steps will be taken to ensure that the claim is managed in the client's best interests.

We have also been told that a broker assisting with a claim may be offered small incentives for referrals or recommendations by repairers or specialist assessors, or may have an undisclosed business relationship with a repairer or assessor (although but others we spoke to doubted that this is happening).

6. *Does the Code sufficiently address potential conflicts of interest that can arise in assisting a client with a claim? Can you provide examples of issues that can arise and suggest how these should be dealt with?*

Generally

7. *If the Code went further in requiring disclosure or limiting incentive fees or structures, what would the practical implications be for broker firms? Can you suggest practical solutions that could be implemented?*

3. Updating/aligning customer protections

Vulnerability

The Code obliges brokers to take reasonable steps to ensure their services are accessible to clients with special needs. Training must be provided for employees to support clients who experience vulnerability. A range of vulnerability factors are explicitly recognised in the Code and there is an obligation on brokers to do their best to identify clients with vulnerability. Clients are also encouraged to advise if they are experiencing vulnerability.

In recent reviews, other financial sector self-regulatory codes have looked into the effectiveness of similar commitments, made comparisons with international best practice and questioned whether more can be done, in particular to more proactively identify earlier those that need additional help. The experience of major natural disasters such as floods and fires has added focus on consumer vulnerability at times of major insurance claims and, to some extent, subsequent significant premium increases or loss of access to insurance.

Our initial discussions revealed some expectation that the Broker Code would need to follow developments in the GI Code, particularly because of their close relationship with clients.

We also heard some contra concerns that the dynamics of broking is quite different from other financial services and simply importing provisions from other settings may be unworkable.

8. *Is there more that the Code should be doing to address the needs of vulnerable clients? Should the Broker Code maintain a close alignment with the relevant provisions of the GI Code?*

9. *What practical problems could arise from the Code adopting similar or the same obligations from a new GI Code?*

Small businesses

The NIBA Code applies to a Code subscriber's general insurance services and activities on behalf of all clients (subject to some limited exceptions). However, the Code obligations to disclose remuneration only apply where the client is a Retail Client as defined in the Corporations Act. This means that there is no obligation under the Code to disclose commission where a small business insurance product such as professional indemnity insurance or other BizPack products are arranged. It also introduces ambiguity as to whether the disclosure obligation applies where building insurance is arranged for an owners corporation.

In recent times, there has been acceptance that small businesses are often not sophisticated and may be in need of customer protections as much as individual consumers. The NIBA Code recognises this, except in relation to disclosure of commissions.

Different views about this were expressed in our initial discussions and we are aware that this has been a controversial issue within the signatory community. A number of those we spoke to (external and industry stakeholders) remained disappointed at the change of position taken in the last version of the Code.

10. *Should the obligation to disclose remuneration apply only to Retail Clients? Should it also apply to an expanded group of small business products? Or to all clients and all Covered Services?*

Advice models

A number of those interviewed raised the issue of general advice vs personal advice, noting that insurance brokers almost universally adopt the general advice model – providing this advice via their FSGs and PDS documentation. We were told, however, that the distinction between general and personal advice is less clear cut in general insurance and that some informal discussions over a customer's individual insurance needs is largely unavoidable.

11. *How well does the regulatory distinction between general and personal advice work in insurance broking? Are there ways in which the Code could address areas of ambiguity?*

Other consumer protection issues

A number of other customer protection issues were raised with us – and we are sure that there will be other matters emerge through our consultations. For example, the Code currently sets a minimum of 14 days notice for a renewal notice. This is seen as inadequate time to consider insurance needs, options or to consider using a different broker. The GI Code Review Panel has recommended that insurers provide 28 days notice.

12. *Should the Code provide for a 28 day notice period for renewals?*

Another example arose from some experience of brokers not keeping adequate client records – with a suggestion that the Code should require a high standard (complete and accurate) of record-keeping.

Consumer advocates also put to us that there should be some strengthening and/or clarifying of the words within the Code in a number of places to set clearer standards for brokers.

13. *As a general proposition, should the Code wordings be revised to be more explicit about the standards being set?*

4. Changes to the environment

The sector generally has been under some pressure, with a number of inquiries and reviews into Australia's disaster-readiness and the performance of insurance in dealing with large numbers of concurrent significant claims.

Inevitably, the insurance sector, including broking, is a target for political pressure, some justified and measured and some opportunistic – for example, threats to break up large insurance companies or regulate premium increases.

A practical recent example is the media furore over potential conflicts of interests in providing insurance in the strata sector – which has resulted in several state governments moving to impose regulation on insurance in that context.

In this case, the concern was broking firms appointing strata managers as their authorised representatives or agents, creating an incentive for strata managers to only source insurance for the owners corporation where there are valuable commissions to the broker.

We have also heard the view that if these commissions are restricted or abolished, that the foregone revenue will simply be paid by residents in higher strata management fees.

Amongst the objectives for a self-regulatory Code is to provide evidence of the sector's ability to effectively self-regulate, to identify potential problem areas, to act where community acceptance is wearing thin or where genuine harm is being caused, to be and be seen to be proactive and responsive.

14. *Has the Code kept pace with changes to the insurance environment? Has the Code helped the sector to maintain credibility as a self-regulator?*

15. *Can the broking sector do more to ensure community support for insurance generally? If more is needed from the Code, where would you support change?*

Recognising the need for the Code to address changes in the environment and to promote continuous improvement, the Code specifies that it will be reviewed at least every 3 years (and whenever urgent amendment is deemed necessary by the NIBA Board). In practice, the 3 year cycle creates an almost continuous work load, given the length of time for a review involving full stakeholder consultation and change implementation timeframes. Some of those we have spoken to have mentioned that a 5 year review cycle would be more practical – and encourage mid cycle focused reviews to address emerging issues.

16. *What do you think the benefits and risks would be of maximum 5 year (rather than 3 year) review cycle? Would you support change to 5 years?*

5. Level playing field

A number of those we have spoken to so far have mentioned the importance to the sector of a level playing field – that all signatory brokers maintain the same standards of professionalism – irrespective of scale or sophistication. We heard quite some scepticism as to whether the Code was achieving this objective and as to whether it was realistic to expect these standards of individual brokers (not part of a network or large firm).

17. *Is the Code helping to create a level playing field within the sector? In particular is it helping to lift standards of professionalism amongst the smallest firms?*

18. *What more could the Code provide to support high standards for small firms?*

6. Complaints

A number of our conversations turned to the question of the relatively low number of complaints recorded in against insurance brokers. This includes internal matters reported to ASIC by brokers, those reported by customers of brokers to AFCA – and allegations of breaches of the Code to the IBCCC.

This apparently low level of complaints has been explained for many years as evidence of the integrity and professionalism of the sector, however of late, there has been an increasing concern from some stakeholders (industry, consumer and regulatory) that this may simply be under-reporting.

Some brokers we spoke with pointed to the relatively high number of firms who report no complaints at all – something they found hard to believe. They argue that there must be systemic under-reporting at play.

Others pointed out that the dynamics of the sector meant that expressions of dissatisfaction (to use the technical term) most frequently happen in the course of a claim and are frequently resolved very quickly in the back and forth of the claim transaction and are often not formal enough to be recorded as a complaint. (We note that recording a complaint from a customer is distinct from alleging a breach of the Code.)

NIBA advises that what looks like a low number of complaints is not actually an outlier when compared only with other advisory/intermediary sectors of financial services – eg. financial planning or mortgage broking.

19. *Do you have experience or evidence of under-reporting of complaints in the broking sector? Do you have a view about the key causes for the relatively low numbers of reported complaints?*

20. *Should the Code be strengthened in the complaint-handling provisions? Should the IBCCC be doing more to test and validate the rate of self-reporting?*

7. Compliance monitoring

A key element of every self-regulatory Code is the capability and credibility of its compliance monitoring. The monitoring must be professionally conducted, clearly independent and of sufficient scale that it can be relied upon to produce a report card of Code compliance that is credible to signatories, to consumer advocates and to regulators (and from time to time, to politicians).

In our initial conversations with stakeholders, concerns were raised about the resourcing of the Code Compliance Committee, about its ability to be proactive and about its 'teeth'.

We are conscious that the IBCCC operation is largely governed by its Charter rather than the Code which is not part of our terms of reference, however we suspect that few stakeholders are aware of the distinction. NIBA is also a much smaller and less well-resourced industry association compared with (say) banking or general insurance and there will be limits to its ability to fund compliance monitoring.

21. *Do you think that the Code monitoring function is providing credibility that the Code is being effectively monitored? To your knowledge, does the Committee have sufficient powers to deal with non-compliance?*

22. *Do you have suggestions for additional or new activities that the Code Compliance Committee could be doing?*

8. Other Issues

23. *Please feel free to raise issues not covered by the questions above.*