



6 December 2021

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Dear Marigold

**Insurance Brokers Code Compliance Committee (IBCCC)
Submission to NIBA's Draft Code of Practice Further Consultation Report**

On behalf of the Insurance Brokers Code Compliance Committee (IBCCC), I would like to provide you with our submission to the draft Insurance Brokers Code of Practice (the Code).

Our submission includes the draft Code with track changes as revised by the IBCCC at its recent meeting. The draft also captures in the margin a number of comments, which we would like to further discuss with you.

We would also be interested to review the consultation plan for the review of the Charter and the wider consultation with stakeholders once the final revised Code is being published, including:

- How do you ensure that all stakeholders are aware of the discussion paper?
- Are you planning to host roundtable discussions, or do you only accept written responses?
- Is there a plan to reach out to insurance broker's clients and/or consumer advocate groups in some way (eg maybe a short online survey)?
- Has ASIC and/or the ACCC been provided with a copy of the consultation?
- What is NIBA's plan regarding development of training and guidance documents for the revised Code and when will they become available?

Looking forward to catching up with you.

Yours sincerely

A handwritten signature in black ink that reads 'Michael Gill'.

Michael Gill
Chair
Insurance Brokers Code Compliance Committee

Appendix: IBCCC submission to Draft Code, 6 December 2021

CC: Philip Kewin - NIBA CEO, Dianne Phelan - NIBA President

IBCCC submission to draft Code, 6 December 2021

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1 **Forward - Vision Statement and Code Approach from NIBA President**

This Code is an initiative of the National Insurance Brokers Association of Australia ABN 006 093 849 (**NIBA**). For well over 30 years NIBA has been the respected voice of the insurance broking profession in Australia.

NIBA has been a driving force for change in the Australian insurance broking industry, setting higher standards for professionalism and education for insurance brokers, promoting our industry-standard Qualified Practising Insurance Broker – QPIB – and requiring Continuing Professional Development from all members.

NIBA represents around 450 member firms and over 4,500 individual Qualified Practising Insurance Brokers operating throughout Australia.

NIBA is committed to ongoing endeavours to promote and maintain high levels of professionalism and integrity in insurance broking in Australia. The purpose of this Code of Practice, therefore, continues to be building better consumer outcomes through professional competence–

BUILDING PROFESSIONAL COMPETENCE AND CONSUMER CONFIDENCE

Diane Phelan
President, 2021 - 2023
National Insurance Brokers Association of Australia

2 **What is the Insurance Brokers Code of Practice?**

The 2021 Insurance Brokers Code of Practice (**the Code**) sets out standards of conduct for all Members of the National Insurance Brokers Association (**NIBA**) and **non-members** who have subscribed to the Code.

The Code is independently monitored and enforced by the Insurance Brokers Code Compliance Committee.

The Code provides additional safeguards for **clients** that are not set out in the law. In some areas, the Code sets higher standards than those required by law. No part of the Code limits or is intended to limit a client's rights under the law.

The Code represents the commitment of **Code Subscribers** to clients, prospective clients, and other parties with whom Code Subscribers interact in performing services.

The Code serves to guide Code Subscribers and consumers on what to expect throughout the client journey. It sets out the principles that shape the way Code Subscribers behave, deal with people, and make decisions.

This version of the Code was developed following close consultation with key stakeholders including consumer groups, regulatory bodies and the broader intermediated insurance industry,

The Code was launched on 1 January 2022, with the Code taking effect on 1 September-January 2023. Given the significant updates to the Code, this period allows Code Subscribers time to understand and implement the new obligations within their organisations.

The Code is accompanied by Code Subscriber and consumer information intended to provide guidance on certain topics referred to in the Code, including outlining Code Subscriber best practice as well as helping consumers understand their rights under the Code.

Consistent with the commitment of NIBA and Code Subscribers to continuous improvement, this Code will be reviewed every three (3) years and whenever an urgent amendment seems necessary.

3 How the Code works

3.1 Who does the Code apply to?

- (a) The Code applies to all members of the National Insurance Brokers Association. Non-members may adopt the Code with approval from NIBA (Code Subscribers, we, our, us).
- (b) Existing Code Subscribers to the 2014 Code must formally adopt the Code by 1 ~~September~~ January 2023.
- (c) A list of Code Subscribers who have adopted the Code will appear on the NIBA website: www.niba.com.au

3.2 When does the Code commence?

- (a) The Code applies to all activities and dealings that take place after 1 ~~January~~ September 2023. Activity prior to 1 ~~January~~ September 2023 will be managed under the 2014 Code.

3.3 What the Code applies to?

- (a) The Code applies to all services and activities a Code Subscriber engages in when arranging or advising on general insurance products or **alternative risk transfer solutions** on behalf of a client. This includes services and advice relating to claims handling, premium funding and risk management (**Covered Services**).
- (b) The Code also applies to a Code Subscriber's interactions and dealings with their clients (**Retail or Wholesale**¹), prospective clients, and other parties with whom the Code Subscriber interacts in performing services for their clients.
- (c) The Code does not apply where a Code Subscriber is arranging or advising on:
 - (i) ~~i~~ Insurance, reinsurance or alternative risk transfer solutions for an insurer or reinsurer;
 - (ii) ~~h~~ Health insurance products issued by a private health insurer; ~~and~~
 - (iii) ~~l~~ Life insurance products issued by a life insurer.

4 Our Code Subscriber Commitment

4.1 Code Principles

The Code is underpinned by a set of guiding principles outlined below (**Code Principles**). As Code Subscribers ~~to the Code~~, we commit to the Code Principles and will work take steps to embed them, and the standards expressed in the Code in our organisational ~~al~~ culture.

- (a) Professional commitment

¹ As defined in the *Corporations Act 2001 (Cth)*

- (i) We will ensure, we and our staff maintain and improve our competency through relevant qualifications, continued education, ~~and training~~ and how we deal with clients.
 - (ii) We will promote and uphold the ethical standards of this profession, including promoting the Code and the Code Principles within and outside our organisations.
- (b) Ethical Behaviour
- (i) We, our staff, and **representatives** will act honestly and with integrity in all dealings.
 - (ii) We will comply with all relevant laws and obligations, as well as this Code.
 - (iii) We will not engage in any conduct with the intent to avoid or limit our obligations under the Code.
- (c) Transparency and accountability
- (i) We will communicate with clients and prospective clients in a clear and timely manner.
 - (ii) We will assist regulators and other enforcement agencies (such as the Australian Financial Complaints Authority, and the Insurance Brokers Code Compliance Committee) to the best of our ability.
 - (iii) We will hold each other accountable for the promotion and implementation of the Code, and for observing Code obligations.

4.2 Code Subscriber Commitments

- (a) We commit to act in accordance with the Code Principles when we:
- (i) perform services for our clients and third-party beneficiaries;
 - (ii) engage with prospective clients;
 - (iii) interact with other insurance brokers, whether they are Code Subscribers or not;
 - (iv) deal with insurers and other members of the insurance industry; and
 - (v) respond to or assist regulators or other enforcement bodies.
- (b) By adopting the Code, we acknowledge:
- (i) we have entered into an agreement with NIBA to comply with the Code;
 - (ii) if a Code Subscriber **breaches** its obligations under the Code, the Insurance Broker Code Compliance Committee may impose sanctions on it as set out in Section 12 of the Code;
 - (iii) we may be otherwise sanctioned ~~by as a NIBA member~~ Code of Conduct Tribunal under Section 12.3(E) of the Code;
 - (iv) a Code Subscriber is in breach of the Code if its employees, representatives, or agents breach the Code when they are acting on the Code Subscriber's behalf;
 - (v) that the Code is designed to work with the laws that cover Code Subscriber conduct and go beyond standards required at law. The Code does not and is not intended to limit a client's rights at law; and
 - (vi) that there may be other codes that apply to services provided by a Code Subscriber (for example, the General Insurance Code of Practice and the Life Insurance Code of Practice).

When other codes apply to services being performed by us, we will comply with the higher of the code standards that apply in performing those specific services.

5 Engaging Your Broker

5.1 Understanding Our Role

- (a) ~~When we receive an enquiry about our services from a prospective client, b~~Before we agree to act for ~~the a~~ prospective client, we will clearly state:
- (i) what services we are authorised to provide;
 - (ii) who we are acting for when responding to questions from a prospective client;
 - (iii) the extent of the services we are able to provide, including any limits on the insurance products we can arrange for you. For example, there may be limits due to our competency, insurers we can access, and timeframes available;
 - (iv) that we are bound by the Code and provide a copy upon request; and
 - (v) ~~-if we cannot advise them or act on their behalf due to a conflict of interest. We will immediately notify a prospective client upon identifying such a conflict.~~

5.2 Terms of Engagement

- (a) If a prospective client agrees to engage us, we will provide them with a document setting out the terms of engaging us before we begin to act on their behalf. If a prospective client wishes to take immediate steps on their behalf, we will provide a document setting out the terms of engagement ~~ing~~ as soon as it is practical to do so.
- (b) The terms of engagement will provide information including:
- (i) the scope of the agreed services required;
 - (ii) whether we will provide advice based on personal circumstances or not;
 - (iii) how we intend to seek quotations from insurance companies on your behalf; and
 - (iv) the remuneration we will earn by arranging insurance policies and/or providing advice on insurance cover. ~~-Remuneration details are outlined further in Section 8 below.~~
- (c) We recognise that regulatory requirements for the provision and disclosure of information can mean prospective clients and clients receive a lot of information when they engage us and when we provide them with advice. We will ~~take all reasonable steps to work towards~~ ensuring our communications are that we provide clear, concise and in plain language information so that a prospective client or client understands the services they will receive.

6 Performing Services

6.1 Communications

- (a) We will communicate with you in a timely manner using clear and concise language and in plain English, subject to regulatory disclosure requirements.
- (b) When providing advice, we will take steps to help you understand the advice we have provided including the costs, key risks and benefits associated with any products we recommend.

6.2 Behaviour

- (a) We will provide services, interact with clients and those we deal with in the insurance industry in accordance with the Code Principles.
- (b) We will not tolerate discrimination, bullying or harassment by our employees, agents or representatives, and we will take appropriate action to discipline and/or prevent such behaviour occurring in the course of performing services.
- (c) We will take reasonable steps to ensure our services are accessible to clients with special needs and introduce training for employees to support clients who experience vulnerability.

6.3 Who We Act For

- ~~(a)~~ When a client (you, your) engages us as insurance brokers and risk advisers, we have a duty to act on your behalf and in your best interests.
- ~~(b)~~ Where we become aware of a possible there may be a conflict of interest, we will advise you of it promptly. We will obtain may only continue to act on your behalf with your express written consent before continuing to act for you.
- ~~(a)~~
- ~~(b)~~~~(c)~~ We may, at times act for insurers during the course of an insurance transaction, for example by arranging insurance and submitting claims electronically. While engaged by you, we will not act for an insurer or another party where doing so would be contrary to your best interests.
- ~~(d)~~ We will have policies and procedures in place so that we can identify and avoid instances where we may act contrary to your best interests.
- ~~(e)~~~~(e)~~ We will periodically review our procedures to ensure they are not creating conflicts.
- ~~(d)~~~~(a)~~ Where there may be a conflict of interest, we may only continue to act on your behalf with your express written consent.

7 Making a Claim & Renewing Your Insurance Cover

7.1 Communication

- ~~(a)~~ We will act on your behalf exclusively in making and managing your claims.
- ~~(b)~~ If we have a conflict of interest, we will identify with you promptly and seek agreement with you as to how we manage it in your best interest.
- ~~(a)~~~~(c)~~ We will keep you informed in a timely manner regarding the progress of your claim.
- ~~(b)~~~~(d)~~ When we receive an insurer's response to a submitted claim, we will notify you of the outcome as soon as it is reasonably practical to do so.
- ~~(e)~~~~(e)~~ If your claim is unreasonably denied by the insurer, we will act as claims advocates on your behalf to try to get your claim paid.
- ~~(d)~~~~(f)~~ We will advise you if the insurer seeks to negotiate a settlement of your claim.
- ~~(e)~~~~(g)~~ We will seek your instructions before agreeing to any settlement or compromise of your claim.
- ~~(f)~~~~(h)~~ If the insurer declines to pay your claim, we will explain the reasons for the insurer's decision and outline what further steps can be taken ~~to escalate the issue further, if any.~~

7.2 Policy Renewal

- (a) We will contact you ~~well before prior to~~ your insurance cover expiry date to:
 - (i) review your needs;

- (ii) ascertain whether your circumstances remain the same or have changed; and
 - (iii) discuss any changes to your insurance cover required due to any change in circumstances.
- (b) We will take appropriate, professional and timely steps to seek insurance cover terms and conditions and advise you of options available (if any) for your consideration.

8 Disclosing what we earn

8.1 Disclosing Remuneration

Insurance Brokers are sometimes remunerated by insurers as well as their clients. The reason is that they provide services that benefit insurers and make the insurance process more efficient and cost effective for all. Payments from insurers are sometimes seen as conflicting with their primary responsibility to their client for who they are arranging insurance or providing other services.

Insurance Brokers are very conscious of this perception. They are legally bound to avoid conflicts, if conflicts are perceived or arise, they will alert you promptly and resolve it in consultation with you. They are also legally required to act in your best interest.

- (a) If you are a retail client² and we are acting for you and, on your behalf, when we advise you about your insurance options, we will provide you with information about any remuneration (including commissions) or other benefits we will or expect to receive as a result of providing Covered Services. See Section 3 for more information on Covered Services.
- (b) This information must include:
 - (i) the dollar amount of commission we will or expect to receive in providing Covered Services;
 - (ii) any **non-monetary remunerations** we receive from insurers as a result of providing Covered Services;
 - (iii) any fees payable by you in relation to our services to you; and
 - (iv) whether we intend to keep any portion of the commission or service fee if the policy is cancelled before it is due to expire.
- (c) This information will be provided at the same time and by the same means as our advice to you.³

8.2 Other Remunerations and their applications

We may receive the following other remunerations depending on the circumstances.

<u>The type of remuneration</u>	<u>When we can receive this remuneration</u>	<u>When we will not receive this remuneration</u>
<u>a) Contingent and Preferential Remuneration</u> Including: <ul style="list-style-type: none"> • <u>volume-based commissions;</u> 	<u>When acting on behalf of an insurer or under a binder arrangement.</u>	<u>When acting on your behalf.</u>

² As defined in the Corporations Act 2001. This will be further explained in the Guidance documents.

³ To avoid doubt, it is intended this will apply when Covered Services are provided under a personal advice or a general advice model.

<ul style="list-style-type: none"> • <u>profit-sharing arrangements; and</u> • <u>preferential remuneration such as override commissions.</u> 		
<p><u>b) Non-Monetary Remuneration</u></p> <p>Including:</p> <ul style="list-style-type: none"> • <u>access to technology platforms and IT support;</u> • <u>education and training;</u> • <u>membership services provided by insurance broker networks;</u> • <u>event sponsorship; and</u> • <u>marketing assistance.</u> 	<p><u>Where there is no reasonable expectation of remuneration influencing our advice or other services we provide to you.</u></p>	<p><u>If it could reasonably be expected to influence the advice and other services we provide to you.</u></p>
<p><u>c) Services Provided to Insurers and others</u></p> <p><u>From time to time we enter into arrangements with insurers and others to provide services and support in order to promote the efficient operation of the insurance market.</u></p> <p><u>Excluded Services</u> <u>means services provided to an insurer or another organisation and paid for by the insurer or the other organisation.</u></p>	<p><u>In all cases, they do not need to be disclosed.</u></p> <p><u>Arrangements for the provision of Excluded Services are commercial in nature, and the obligations relating to disclosing what we earn do not apply to those arrangements.</u></p>	<p><u>Not applicable.</u></p>

8.3 Review of Remunerations

We commit to periodically reviewing all non-monetary remuneration arrangements to ensure they are not creating conflicts of interest.

8.2 Contingent and Preferential Remuneration

- ~~(a) When acting on your behalf we will not receive any contingent remuneration including volume based commissions or profit sharing arrangements or preferential remuneration such as (override commissions) from an insurer.~~
- ~~(b) The above does not apply when we are acting on behalf of an insurer or in relation to Covered Services effected under a binder arrangement~~

8.3 Non Monetary Remuneration

- ~~(a) When we are acting for you and on your behalf, we may receive non-monetary remuneration, including:~~
- ~~(i) access to technology platforms and IT support;~~
 - ~~(ii) education and training~~
 - ~~(iii) membership services provided by insurance broker networks~~
 - ~~(iv) event sponsorship; and~~

~~(v) marketing assistance.~~

~~(b) We will not accept any non-monetary remuneration in exchange for Covered Services where doing so could reasonably be expected to influence the advice we provide.~~

~~8.4 Services Provided to Insurers and others~~

~~(a) From time to time we enter into arrangements with insurers and others to provide services and support in order to promote the efficient operation of the insurance market. Excluded Services.~~

~~(b) Excluded Services means services provided to an insurer or another organisation and paid for by the insurer or the other organisation including:~~

~~i. access to broker-owned and operated technology;~~

~~ii. access to broker-owned intellectual property, including broker insurance wordings;~~

~~iii. insurer consulting services;~~

~~iv. data and analytic services;~~

~~v. risk control and engineering services;~~

~~vi. product development services;~~

~~vii. binder and cover holder activities outside arranging or advising on general insurance products for insured clients.~~

~~(c) Arrangements for the provision of Excluded Services are commercial in nature, and the obligations relating to disclosing what we earn do not apply to those arrangements.~~

9 Employees, Agents and Representatives

9.1 Our Responsibility

(a) We are responsible for ensuring that our employees, agents and representatives comply with the Code when they are acting on our behalf.

9.2 Promoting the Code

(a) We will do the following to promote compliance with the Code:

(i) develop policies and procedures for our organisation and create a culture that reflects the Code in the way we provide services, and deal with others;

~~(i)(ii)~~ only allow our employees, agents and representatives to provide services that match their expertise;

~~(ii)(iii)~~ require all our employees, agents and representatives to receive appropriate education and training:

(A) to provide their services competently; and

(B) on the Code at least once, every year;

~~(iii)(i) develop policies and procedures for our organisation that reflects the Code in the way we provide services, and deal with others;~~

(iv) include obligations in our agreements with agents and representatives:

- (A) to comply with the Code Principles and other provisions of the Code relevant to the services they are providing;
 - (B) to report on breaches or potential breaches of the Code within five (5) days of discovery; and
 - (C) to report to us immediately upon receiving a **complaint** about a breach of the Code.
- (v) At least annually review the extent to which employees, agents and representatives are complying with the Code and take steps to improve compliance within our organisation where appropriate.

10 When Things Go Wrong

10.1 Making a Complaint

- (a) We will make available our free internal and external dispute resolution processes and contact information for the Australian Financial Complaints Authority (AFCA).
- (b) If you are unhappy about any aspect of the services performed for you or an interaction with our employee, agent or representative, you should make a complaint to us in the first instance (Complaint).
- (c) We will publish, and make readily available, information about our internal dispute resolution processes and our external dispute resolution processes.

10.2 Handling your Complaint

- (a) We will promptly acknowledge receipt of your Complaint and provide information about our internal dispute resolution process and timeframes.
- (b) Your Complaint will be handled by a person with the appropriate authority, knowledge and experience.
- (a)(c) We will take all reasonable steps to ensure that ~~Unless compelling reasons exist,~~ the person who is handling your ~~whose conduct you are complaining about will not handle your~~ Complaint will not be the person whose decision or conduct is the subject of your Complaint.
- (b)(d) We will keep you informed about the progress of your Complaint at least every ten (10) business days and provide you with contact details for the person responsible for handling your complaint.
- (e)(e) Complaints first made after 1 January September 2023 will be handled in accordance with Section 10 of the Code, regardless of when services are provided.

10.3 Responding to your Complaint

- (a) When we have completed our investigation, unless 10.4(a) applies, we will provide you with a written response, which will include:
 - (i) the outcome of our investigation of your Complaint;
 - (ii) the reasons for our decisions;
 - (iii) your right to take your Complaint to AFCA~~our external dispute resolution provider;~~ and
 - (iv) information on how you can take your Complaint to the Australian Financial Complaints Authority (AFCA), if you are not satisfied with our response.
- (b) If it is identified that we have made a mistake in handling your Complaint, we will take action to correct the mistake.

10.4 Timeframes for handling your complaint

- ~~(a)~~ If we resolve your Complaint to your satisfaction within five (5) business days, we will ~~not~~ provide you with ~~a~~ written confirmation of the resolution of your Complaint. ~~response unless:~~
- ~~(b)~~ ~~you request a written response; or~~
- ~~(c)~~ ~~the Complaint is about:~~
- ~~(d)~~ ~~hardship;~~
- ~~(e)~~ ~~a declined insurance claim; or~~
- ~~(f)~~(a) the value of an insurance claim.
- ~~(g)~~(b) We will resolve your Complaint within thirty (30) **calendar days** from the date we receive your Complaint.
- ~~(h)~~(c) If we cannot make a decision within this timeframe, ~~prior to the deadline,~~ we will:
- (i) contact you **in writing** and provide reasons for the delay;
 - (ii) if you are a Retail Client, inform you of your right to take your Complaint to AFCA~~the Australian Financial Complaints Authority;~~
 - (iii) inform you of your right to report alleged breaches of the Code to the Insurance Brokers Code Compliance Committee – see Section 12 about reporting alleged breaches of the Code.

11 Supporting clients experiencing vulnerability

11.1 Identifying vulnerable clients

- (a) We are committed to supporting clients who may be experiencing vulnerability.
- (b) A person's vulnerability may be due to a range of factors including:
- (i) age;
 - (ii) disability;
 - (iii) mental health conditions;
 - (iv) physical health conditions;
 - (v) family and domestic violence;
 - (vi) language and/or literacy barriers;
 - (vii) cultural background;
 - (viii) Aboriginal or Torres Strait Islander status;
 - (ix) remote location; ~~or~~
 - (x) financial distress; or
 - (x)(xi) other personal or financial circumstances causing significant detriment.
- (c) We will do our best to identify any vulnerability. We encourage you to communicate with us if you are experiencing vulnerability as we may not otherwise become aware of your circumstances if you do not disclose them to us.

11.2 Supporting vulnerable clients

- (a) If you tell us, or we identify, that due to a vulnerability you need additional support or assistance, we will work with you and try to find a suitable way to proceed. We will do this as early as practicable whilst at all times respecting your right to privacy and self-advocacy.
- (b) If you tell us, or we identify, that you require support from a third-party (e.g., a lawyer, interpreter, or friend) we will make reasonable accommodations to allow for this.
- (c) We will endeavour to make sure our processes are flexible enough to recognise the authority of your support person.
- (d) We will have internal policies and training appropriate to our employees' roles to help them:
 - (i) understand and recognise vulnerabilities;
 - (ii) understand support options available to vulnerable persons and to what extent we can support you;
 - (iii) take account of your particular needs or vulnerability; and
 - (iv) engage with you with sensitivity, dignity, respect and compassion — this may include arranging additional support, for example referring you to people, or services, with specialist training and experience.

12 Enforcement of the Code: Insurance Brokers Code Compliance Committee

We have established an independent code monitoring body, the Insurance Broking Code Compliance Committee (**IBCCC**), to monitor ~~and enforce our~~ compliance with this Code.

12.1 Responsibilities of the IBCCC

- (a) The IBCCC's constitution, functions, and power are set out in its **Code Charter**.
- (b) In addition to its powers to enforce the Code, the IBCCC is responsible for:
 - (i) providing guidance to the insurance broking industry about how to comply with the Code;
 - (ii) identifying areas for improvement of insurance broking practices;
 - (iii) monitoring the efficacy of the Code through investigations, **collection and** analysis of data, and stakeholder engagement;
 - (iv) providing reports to the NIBA Board and the public regarding industry data and consolidated analysis on Code compliance;
 - (v) publishing breach decisions on a de-identified basis; and
 - (vi) advising the Australian Securities and Investments Commission (**ASIC**) of decisions it deems appropriate or of the behaviour of a **Code** Subscriber that may be warranted.

12.2 Reporting Breaches of the Code

- (a) Anyone can report alleged breaches of the Code to the IBCCC.
- (b) The IBCCC ~~will~~ **may** review the allegations reported and make a decision about whether the Code has been breached.
- (c) **If a review of the allegations is conducted,** ~~T~~he IBCCC will advise the person reporting the breach and the relevant **Code** Subscriber of its decision and reasons in writing.

12.3 Imposing Sanctions

- (a) The IBCCC has the power to impose sanctions on a Code Subscriber for breaching the Code.
- (b) When determining any sanction to be imposed, the IBCCC will consider:
 - (i) whether the breach is widespread;
 - (ii) how long the breach went undetected;
 - (iii) how the breach was handled by the Code Subscriber including behaviour towards the person alleging the breach;
 - (iv) the extent to which the Code Subscriber has made efforts to or has remedied the breach;
 - (v) the impact, effect, loss or damage experienced by the client as a result of the breach;
 - ~~(i)~~ the appropriateness of the sanction;
 - ~~(ii)~~ the extent to which the Subscriber has made efforts to or has remedied the breach;
 - ~~(iii)~~~~(vi)~~ the loss or damage experienced by the client as a result of the breach; and
 - ~~(iv)~~~~(vii)~~ any other relevant factors.
- (c) The IBCCC may impose any one or more of the sanctions below on a Code Subscriber if it determines the Code Subscriber has breached the Code.
- (d) The IBCCC may direct a Code Subscriber found to be in breach of the Code to:
 - (i) take specific steps to rectify the breach within a timeframe;
 - (ii) undertake a Code compliance audit at the Code Subscriber's cost;
 - (iii) publish corrective advertising; or
 - (iv) undertake to receive additional training or certification within a timeframe.
- (e) The IBCCC may also sanction a Code Subscriber by:
 - (i) publishing the fact that a named Code Subscriber has breached the Code and details of the breach;
 - (ii) advising ~~the Australian Securities and Investments Commission~~ASIC of the breach; or
 - (iii) requesting ~~the NIBA Board refer~~ the matter to be referred to the NIBA Code of Conduct Tribunal for the purposes of determining any further sanction to be applied to the Subscriber under Rule 6.3 of the NIBA Rules and Regulations.

12.4 Working with the IBCCC

- (a) NIBA will arrange for the IBCCC to be reasonably resourced to enable it to carry out its responsibilities in an effective way.
- (b) Both NIBA and Code Subscribers will make efforts to cooperate with the IBCCC in its review of our compliance with the Code and its investigations of any breaches of the Code.

13 Commitment to the Code

13.1 Promoting the Code

- (a) We will work with NIBA to promote the Code to clients, prospective clients, and to insurance brokers that have not yet adopted the Code.
- (b) We will promote the Code to our clients and prospective clients by:

- (i) providing every client with a copy of the Code, either hard copy or electronically prior to or at the point we are engaged by the client; and
 - (ii) referring to the Code on our company website and in other promotional material.;
- (c) We will promote the Code within our organisation by:
- (i) including Code training materials as part of new employee induction materials;
 - (ii) endeavouring to embed the Code Principles in our organisational goals and objectives, and decision making;
 - (iii) having a governance process in place to report to our Board or Executive Management on our compliance with the Code; and
 - (iv) supporting NIBA initiatives aimed at improving insurance broker competency, professionalism, and embedding the Code in the industry.

13.2 Reviewing and Improving

(a) NIBA will:

- (i) immediately review any Code provision where it appears to be necessary to achieve the intended operation of the Code;
- ~~(ii)~~ arrange for the Code to be independently reviewed at least every ~~{(3)}~~ years from the date the Code comes into effect;
- ~~(iii)~~ take steps to make available multi-lingual versions of the Code to improve client accessibility;
- ~~(iv)~~ develop guides to improve consumer understanding about the Code; and
- (v) develop non-binding best practice guides to help Code Subscribers meet their obligations under the Code.

14 Definitions

Please note that all words in BOLD are words with special meanings as defined below.

AFCA means the Australian Financial Complaints Authority. For information see www.afca.org.au.

AFCA Rules means the rules under which AFCA operates. For information see <https://www.afca.org.au/about-afca/rules-and-guidelines>.

Alternative Risk Transfer Solutions

mean tailor-made risk financing solutions as key response to some of the limitations of the traditional insurance market.

ASIC means the Australian Securities and Investments Commission. For information see www.asic.gov.au.

Associated Services means services provided in association with the provision of insurance services. These services include but are not limited to:

- Claims administration services;
- Loss control and risk management services;
- Mutual fund or captive administration;
- Risk inspection; and

- Premium funding arrangement or referral.

Associated Services do not include reinsurance services.

<u>Binder Arrangement</u>	<u>means an arrangement when an insurer permits a person or entity (such as the Code Subscriber) to enter into insurance contracts with you on their behalf.</u>
<u>Breach</u>	<u>means a failure to comply with the obligations of the Code in relation to the provision of an insurance broking service.⁴</u>
<u>Business Days</u>	<u>means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.</u>
<u>Calendar Days</u>	<u>means any days in accordance with the world-wide accepted calendar, including Saturdays, Sundays and State and federal holidays.</u>
<u>Catastrophes and Disasters</u>	<u>means any natural events such as fires, floods, earthquakes, cyclones, severe storms and hail, pandemics, affecting a significant group of persons.</u>
<u>Client</u>	<u>means a person and/or business covered by the Code in relation to Covered Services. It does not include:</u> <ul style="list-style-type: none"> • <u>Insurer or its agents;</u> • <u>Insurance broker;</u> • <u>Other type of insurance intermediary; or</u> • <u>Other insurance service provider such as premium funder and loss adjuster.</u>
<u>Code</u>	<u>means this version of the Code.</u>
<u>Code Administrator</u>	<u>means the Australian Financial Complaints Authority (AFCA) appointed by NIBA for this role.</u>
<u>Code Charter</u>	<u>means the Charter determined by the NIBA Board to apply in relation to the operation of the Code Compliance Committee. For information see https://insurancebrokerscode.com.au/resource/charter/.</u>
<u>Code Compliance Committee</u>	<u>means the independent committee operating under the Code Procedures and Charter to monitor compliance with the Code, that can amongst other things, make binding determinations for a breach of the Code.</u>
<u>Code Compliance Manager</u>	<u>means the Code Compliance Manager appointed by the Code Administrator in accordance with the Code Procedures and Charter to undertake the day to day operations of the Code Compliance Committee.</u>
<u>Code Procedures</u>	<u>means the code procedures determined by the NIBA Board to apply in relation to the administration of the Code.</u>
<u>Code Subscriber</u>	<u>is anyone that has entered into a formal agreement with NIBA to be bound by the Code.</u>
	<u>The Code applies from 1 January 2023 or such time the Code subscriber enters into an agreement with NIBA.</u>

⁴ Terms have been defined with reference to the ASIC *Regulatory Guide 78 – Breach Reporting by AFS Licensees*, the Australian Standard AS 3806 2006 – *Compliance Programs*, Section 912D of the *Corporations Act 2001*.

For a list of Code Subscriber see <https://insurancebrokerscode.com.au/about/about-the-code/code-subscriber-register/>.

<u>Complaint</u>	means any expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required. ⁵
<u>Covered Services</u>	means Insurance Services and Associated Services provided by a Code Subscriber (or its representative) to the Client or prospective Client from the time the Code Subscriber becomes bound by the Code. This includes services relating to claims handling, premium funding and risk management.
<u>Excluded Services</u>	means services where a Code Subscriber is arranging or advising on: <ul style="list-style-type: none">• <u>insurance, reinsurance or alternative risk transfer solution for an insurer or reinsurer;</u>• <u>health insurance products issued by a health insurer; or</u>• <u>life insurance products issued by a life insurer.</u>
<u>Insurance Services</u>	means all general insurance and life insurance services. Insurance services do not include reinsurance services.
<u>In writing</u>	means a communication conveyed by any one or more of mail, email, facsimile, text message, or a document sent or given to the relevant person or business.
<u>NIBA</u>	means the National Insurance Brokers Association. For information see www.niba.com.au .
<u>Non-member</u>	means a financial service provider who is not a member of NIBA.
<u>Non-monetary Remuneration</u>	means any remuneration rewarded in a non-cash form as defined in Section 8.2 (b) of the Code.
<u>Personal Advisory Service</u>	is when Code Subscribers provide advice based on consideration of whether certain insurance products are appropriate for personal and/or business needs, objectives or financial situation or not.
<u>Remuneration</u>	means money paid for work or a service.
<u>Representative(s)</u>	means anyone who acts on behalf of a Code Subscriber in providing the Covered Services, including but not limited their employees.
<u>Retail Client</u>	means an individual or small business that purchases a prescribed retail insurance product. Retail clients must receive a Financial Services Guide (FSG), Statement of Advice (SOA) and where appropriate, a Product Disclosure Statement (PDS) from their adviser. Wholesale clients generally do not.
<u>Third-Party Beneficiary</u>	means a person or business that benefits from the terms of a contract made between two other parties. In law, a third-party beneficiary may have certain rights that can be enforced if the contract is not fulfilled.
<u>Wholesale Client</u>	means a client who is not a Retail Client.
<u>“We”, “Our” and “Us”</u>	has the same meaning as Code Subscriber.
<u>“You” and “Your”</u>	has the same meaning as Client.

⁵ As per AS/NZS 10002:2014 and ASIC RG 271.27.