

# INSURANCE BROKERS CODE COMPLIANCE COMMITTEE CHARTER

## 1. PURPOSE

- 1.1. This Charter sets out the terms on which the Insurance Brokers Code Compliance Committee (IBCCC) is established and operates for the purposes of exercising its powers and duties under the Code.
- 1.2. The powers, duties, functions and responsibilities of the IBCCC set out in this Charter are subject always to the law and to the Code.

## 2. FUNCTIONS AND RESPONSIBILITIES OF THE IBCCC

### 2.1 Functions and responsibilities

In accordance with the Code and this Charter, the IBCCC is the independent committee responsible for monitoring compliance with and enforcing the Code and has the following functions and responsibilities:

- (a) to help and assist Code subscribers and other members of the insurance broking industry understand and comply with the Code;
- (b) to identify potential areas of improvement of insurance broking practices and actively recommend and encourage such improvements;
- (c) to identify and recommend steps to drive improvement in insurance broking practices;
- (d) to monitor, investigate and enforce Code compliance by Code Subscribers to the extent set out in the Code and the Charter, including but not exclusively, to:
  - (i) receive information and compliance reports from Code Subscribers;
  - (ii) receive reports of possible Code breaches;
  - (iii) investigate potential Code breaches and where appropriate make determinations of a Code breach in accordance with the provisions of the Code and of this Charter;
  - (iv) impose reasonable corrective measures where relevant to remedy Code breaches
  - (v) monitor the implementation of corrective measures, and
  - (vi) impose sanctions as provided for in the Code and in this Charter.

- (e) to liaise with NIBA on relevant matters and provide recommendations to NIBA as to how the objectives of the Code may be better achieved;
- (f) to regularly publish information and deliver presentations to Code Subscribers and others on the activities of the IBCCC and to promote its work;
- (g) to publish an Annual Report on the activities of the IBCCC and an Annual Data Report containing aggregated industry data and consolidated analysis on Code compliance;
- (h) to establish and maintain an up-to-date register of Code Subscribers;
- (i) to provide guidance to Code Subscribers to promote best practice Code compliance; and
- (j) to perform such other activities as may be provided for in the Code, including matters incidental to the IBCCC's functions and responsibilities.

## 2.2 Guiding principles

The IBCCC will:

- (a) be transparent and accountable as to its processes;
- (b) act in a fair, reasonable, independent and honest manner, with integrity and impartiality; and
- (c) comply with this Charter and the Code.

## 2.3 Delegation of IBCCC functions

- (a) Subject to the following subclauses, the IBCCC may delegate its functions under the Code and this Charter to the Code Administrator.
- (b) The IBCCC must not delegate its power to impose a sanction in relation to Code non-compliance.
- (c) For the avoidance of doubt, the IBCCC may delegate its secretariat function to the Code Administrator.
- (d) Any reports of the IBCCC must be approved by the IBCCC before being released including where the preparation of a report has been delegated.

## 2.4 Appointment of AFCA as Code Administrator

- (a) NIBA has appointed AFCA as the party responsible under the Code to act on NIBA's behalf as the Code Administrator.
- (b) AFCA has accepted its appointment as Code Administrator and has agreed to act (as applicable to its role) in accordance with the Code and the Charter.
- (c) AFCA has appointed a dedicated team of staff (the **Code team**), including a Code Compliance Manager, to assist the IBCCC discharge its obligations and fulfil its functions under the Code and this Charter, including monitoring and enforcing Code Subscriber compliance with the Code.

### 3. FUNDING

The IBCCC will be funded and reasonably resourced by NIBA in order to carry out its responsibilities under the Code and this Charter in an effective way.

Each year, no less than one month before the end of the IBCCC financial year, the IBCCC will provide NIBA with a draft workplan and proposed budget for the following IBCCC financial year. If the draft workplan and proposed budget include any major changes to previous years, the IBCCC will advise NIBA accordingly, no less than three months before the end of the IBCCC financial year.

NIBA must consider the draft workplan and proposed budget and notify its decision to the IBCCC in writing as soon as practical, but prior to the end of the previous IBCCC financial year. In the event of any delay to the finalisation of the draft workplan and proposed budget, NIBA will ensure the IBCCC continues to be reasonably resourced to enable it to carry out its responsibilities in an effective way.

### 4. STRUCTURE OF IBCCC

#### 4.1 Composition of the IBCCC

The IBCCC will consist of three (3) members:

- (a) one IBCCC Chair with relevant experience and knowledge in industry, commerce, public administration or government service, to be appointed in accordance with the approval of both the NIBA Board and AFCA Board;
- (b) one industry representative with relevant experience and knowledge at senior level in the insurance broking industry in Australia, to be appointed in accordance with a decision of the NIBA Board; and
- (c) one consumer representative with relevant experience and knowledge, to be appointed in accordance with a decision taken by a majority of the consumer directors of the AFCA Board.

Each appointment or re-appointment of an IBCCC member and alternate member will be effected under a contract for services as between AFCA on behalf of NIBA, and the member or the member's company.

To maintain independence, a member of the IBCCC cannot also:

- (d) be a current member of the NIBA Board or the AFCA Board or have been a member of either board within 12 months of their appointment; or be employed by or be an officer of a Code Subscriber or its related body corporate.

#### 4.2 Alternate members of the IBCCC

Alternate members shall be appointed for each IBCCC member apart from the Chair.

The alternate members of the IBCCC will consist of:

- (a) one alternate industry representative with relevant experience and knowledge at senior level in the insurance broking industry in Australia, to be appointed in accordance with a decision of the NIBA Board; and

- (b) one alternate consumer representative with relevant experience and knowledge, to be appointed in accordance with a decision taken by a majority of the consumer directors of the AFCA Board.

To maintain independence, an alternate member of the IBCCC cannot also:

- (c) be a current member of the NIBA Board or the AFCA Board or have been a member of either board within 12 months of the appointment; or
- (d) be employed by or be an officer of a Code Subscriber or its related body corporate.

#### **4.3 Tenure**

Subject to clauses 4.4-4.8, each IBCCC member (including the Chair) will hold office, and each IBCCC alternate member will be appointed, for a three-year term.

#### **4.4 Re-appointment**

A person who was, or is currently, an IBCCC member or alternate member is eligible for consideration for re-appointment to that position.

In reappointing a member or alternate member for a further term, the relevant decision-making body (as set out in clauses 4.1 and 4.2):

- (a) must reappoint the member or alternate member for a further term of no more than three (3) years, unless special circumstances apply; and
- (b) may advertise the position if, in the opinion of the decision-making body, it is appropriate for additional candidates to be located and considered for the position.

#### **4.5 Resignation**

Without limiting the rights under the contract for services under which an IBCCC member or alternate member was appointed:

- (a) a member may resign from their position during their term by providing the relevant decision-making body (as set out in clauses 4.1 and 4.2) with at least one month's notice in writing of the intended resignation or such lesser period as may be agreed in writing; and
- (b) such resignation may be accepted by AFCA on behalf of NIBA as notice of termination of the contract for services.

#### **4.6 Termination for any reason**

Without limiting the rights under the contract for services under which an IBCCC member or alternative member was appointed:

- (a) that appointment may be terminated in writing for any reason by the relevant decision-making body (as set out in clauses 4.1 and 4.2) by providing the member with at least 14 days' notice in writing of such termination; and

- (b) in the event of such termination, AFCA may terminate the relevant contract for services on behalf of NIBA.

#### 4.7 Automatic disqualification

Without limiting the rights under the contract for services under which an IBCCC member or alternate member was appointed, if an IBCCC member (including the Chair):

- (a) becomes incapable of carrying out the inherent requirements of that position despite reasonable adjustments being made such as by reason that the member becomes of unsound mind;
- (b) becomes employed by or an officer of a Code Subscriber, a related body corporate of a Code Subscriber or NIBA; or
- (c) joins the NIBA Board and/or the AFCA Board;

(each a “disqualifying event”) then:

- (d) that member will become automatically disqualified from holding the appointment with effect from the relevant date or such later date as the relevant decision-making body (as set out in clauses 4.1 and 4.2) may decide; and
- (e) AFCA may terminate the relevant contract of service on behalf of NIBA with effect from that date by reason of the disqualifying event and on such terms as AFCA on behalf of NIBA considers appropriate.

#### 4.8 Effect of disqualification

The automatic disqualification of an IBCCC member under clause 4.7 will not of itself invalidate an act of the relevant IBCCC member performed between the date of the disqualifying event and the date of termination of their appointment and contract of service. After the disqualified member has been replaced, the IBCCC may convene a meeting of all members and unanimously resolve to affirm or disclaim any such acts.

## 5. MEETINGS

### 5.1 Meetings

- (a) The IBCCC shall hold at least four (4) meetings annually, at regular intervals of approximately three (3) months between meeting dates.
- (b) No person is entitled to attend an IBCCC meeting unless that person is:
  - (i) a member of the IBCCC, or, in the absence of that member, the member's alternate;
  - (ii) the Code Administrator of the IBCCC; or
  - (iii) a person invited to attend the meeting by the IBCCC.

## 5.2 Quorum

In order to hold a meeting, three (3) persons comprising each IBCCC member (or their alternate where the member is unavailable) must be present.

## 5.3 IBCCC Chair to preside

The IBCCC Chair will preside over each meeting of the IBCCC.

## 5.4 Notice of meeting

- (a) Subject to this clause 5.4, an IBCCC meeting may be called by a member (or the Code Administrator) by giving to every other member:
  - (i) notice stating the venue, time and date of the meeting at least ten (10) business days prior to the meeting; and
  - (ii) an agenda of items to be discussed at the meeting at least five (5) business days prior to the meeting.
- (b) A member (or the Code Administrator) may call an IBCCC meeting in relation to an urgent matter by giving to every other member prior notice of at least two (2) business days stating the venue, time and date of the meeting together with an agenda of items to be discussed.
- (c) A breach of clause 5.1 does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing if, at a meeting at which all members are present, the IBCCC resolves unanimously to excuse the breach.
- (d) IBCCC meetings may be attended in person or remotely by using available technology as agreed by the IBCCC.

## 5.5 Minutes

- (a) The Code Administrator will minute the proceedings of all IBCCC meetings, including the names of those present and in attendance, any resolutions proposed and whether any resolutions were passed.
- (b) The Code Administrator will circulate the minutes to each member and alternate member of the IBCCC (regardless of whether they attended the meeting). Minutes must be approved by the IBCCC.

## 5.6 Voting

- (a) Each member (or alternate member) attending IBCCC meetings shall have one vote.
- (b) Resolutions will be decided by simple majority.

### 5.7 Delegation of authority by the IBCCC

The IBCCC may from time to time, by written resolution, assign to or vest in an IBCCC member powers and responsibilities of the IBCCC, with the exception of its power to impose a sanction in relation to Code non-compliance. A copy of the resolution of the IBCCC as to the authority of the IBCCC member will be accepted as conclusive. The IBCCC member will not vote on such a resolution, with an affirmative vote by the other two members required to pass the resolution.

## 6. MATERIAL PERSONAL INTERESTS AND CONFLICTS

### 6.1 Personal interest in a matter being considered at an IBCCC meeting

In addition to, and not in derogation of any general law about conflicts of interest or conflicts of duties, if an IBCCC member has a material personal interest in relation to a matter that is being considered at a meeting of the IBCCC, they must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter, unless:
  - (i) the IBCCC member has first notified the other IBCCC members of their material personal interest and provided sufficient detail to enable them to understand the nature of the interest and any actual or potential conflict of interest or duties which may arise as a result;
  - (ii) the other IBCCC members are satisfied that the material personal interest should not disqualify the IBCCC member from participating in consideration of, and voting on, the matter;
  - (iii) the nature and details of the personal material interest and the circumstances in which it was disclosed have been recorded in a minute; and
  - (iv) the minute, relevant determination by the IBCCC and any reports on the matter are made available for inspection on request by any Code Subscriber affected.

For the avoidance of doubt, a material personal interest for the purposes of this clause does not arise solely with respect to an IBCCC member by reason of:

the member's previous employment with or previous holding of office with a Code subscriber; or the member being a policyholder or other customer of a Code subscriber or its related bodies corporate.

## 7. IBCCC COMPLIANCE MONITORING PROCESS

### 7.1 Methods

The IBCCC may, for the purposes of monitoring compliance with the Code and monitoring the efficacy of the Code (including compliance with any sanctions imposed by the IBCCC under the Code), do any of the following as it sees fit to fulfil its obligations, without limitation:

- (a) require a Code Subscriber to provide reasonable access to information, documents and systems which the IBCCC considers necessary to discharge its functions;
- (b) require a Code Subscriber to authorise AFCA to release to the IBCCC any confidential information of the Code Subscriber kept by AFCA which the IBCCC considers necessary to discharge its functions;
- (c) make a request of AFCA under Rule A.11.5 b) of the AFCA Rules for information obtained by AFCA from the parties to a complaint (including from a Code Subscriber), provided that a written agreement between the IBCCC and AFCA which allows for the release of that information is on foot at the time of the request;

require a Code Subscriber to conduct an internal or external audit to assess its compliance with the Code;

seek independent professional legal, accounting or other expert advice – and the IBCCC will take reasonable steps to ensure that any such external parties also comply with the requirements of this Code where applicable;

conduct own-motion enquiries, audits of Code Subscribers' Code compliance and "shadow shopping";

request each Code Subscriber to lodge an annual return reporting on their compliance with the Code;

issue reports and publish other documents and information related to its activities and findings; and

enter into appropriate arrangements with AFCA and other key stakeholders for the purpose of facilitating:

- (i) information exchange relevant to the IBCCC's functions;
- (ii) the promotion of the Code; and
- (iii) referrals to the IBCCC of an allegation that a Code Subscriber has breached the Code.

## 8. IBCCC COMPLIANCE INVESTIGATION PROCESS

### 8.1 Investigations undertaken by the IBCCC

The IBCCC may commence an investigation of Code compliance in the following circumstances, without limitation:

- (a) in response to an allegation or report from any source that a Code Subscriber may have breached the Code; or
- (b) in response to a referral or report from AFCA that a Code Subscriber may have breached the Code; or



- (c) as an outcome of the IBCCC's monitoring process if the IBCCC has reason to suspect that a Code Subscriber may have breached the Code (including in circumstances where a Code Subscriber has self-identified a breach); or
- (d) otherwise in response to any other information received by the IBCCC including as a result of IBCCC's monitoring activities.

## 8.2 Matters outside the scope of IBCCC's investigation powers

The IBCCC has a discretion to determine whether a matter falls outside the scope of its investigation powers under the Code. Where the potential breach is the subject of:

- (a) dispute before AFCA, a court, tribunal or other forum; or
- (b) an investigation by a regulatory body;

the IBCCC may but is not obliged to await the final determination or findings of that body before deciding to carry out or continue its investigation.

## 8.3 Discretion to discontinue or suspend compliance investigations

- (a) The IBCCC may decide, at any stage, that it is not appropriate to continue an investigation started under clause 8.1. In making this decision, the IBCCC may consider any factors it thinks relevant, including:
  - (i) the nature of the allegations made against the relevant Code Subscriber, including the significance of the alleged breach;
  - (ii) the period that has elapsed since the alleged event occurred;
  - (iii) whether another forum would be more appropriate to consider the matter;
  - (iv) whether the allegation or report of breach of the Code under investigation is frivolous or vexatious; and
  - (v) any work previously undertaken by the IBCCC to monitor or review practices and procedures of the relevant Code Subscriber where relevant to the allegations made.
- (b) If, during the course of conducting a compliance investigation, the IBCCC considers that a court, tribunal or other forum would be more appropriate to consider the matter, or if it considers the matter to be frivolous or vexatious, the IBCCC may suspend or discontinue the investigation of the allegation.
- (c) The IBCCC will provide the relevant parties with its written decision where it has exercised its discretion in accordance with subclause 8.3(a) or (b).

## 8.4 Process for considering potential Code breaches

- (a) Subject to clause 8.2, the IBCCC may, within a reasonable time of becoming aware of a potential breach, consider the potential breach in accordance with this Charter.

- (b) Where the IBCCC investigates a potential Code breach, the IBCCC must provide the Code Subscriber with an opportunity to respond to the potential breach.

### **8.5 Notice of determination**

- (a) Following an investigation in accordance with clause 8.4, the IBCCC may make a written determination in respect of the potential breach.
- (b) A written determination made by the IBCCC must:
  - (i) include a brief description of the potential breach including any relevant allegations;
  - (ii) the IBCCC's findings with respect to the potential breach, which may include where applicable that the Code subscriber is responsible for serious and/or systemic non-compliance with the Code;
  - (iii) include reasons for the conclusions reached; and
  - (iv) be provided to the Code Subscriber so that the IBCCC and the Code Subscriber may liaise as to any corrective measures, and the relevant timeframes for implementing these.
- (c) Determinations may be published on a de-identified basis on the IBCCC website or distributed in full or in summary as the IBCCC sees fit.
- (d) If the investigation is commenced in response to an allegation that a Code Subscriber has breached the Code, the determination may also be provided to the person(s) who made the allegation.

### **8.6 Consumer redress for findings and recommendation**

- (a) While the IBCCC may direct a Code Subscriber found to be in breach of the Code to rectify that breach under clause 11.3(d)(i) of the Code and clause 9.3(a) of this Charter, such a direction will not include requiring the Code Subscriber to award compensation or other form of direct consumer redress to the affected customer(s), such as for financial or non-financial loss. The IBCC's role does not include the awarding of such redress.
- (b) If a complainant may be entitled to compensation, the IBCCC may refer the complainant to the Code Subscriber's complaints team or, where appropriate, to AFCA as part of its external dispute resolution function and/or to ASIC.

## **9. SANCTIONS AGAINST CODE SUBSCRIBERS**

### **9.1 Right to impose a Sanction**

The IBCCC may impose a sanction(s) on a Code Subscriber for a breach of the Code in accordance with the Code where it has made a finding that:

- (a) the breach is serious or systemic;

- (b) the Code Subscriber has failed to remedy the breach despite the IBCCC's request that it do so, or has failed to do so within a reasonable time of that request;
- (c) there has been a breach of an undertaking given to the IBCCC in connection with that breach;
- (d) the Code Subscriber has not taken adequate steps to prevent a serious or systemic breach from re-occurring; or
- (e) the Code Subscriber has not co-operated and complied with reasonable requests of the IBCCC in the performance of its monitoring and investigative activities.

The IBCCC alone may impose a sanction on a Code Subscriber for breach of the Code, notwithstanding that a regulator, or a court, tribunal or other forum, may also have imposed its own sanction in connection with the same breach by reason that the Code Subscriber is also in breach of a legal, regulatory or other requirement.

The power to impose a sanction for a breach of the Code may not be delegated by the IBCCC.

## 9.2 Notice of Proposed Sanction

Before imposing a sanction, the IBCCC will notify the Code Subscriber in writing of the proposed sanction(s), and the reasons the IBCCC considers the sanction(s) would be appropriate, and will provide the Code Subscriber with 15 business days' to respond including any reasons why the Code Subscriber considers it would not be appropriate for the IBCCC to impose the sanction(s). The IBCCC in determining what sanction(s) would be appropriate, may have regard to, but not limited to, the following:

- (a) the serious and/or systemic nature of the breach;
- (b) the timeliness of the Code subscriber reporting the breach and/or undertaking corrective measures; and
- (c) the actual or potential harm caused by the breach.

## 9.3 Sanctions the IBCCC may impose

The IBCCC may impose one or more of the following sanctions on a Code Subscriber only as set out in clause 11.3(d) of the Code.

The IBCCC may direct a Code Subscriber found to be in breach of the Code to:

- (a) take specific steps to rectify the breach (subject to clause 8.6 of this Charter) within a stated timeframe;
- (b) undertake a Code compliance audit at the Code subscriber's cost;
- (c) publish corrective advertising;
- (d) undertake to receive additional training or certification within a timeframe.

- (e) The IBCCC may also sanction a Code subscriber by:
- (f) publishing the fact that a named Code subscriber has breached the Code and details of the breach;
- (g) advising ASIC of the breach;
- (h) requesting the matter be referred to NIBA to be dealt with under applicable NIBA Member rules and regulations, and/or Code Subscriber membership rules that apply.

## 10. COMPLAINTS ABOUT THE IBCCC

### 10.1 Handling of complaint by IBCCC

- (a) An affected person who is dissatisfied by reason that they consider that the IBCCC has not acted in accordance with the Code or the Charter may lodge a complaint (“a complaint about the IBCCC”) with the IBCCC.
- (b) A complaint about the IBCCC must contain sufficient details of the allegations being made, the grounds for those allegations and how the complainant has been affected.
- (c) The IBCCC will consider, investigate and respond to a complaint about the IBCCC as it deems appropriate and within a reasonable timeframe.
- (d) Before or at the time of responding to the complaint, the IBCCC must take reasonable steps to notify the complainant of the matters set out in clause 10.2, including details as to how a referral to the independent party may be initiated.

### 10.2 Handling of complaint by independent party

- (a) The CEO of NIBA and the Chief Ombudsman of AFCA will jointly appoint an independent party for the purpose of this clause 10.2 under appropriate terms of reference.
- (b) If the complainant remains dissatisfied after receiving the IBCCC response under clause 10.1(c), they may refer the complaint against the IBCCC to the independent party.
- (c) The referral must include the material lodged with IBCCC and any correspondence between the IBCCC and the complainant concerning the complaint about the IBCCC, and specify the reason(s) the complainant is dissatisfied with the IBCCC’s response to the complaint.
- (d) The independent party will consider the complaint in accordance with their terms of reference, including as to any applicable timeframes.
- (e) If the independent party finds that the IBCCC has not acted in accordance with the Code or the Charter, the independent party must recommend in writing to the IBCCC, NIBA and AFCA what steps it considers should be taken and the basis for that recommendation.

- (f) Subject to any relevant confidentiality or privacy considerations, the independent party will provide a copy of the recommendation to the complainant.
- (g) The costs of the independent party in dealing with a complaint about the IBCCC will be met by NIBA or as otherwise agreed between NIBA and the Code Administrator.

## 11. REPORTING BY IBCCC

### 11.1 Collection of information for Annual Report

The IBCCC must, for each period for which it must prepare an Annual Report, collect and record data for the purposes of analysis and reporting on Code compliance.

## 12. PUBLICATION OF ANNUAL REPORT

- (a) The IBCCC must prepare and publish an Annual Report within six (6) months of the end of each financial year.
- (b) Each Annual Report must include a fair and adequate summary and analysis of the information specified in clause 12(c). It may include any other matters the IBCCC thinks fit that are consistent with the functions of the IBCCC under the Code and this Charter.
- (c) The Annual Report must include the following:
  - (i) an outline of the activities of the IBCCC in the relevant period, including information as to:
    - a) the reported allegations of breaches of the Code;
    - b) investigated alleged breaches and any corrective measures agreed with Code Subscribers;
    - c) any sanctions imposed by the IBCCC; and
    - d) the number of meetings of the IBCCC;
  - (ii) any recommendations on Code improvements and education relevant to the operation of the Code arising out of its experiences of Code compliance in the relevant period; and
  - (iii) a statement that the IBCCC has complied with the terms of the Charter in the period of the Annual Report and, if there has been any non-compliance, the Annual Report must identify that non-compliance, the reasons for it and any action instituted by the IBCCC to ensure that such non-compliance does not reoccur.
- (d) The IBCCC must publish the Annual Report on the IBCCC website and provide a copy, either in hard copy or electronically, to:
  - (i) the NIBA Board;
  - (ii) each Code Subscriber;
  - (iii) the AFCA Board;

- (iv) the Consumers' Federation of Australia, and
  - (v) ASIC.
- (e) Each year the IBCCC will prepare and publish aggregated industry data and consolidated analysis of Code compliance by Code subscribers for the relevant period comprised in an Annual Data Report. This information may be published or provided separately to the Annual Report. Before determining what data it may collect and/or publish, the IBCCC must take into account any industry data already published by a regulator or NIBA to avoid duplication.

## 13. POLICIES, GUIDELINES, REPORTING FORMS AND OPERATING PROCEDURES

### 13.1 Development of reporting forms and operating procedures

The IBCCC may develop:

- (a) policies and guidelines on the administration of the Code;
- (b) compliance reporting and other forms; and
- (c) operating procedures related to the activities of the IBCCC and/or the Code Administrator (if relevant), that are consistent with this Charter and the Code.

In conjunction with NIBA, and where the change is considered by the IBCCC to be significant, the IBCCC may consult with Code Subscribers in developing or updating these policies, guidelines, reporting forms and operating procedures. The IBCCC may also consult with other organisations and individuals with an interest in the Code as the IBCCC sees fit.

## 14. GENERAL PRINCIPLES AND PROCEDURES

### 14.1 General principles

When considering a potential breach, the IBCCC must:

- (a) ensure the Code subscriber(s) to whom the potential breach or investigation relates is (are) accorded procedural fairness throughout the course of the IBCCC's consideration of the potential breach and the conduct of the investigation, having regard to:
  - (i) this Charter and the applicable Code provisions;
  - (ii) any IBCCC guidance as to Code requirements; and
- (b) act reasonably in all circumstances.

### 14.2 Confidentiality of information

- (a) In this Charter, "confidential information" means all technical, commercial and other confidential information and materials of a Code Subscriber,

consumer or small business and includes any information or material that discloses or relates to:

- (i) a Code Subscriber's compliance or non-compliance with the Code;
  - (ii) an actual or alleged breach of the Code;
  - (iii) the commercial, financial or legal affairs of a Code Subscriber including but not limited to pricing policies, costing information, supplier lists and customer lists;
  - (iv) legal advice and other privileged materials;
  - (v) a matter to which an obligation of confidence applies under law or in equity;
  - (vi) personal information within the meaning of privacy legislation; and
  - (vii) any other information or material which is of a confidential or sensitive nature, is marked or denoted as being confidential or which a reasonable person to whom that information or material is disclosed, or to whose knowledge that information or material otherwise comes, would consider confidential.
- (b) Subject to clause 14.2(c), a person referred to in clause 5.1(b) must take reasonable steps to maintain the confidentiality of confidential information supplied to it in connection with the business of the IBCCC, and not disclose or use for a purpose other than as permitted under this Charter or the Code any such confidential information.
- (c) The Code Administrator and each IBCCC member or alternate member may disclose confidential information:
- (i) as between each other;
  - (ii) to any person to whom disclosure is reasonably required for the purpose of the IBCCC exercising its functions under the Code or the Charter;
  - (iii) to any person to whom disclosure of confidential information is required by law;
  - (iv) to a relevant regulator, including in response to a request for that confidential information from the relevant regulator;
  - (v) under corresponding obligations of confidence as imposed by this clause 14, to:
    - a) a person retained to provide advice in accordance with clause 7.1(e), or
    - b) AFCA in its external dispute resolution function but only to the extent that it is relevant to a matter being dealt with by AFCA and only to the extent such disclosure is required or permitted under the AFCA Rules;



- (vi) for the purpose of imposing a sanction on a Code Subscriber in accordance with the Code;
- (vii) to another Australian financial services industry code compliance or governance committee to facilitate collaboration on common issues; or
- (viii) with the prior written consent of the Code Subscriber, subject to law.

### 14.3 Authority to give oral or written public statements

The IBCCC, and each IBCCC member (acting with the approval in writing of the IBCCC), will not make public statements on behalf of the IBCCC, except:

- (a) as contained in the Annual Report and Annual Data Report;
- (b) as expressly permitted under this Charter; or
- (c) as otherwise required in the performance of its functions and responsibilities as set out in clause 2 of this Charter.

## 15. CHARTER REVIEW

- 15.1 This Charter may be amended by NIBA after consultation with AFCA and the IBCCC, in which event a copy of the amended Charter must be provided or otherwise published to each Code Subscriber.
- 15.2 NIBA may arrange a periodic review of the IBCCC's activities, that may coincide with the periodic review of the Code by NIBA.

## 16. INTERPRETATION

For the purposes of interpretation, the following definitions apply to these terms. Any words not defined in this Charter will have the same meaning as in the Code.

**AFCA** means the Australian Financial Complaints Authority Limited ABN 38 620 494 34.

**AFCA Rules** means AFCA's Complaint Resolution Scheme Rules dated 31 January 2021 as amended from time to time.

**ASIC** means the Australian Securities and Investments Commission.

**Code Administrator** means an entity appointed in accordance with clauses 2.3 and 2.4.

**Charter** means this IBCCC Charter.

**Code** means the Insurance Brokers Code of Practice 2022 as amended from time to time.

**Code Subscriber** means an entity that has entered into a formal agreement with NIBA to be bound by the Code.

**IBCCC** means the Insurance Brokers Code Compliance Committee.

**NIBA** means the National Insurance Brokers Association.