

Implementing the 2022 Code

How subscribers approached transition, as well as guidance for compliance in key areas

December 2023

INSURANCE
BROKERS

CODE
COMPLIANCE
COMMITTEE



We acknowledge the traditional owners of country throughout Australia and their continuing connection to the land, culture and community. We pay our respects to elders past and present.

This land is, was, and always will be, traditional First Nations Country.

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Background

The [2022 Insurance Brokers Code of Practice](#) (2022 Code) came into effect on 1 November 2022, replacing the 2014 Code. The exception is section 6.1 (Disclosing Remuneration), which came into effect on 1 November 2023.

The 2022 Code strengthened the existing Code provisions and contained new obligations for insurance brokers dealing with clients and prospective clients. Key improvements included protections for clients experiencing vulnerability, changes to the way complaints are handled, disclosure of remuneration, and the provision of a Terms of Engagement document to clients that clarifies the broker's role.

Subscribers had nine months to transition to and implement the 2022 Code. In that time, we published guidance resources to help subscribers with their transition activities, including [Complying with the 2022 Code](#) and [Comparing the Codes – how the 2014 and 2022 Codes differ](#).

Additionally, the National Insurance Brokers Association (NIBA) published several resources to help subscribers with transition to the 2022 Code: [Member Implementation Guide](#), [Identifying and Supporting Vulnerable Clients Guide](#), and [Terms of Engagement template](#).

Our inquiry

To determine the industry's progress in transitioning to the 2022 Code, we conducted an inquiry into the work subscribers undertook to implement the Code and meet its obligations.

We asked subscribers, as part of the 2022 Annual Compliance Statement (ACS) program, to complete a questionnaire on Code transition activities, including processes, policies and systems, training, and post implementation reviews.

This report presents the findings of our inquiry, along with examples of good practice and guidance and recommendations for improving compliance with the 2022 Code.

Our expectations

While we acknowledge and appreciate the significant work that all subscribers undertook over the last 18 months, there is more to be done.

We encourage every subscriber to review systems, processes and other compliance frameworks regularly to ensure they meet the Code's requirements. Every subscriber should look for opportunities to improve and embed the Code obligations in its culture.

Subscribers should always aim to go above and beyond the minimum obligations in the Code to ensure the best outcomes for clients.

FINDINGS

**The results of our inquiry into
transition to the 2022 Code.**

Training programs

Training was a key part of Code transition activities and many subscribers provided training to staff focused specifically on the Code's new provisions, as well as Code compliance training more broadly.

Most subscribers (46%) reported training as the business area that needed the greatest amount of change to transition to the 2022 Code.

Training was also nominated as the activity that most subscribers had already completed, or were planning to complete, at the time of reporting.

More than three-quarters of subscribers (79%) provided staff with some form of in-house training on the 2022 Code as part of their transition activities.

Some of this was traditional, structured training, such as online modules, training sessions run by the compliance team or an external compliance consultant, and webinars for staff and representatives.

Other, less formal types of training included:

- Presentations and discussions about the 2022 Code at staff meetings.
- Lunchtime Q&A sessions.
- A quarterly staff quiz.
- Training materials summarising each Code provision and how to apply it.

Just under two-thirds of subscribers (61%) used an external training provider to train staff. For this, subscribers used a variety of platforms, including online training modules, webinars and professional development days.

Some subscribers provided staff and representatives with NIBA's written guidance on Code implementation and supporting vulnerable clients, as well as our guidance document, [Comparing the Codes](#).

More than half of subscribers (58%) reported plans to commence or carry out additional in-house training to support transition to the 2022 Code, while 36% planned to run external training in the future.

Good practice

One Category E subscriber created a dedicated team to oversee its transition to the 2022 Code.

The team captured all the changes and ensured staff were trained to understand the Code's new provisions and their potential impact.

The team plans to conduct an annual review of transition activities to measure the effectiveness of their Code implementation and resolve any issues.

Frameworks

We were pleased to see that many subscribers updated their processes, procedures and policies as part of their Code transition activities. At the time of reporting, 63% of subscribers had updated their processes, 60% their procedures and 56% their policies.

The updates focused on four key areas – Terms of Engagement, complaints handling, remuneration disclosure, and supporting clients experiencing vulnerability. Updates were mostly completed by the Compliance Manager (or an equivalent staff member responsible for overall compliance), while some subscribers reported using an external compliance consultant.

These findings indicate that subscribers took Code transition seriously and prioritised it appropriately. Most heeded the advice in NIBA’s [Member Implementation Guide](#) to review existing processes and policies to ensure they meet the Code’s three guiding principles, including identifying areas in which to demonstrate the principles to clients.

Terms of Engagement

The [2022 Code, in Section 4.2](#), introduced a requirement for subscribers to provide clients with a Terms of Engagement document.

Around one third of subscribers (31%) identified Terms of Engagement as an area that required additional change to comply with the 2022 Code. Many subscribers had not provided clients with a Terms of Engagement document prior to the 2022 Code, and their transition activities included creating a Terms of Engagement document that aligned with the new requirements.

Good practice

In addition to updating its broking manual to include instructions on how to provide clients with Terms of Engagement information, one Category B subscriber updated its online system to generate automated Terms of Engagement letters.

One Category E subscriber now includes a link in all staff email signatures to its Terms of Engagement.

Another Category E subscriber has amended its client engagement process to include a Terms of Engagement letter that meets the requirements of the 2022 Code.

Supporting clients experiencing vulnerability

The [requirement to identify and support clients experiencing vulnerability](#) is another addition to the 2022 Code not covered in previous versions.

Just under one-third of subscribers (31%) highlighted this as an area that required change to comply with the 2022 Code. As part of their transition activities, many subscribers reported

creating new processes, procedures and policies to better identify and support vulnerable clients.

Examples included creating a new policy for responding to clients experiencing vulnerability or financial hardship and updating procedures for referring potentially vulnerable clients to senior staff with experience in supporting them.

In 2024 we will publish the findings of an inquiry into how subscribers approach client vulnerability in line with obligations in the 2022 Code.

Governance

[Section 12.1 of the 2022 Code](#) includes a requirement for subscribers to have a process for reporting on Code compliance to the Board or Executive Management.

Subscribers described a range of methods for reporting on Code compliance to their Boards and Executive Management.

Larger subscribers (from Categories A, B and C) often have a Risk and Compliance (R&C) Committee that reports to the Board, either directly at Board meetings or via minutes from R&C meetings where Code compliance was discussed.

Other methods referenced by larger subscribers included:

- Updating the Board via briefing papers.
- Reporting to the Board by the CEO or other senior management.
- Automated notifications from a breach or incident register sent directly to the Executive Management team.
- Board discussion of reports from an Enterprise Risk Management (ERM) system or other compliance system.
- Periodic declarations by the head of R&C to the Executive Management Committee.

Good practice

As part of its governance processes, one Category B subscriber records Code breaches in an internal breach register and notifies the Compliance Manager within 24 hours of the breach occurring.

Subscribers from Categories D and E described governance processes that reflected their smaller size and flatter management structures.

Many reported discussing Code compliance at weekly team meetings where senior executives are present, with any breaches or complaints passed on to the Board.

Some subscribers relied on the compliance or operations manager to report on Code compliance to the managing director.

Other governance processes used by smaller brokers include:

- Reports generated from compliance systems.
- Managers reviewing compliance reports based on declarations and self-reporting from staff.
- Reports from breach and complaints registers presented to the Board and Executive Management.
- Periodic internal audit reports being provided to the Board and Executive Management.

Frequency of reporting

The frequency of reporting Code compliance to Boards and Executive Management largely depended on the size and structure of the subscriber. Large and medium-sized subscribers generally reported once every two to six months, while smaller subscribers were more likely to report at least monthly, with some reporting weekly.

Overall, just under half of subscribers (45%) reported updating their Board or Executive Management on Code compliance at least once a month. For 36% of subscribers this occurs monthly, while the remaining 9% (mostly from Category E) report weekly.

Almost a quarter of subscribers (24%) reported that they advise their Board or Executive Management of instances of non-compliance immediately, rather than notifying them as part of a formal reporting cycle. Around 4% of Category E subscribers explained that, because of their size and organisational structure, they do not have a Board or Executive Management to report Code compliance to.

Irrespective of size, it is essential that the most senior decision-makers have regular oversight of the effectiveness of compliance frameworks and how the organisation meets its promises to clients.

Using ERM systems to full potential

Subscribers reported relying on Enterprise Risk Management (ERM) systems used by industry associations as part of their governance processes.

Some brokers use their ERM system to track breaches and complaints, while others did not provide sufficient detail about their use of ERM systems for us to have confidence they are being used effectively.

When mapped to Code provisions, and used to its full potential, an ERM system is a useful source of real-time information and can promote a culture of risk awareness and Code compliance.

If a subscriber relies on an ERM system for reporting on compliance, we encourage them to review its use to maximise its full capability. It should allow all staff – not just a single manager or designated employee – to identify, record and monitor incidents, breaches and complaints within the system. Also, Board and Executive Management should receive real-time reports when non-compliance occurs.

Post implementation reviews

At the time of reporting, four out of five brokers reported that they had either conducted or planned to conduct a post implementation review (PIR). Around 41% of subscribers reported a PIR would be completed within six months, while a further 28% expected their PIR to take up to 12 months to complete.

One in five subscribers (20%), mostly from Category E, reported they had no plans to conduct a PIR. Many explained their parent company would conduct a review of their transition to the 2022 Code, or that specific team members would review their Code transition on an ongoing, less formal basis.

We are concerned that eight subscribers from the three largest size categories reported that they had no plans to conduct a PIR – two each from Categories A and B and four from Category C.

Approximately half of subscribers (51%) reported their PIR would cover compliance with all provisions in the 2022 Code.

The PIR would focus exclusively on compliance with the Code's new obligations for 16% of subscribers, while a further 9% reported they would review their compliance with specific obligations only.

The format of PIRs included:

- Liaising with staff to monitor Code transition and identify gaps.
- Running internal audits, including quarterly file audits and monthly spot checks.
- Reviewing policy documentation against the 2022 Code.
- Monitoring compliance through breaches and complaints.
- Developing checklists to assess compliance with each of the Code requirements.
- Meeting quarterly with an external compliance manager to identify areas of concern.

Approximately two-thirds of subscribers (65%) reported that their compliance department was responsible for conducting the PIR. In some cases, subscribers reported that a secondary review would be carried out by an internal or external audit function.

GUIDANCE

**Advice and tips to help
subscribers comply with key
aspects of the 2022 Code**

Training programs

[Section 3.1 of the 2022 Code](#) includes the obligation to maintain and improve competency through qualifications, education and training, as set out in the 2022 Code under Professional Commitment.

As well as updating and enhancing several provisions from the 2014 Code, the 2022 Code introduced new obligations that staff and authorised representatives need to understand and comply with.

While the Code does not specify a minimum number of hours that a subscriber should dedicate to Code training, the advice in NIBA's [Member Implementation Guide](#) is that subscribers must be satisfied that staff and authorised representatives have received sufficient training to understand their obligations in the Code.

Additionally, if subscribers use authorised representatives, they are responsible for ensuring they have formally adopted the Code.

Recommendations



Foster a consumer-centric culture by educating all staff, including Board, Executive Management, authorised representatives, on the Code's values and their responsibilities to consumers. Incorporate this into onboarding for new staff and provide regular refresher training. Evaluate training effectiveness and monitor for any gaps.



Create a reporting system that encourages all staff, including authorised representatives, to report incidents and Code breaches without fear of blame. Promote breach reporting as an opportunity to rectify mistakes and prevent recurrence.



Deliver Code-related communications and training to all staff, including authorised representatives and external third parties. Set clear expectations for Code compliance and how the organisation will monitor and report on it.

Terms of engagement

An important safeguard for subscribers and their clients, the Terms of Engagement document sets out the nature of the broker–client relationship and clarifies the subscriber’s role to the client.

It must include information about the scope of the agreed services, the type of advice the subscriber will provide, and the remuneration they will receive from providing the client with advice about insurance coverage and arranging policies.

To help subscribers create a Terms of Engagement document that complies with the 2022 Code’s requirements, NIBA has published a [Terms of Engagement template](#) on its website that can be downloaded and customised.

Recommendations



Ensure that the Terms of Engagement is clear, concise and in plain language. This will help clients understand the expectations of their relationship with their brokers and reduce misunderstandings.



Make Terms of Engagement documents publicly available and easily accessible. Transparency of the broker-client relationship builds trust in the insurance broking profession and ensures that clients make informed decisions.



Include information about the Terms of Engagement in client onboarding materials. Clearly communicate its significance and provide instructions on where and how clients can access the document. Ensure that clients understand the information and communication provided.

Complaints handling

The 2022 Code introduced [complaints handling obligations](#) in section 9 to bring the Code into line with ASIC's [Regulatory Guide 271 Internal dispute resolution](#).

One of the key policy documents that were updated in line with the 2022 Code is the Complaints & Disputes Policy.

We note that complaints handling obligations in the 2022 Code go beyond regulatory requirements to protect clients.

As these obligations were not addressed in the 2014 Code, we encourage subscribers to review their processes, procedures and policies to ensure compliance. Each subscriber should take note of the following provisions which introduce additional safeguards that are not set out in law:

- Section 9.2(a) of the 2022 Code requires subscribers to take reasonable steps to ensure the person whose conduct is the subject of the complaint will not handle the complaint.
- Section 9.2(b) of the 2022 Code extends to providing complainants with an update on the progress of their complaint at least every 10 business days. This applies even if there is nothing new to report since the complainant was last updated.

Recommendations



Ensure that complaints processes, policies and procedures have been updated to reflect section 9 of the 2022 Code. This includes ensuring conflicts of interest are avoided and all staff are trained in effective complaints handling.



Implement a centralised tracking system to monitor the progress of each complaint. This system can help automate updates and ensure complainants receive an update of the status of their complaint every 10 business days. Failing to provide updates to complaints every 10 business days should inform the breach reporting system and be included in staff performance reviews.



Establish an escalation procedure for complaints, particularly when the staff handling the complaint is the subject of the complaint. It is important that clients feel comfortable raising a complaint and trust that the complaint will be resolved without bias. Overseeing management must be empowered to make informed decisions to resolve complaints.

Disclosing remuneration

The change in the Code dealing with the disclosure of remuneration is designed to enhance the broker–client relationship by creating transparency and accountability. It also allows subscribers to better demonstrate the value they deliver to clients.

This obligation improves on the previous Code as it removes contingent and preferential remuneration and volume-based commissions or profit-sharing arrangements.

NIBA deferred the implementation of section 6.1 of the 2022 Code until 1 November 2023 to give subscribers more time to make system changes necessary to achieve full compliance. Section 6.1 has since been amended to include all retail clients as defined in the *Corporations Act 2001* (Cth). This includes small business clients with up to 20 staff (or up to 100 staff if they manufacture goods). For a comprehensive list of products which require disclosure of remuneration see Definitions on page 22 of the Code.

We encourage you to disclose remuneration on other policies such as Industrial Special Risks (including Business Interruption), Legal Liability, Crime, Cyber, Management Liability, Directors and Officers Liability, Workers Compensation, Construction, Credit Insurance, and Marine Transit.

Recommendations



To promote transparency and accountability of the broker-client relationship, where possible, disclose remuneration to all clients, for all policies.



Put disclosure information in writing using simple and plain language. Ensure that clients understand how brokers are being compensated without any confusion.



Obtain informed consent in writing from clients before accepting a commission. This provides a genuine opportunity for the client to make an informed decision before deciding to be issued or sold a certain insurance product.

Governance

The requirement for subscribers to have in place a governance process for reporting on Code compliance to the Board or Executive Management ensures company directors and senior leaders are made aware of emerging issues on risk and compliance, as well as trends relating to complaints.

Such insights are vital for assessing the need for process improvements and informing strategic planning, and to ensure Boards and Executive Management teams can fulfill their duties.

Breach reporting is not a one-way conversation in which the Board's role is merely to listen.

The most senior decision-makers must be able to access, review and analyse up-to-date information about Code breaches so they can understand why the incident occurred, determine whether remediation has been successful, and hold managers and staff accountable for preventing similar breaches in the future.

Recommendations



Foster a culture of collaboration and unity by facilitating regular interactions between Board members and Executive Management with staff throughout the organisation. Encourage Board members and Executive Management to observe daily operations, including client calls and complaints, and promote open discussions about Code compliance concerns.



Keep the Board informed about our publications, emphasising key findings, observations, and relevant recommendations in the context of business and Code compliance obligations.



Provide quarterly reports to the Board and Executive Management on Code compliance, including breaches, to maintain effective oversight.

Post implementation reviews

Code transition is an ongoing, iterative process.

The 2022 Code should be embedded into everything that subscribers and their employees do.

We encourage subscribers to continue assessing the transition to, and implementation of, the 2022 Code by conducting a post implementation review (PIR).

A PIR is an opportunity to measure the effectiveness of Code transition activities and compliance arrangements, and ensure that staff and representatives understand, and are meeting, their Code obligations.

Recommendations



Conduct a gap analysis in the PIR to address identified deficiencies and short-term compliance measures. Evaluate the effectiveness of these interim solutions and assess the plans for implementing replacement solutions, including their scope and timeframes.



Proactively review areas with a higher risk of non-compliance in the PIR, with a specific focus on training, policies, processes, and control environments.



Clearly outline in the PIR the status of work that is pending or in progress, along with accountabilities, milestones, and delivery timeframes.

The Code

The [Insurance Brokers Code of Practice](#) sets out obligations that promote high standards of ethical conduct and customer service for insurance brokers.

The Code aims to strengthen consumer protection by ensuring insurance brokers operate with transparency, accountability and a focus on consumer interests and needs. It also helps to build a relationship of trust with consumers.

Subscribing to the Code commits insurance brokers to good practices and service delivery that is fair and reasonable.

The Code is owned and published by the [National Insurance Brokers Association](#) and is an important part of the national consumer protection framework and insurance broking regulatory system.

Self-regulation

The Code is a fundamental element of successful self-regulation. Self-regulation involves the industry setting its own standards of conduct and enforcing these standards through breach identification, reporting, and remediation.

This model allows the industry to demonstrate a commitment to ethical and responsible behaviour, helping to build trust with consumers. It also reduces the need for costly and time-consuming regulatory intervention.

Our work monitoring the Code is crucial to the success of the self-regulation model working to its full potential.

Our role

We were established to monitor compliance with the Code to help encourage good practices and improve outcomes for clients.

[Our Charter](#) provides for us to undertake the following functions:

- monitor compliance with the Code
- collect and analyse data
- identify areas for improvement
- provide guidance
- publish findings of inquiries, and
- engage with stakeholders.

We also have the power to issue determinations and impose sanctions when fair and appropriate in the circumstances.

In addressing issues, our first step is to work with a subscriber to rectify issues and support its compliance with the Code.

Our work is supported by the Code Team which provides monitoring, operational and administrative services. The Code Team works within the Australian Financial Complaints Authority (AFCA).