

## CODE ADMINISTRATION DEED

### PARTIES

**FINANCIAL OMBUDSMAN SERVICE LIMITED**, ABN 17 131 124 448, Level 12, 717 Bourke Street, Melbourne, VIC, 3008 (**FOS**) and

**THE NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA** (ACN 006 093 849) of Level 11, 20 Berry Street North Sydney, NSW, 2060 (**NIBA**) and

**THE MEMBERS OF THE CODE COMPLIANCE COMMITTEE** (**Code Compliance Committee**)

### BACKGROUND

NIBA has developed the Insurance Brokers Code of Practice 2014 (the **Code**).

This Deed sets out the obligations of NIBA, the Code Administrator and the Code Compliance Committee in relation to the Code.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

- (a) For the purposes of interpretation, the following definitions apply to these terms. Any words not defined in this Deed will have the same meaning as in the Code.
- (i) **Annual work plan and budget** means the relevant annual work plan and budget agreed by NIBA and FOS in relation to each financial year as specified in clause 4 of this Deed.
  - (ii) **Charter** means the Code Compliance Committee charter set out in Schedule 1 as amended in accordance with its terms from time to time.
  - (iii) **Code** means the Insurance Brokers Code of Practice 2014 as amended in accordance with its terms from time to time by NIBA.
  - (iv) **Code Administrator** means FOS or such other person appointed by NIBA from time to time to act on NIBA's behalf in administering the Code.
  - (v) **Code Compliance Committee** means each member and alternate member of the code compliance committee established in accordance with this Deed, the Code, the Charter and the Code Procedures.
  - (vi) **Code Compliance Committee Chair** means the person appointed under the Charter and acting as the independent chair and alternate independent chair of the Code Compliance Committee.
  - (vii) **Code Compliance Manager** means the person appointed by the Code Administrator to act on its behalf for the purpose of the Code Procedures.
  - (viii) **Code Member** means a member of the Code as defined in the Code.
  - (ix) **Code Procedures** means the document of that name attached to this Deed as amended from time to time by the NIBA Board.
  - (x) **GST** has the meaning given to that expression in section 195-1 of A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any subsequent amendment to that Act.

## **1.2 Interpretation**

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to any document (including this Deed) is a reference to that document as varied, novated, ratified or replaced from time to time;
- (c) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (d) words used in the singular must include the plural and vice versa;
- (e) words used in the masculine gender must include feminine or neuter genders and vice versa;
- (f) words used to describe individuals must include companies and bodies corporate;
- (g) any covenant or agreement on the part of any two (2) or more persons other than the Code Compliance Committee members binds them both jointly and severally;
- (h) any reference to a party will include severally each of any past or present officer, employee, agent or related body corporate of that party; and
- (i) any reference to the Code Compliance Committee will include severally each of any past or present members or alternate members of the Code Compliance Committee.

## **2. FOS**

### **2.1 Appointment of FOS as Code Administrator**

NIBA appoints FOS as the party responsible under the Code to act on NIBA's behalf as the Code Administrator.

### **2.2 Acceptance by and obligations of FOS**

FOS accepts its appointment as Code Administrator and agrees to act (as applicable to its role), in accordance with the Code, the Charter, the Code Procedures and the terms of this Deed.

### **2.3 General Obligations**

FOS and NIBA must perform their obligations under this Deed:

- (a) in a fair, honest, commercial, prudent and reasonable manner; and
- (b) in accordance with all relevant statutes, regulations and laws.

## 2.4 Specific Obligations of FOS

FOS must:

- (a) act as the Code Administrator in accordance with the Code Procedures;
- (b) appoint a Code Compliance Manager to comply with the obligations that apply to such persons in the Code Procedures and ensure they comply with these obligations;
- (c) manage, administer and process Code membership applications in accordance with the procedures and documents issued for this purpose by NIBA to FOS from time to time;
- (d) exercise any discretion conferred by the instructions of NIBA in good faith, taking into account the interests of NIBA;
- (e) not, without the fully informed consent of NIBA, acquire any profit or benefit from the agency;
- (f) keep and maintain all proper records and documentation, in respect of administering the Code, reasonably required to be kept by a prudent person providing similar services, except where agreed otherwise. FOS will keep such records and documentation throughout the duration of this Deed and on termination of this Deed comply with its termination obligations regarding such records and documentation;
- (g) provide NIBA with, or access to, such records, information, documentation, or reasonable assistance that will allow NIBA to meet any requirements of law or under any code to which NIBA subscribes in relation to the activities carried out by FOS for NIBA under this Deed.
- (h) not do any of the following without NIBA's prior written consent, such consent not to be unreasonably withheld:
  - (i) provide any Opt in Deed provided by NIBA to FOS to a non- NIBA Code Member, unless NIBA has consented to that person being eligible to be a Code Member of the Code;
  - (ii) use or register any part of the other party's name in their own business name or that of any associated entity.
- (i) not without prior consultation with NIBA, publish or distribute any information to the public in relation to the Code, except to the extent this Deed or the Annual work plan expressly permits this.

## 2.5 Warranties

- (a) FOS represents and warrants to NIBA that:
  - (i) it has access to the financial resources, equipment, personnel with sufficient experience and skill, and other resources needed to administer the Code;
  - (ii) the information it receives from NIBA or their Code Members will be protected at all times from misuse, damage and destruction;
- (b) FOS acknowledges that, in entering into this Deed, NIBA relies on FOS's warranties.

## **2.6 Delegation**

FOS must not delegate its obligations under this Deed without the prior written consent of NIBA. Any delegation approved by NIBA will not relieve FOS of its obligations under this Deed.

## **2.7 Money Handling**

- (a) NIBA and not FOS will collect and receive payments from Code Members for membership to the Code.
- (b) If any payment is unintentionally received by FOS, FOS must provide such a payment to NIBA by the earlier of 5 days or as soon as reasonably practicable, from the time of receipt and keep true, complete, accurate and up to date accounts and records of all such payments received and produce them to NIBA for inspection on request during or after the term of its appointment.
- (c) Any money received as a result of any recovery action undertaken by FOS under this Deed must be held in a trust account by FOS on trust for NIBA, except where agreed otherwise by NIBA.

## **3. CODE COMPLIANCE COMMITTEE**

### **3.1 Deed to perform functions**

The Code Compliance Committee agrees to act (as applicable to its role) in accordance with the Code, the Charter, the Code Procedures and the terms of this Deed.

### **3.2 Duties of the Chair**

The Code Compliance Committee Chair shall do all such things as are necessary to ensure the duties and responsibilities of the Code Compliance Committee as specified in the Charter are effectively discharged.

### **3.3 Delegation of authority by the Committee**

- (a) The Code Compliance Committee may from time to time, by written resolution, assign to or vest in the Code Compliance Committee Chair powers and responsibilities of the Code Compliance Committee. A copy of the resolution of the Code Compliance Committee as to the authority of the Code Compliance Committee Chair in respect of any matter shall be accepted as conclusive proof of such authority.
- (b) The Code Compliance Committee may engage the Code Compliance Manager to undertake any activity on behalf of the Code Compliance Committee pursuant to the Code Compliance Committee's functions and responsibilities, subject to the following:
  - (i) while the Code Compliance Manager may make recommendations to the Code Compliance Committee in relation to the making of a determination, order or the imposition of a sanction, only the Code Compliance Committee may make determinations, orders or impose sanctions under the Code and the Charter;
  - (ii) the Code Compliance Committee must not delegate its power to approve and publish any report.

### **3.4 Composition of Code Compliance Committee**

- (a) The Code Compliance Committee will consist of 3 members.
- (b) The Code Compliance Committee members will comprise:
  - (i) an independent chair jointly appointed by the NIBA Board and FOS Board; and
  - (ii) 1 industry representative appointed by the NIBA Board; and
  - (iii) 1 consumer representative appointed by the FOS Board.
- (c) To maintain independence a member of the Code Compliance Committee cannot also be a member of the NIBA Board or the FOS Board.

### **3.5 Alternate Members**

- (a) Alternate members shall be appointed for each Code Compliance Committee member.
- (b) The alternate members of the Code Compliance Committee will comprise:
  - (i) an independent alternate chair jointly appointed by the NIBA Board and FOS Board; and
  - (ii) 1 alternate industry representative appointed by the NIBA Board; and
  - (iii) 1 alternate consumer representative appointed by the FOS Board.
- (c) To maintain independence an alternate member of the Code Compliance Committee cannot also be a member of the NIBA Board or the FOS Board.

### **3.6 Appointment of members to Code Compliance Committee**

The appointment of members and alternate members to the Code Compliance Committee will be made in accordance with the criteria contained in Schedule 2 to this Deed.

### **3.7 Process for Code Compliance Committee member becoming a party to this Deed**

Each member or alternate member of the Code Compliance Committee will be taken to be a party to this Deed by acceptance of the appointment to the Code Compliance Committee by that person and, for this purpose, each member or alternate member of the Code Compliance Committee may execute a deed poll under which that person confirms that he or she is bound by and has the benefit of the terms of this Deed.

## **4. Funding**

The activities of the Code Compliance Committee, Code Administrator and the Code Compliance Manager are to be funded by NIBA as follows:

- (a) NIBA will pay FOS such remuneration as is agreed by the parties from time to time in writing for the services performed by it under this Deed.

- (b) Each year, no less than three months before the end of the financial year, the Code Administrator and Code Compliance Committee will provide NIBA and FOS with a workplan and budget for the next financial year.
- (c) The workplan and budget must be approved by NIBA no less than one month before the commencement of the next financial year.
- (d) In providing approval to the workplan and budget NIBA may make such changes as it sees fit to the workplan or budget based on the proposed activities of the Code Administrator and Code Compliance Committee.
- (e) FOS and NIBA agree that:
  - (i) FOS will remunerate the Code Compliance Committee members in accordance with the agreed funding for the Code Compliance Committee, as outlined in the Annual work plan and budget; and
  - (ii) NIBA will reimburse FOS annually, as part of the Code Compliance Committee's funding, the reasonable proportion of any professional indemnity insurance premiums incurred by FOS for and on behalf of the Code Compliance Committee members. Where reasonably possible, the estimated or proposed cost will be included as part of the Annual work plan and budget.

## **5. RELEASES AND INDEMNITIES**

### **5.1 Interpretation**

In this clause 5 any reference to FOS or NIBA will include severally each of any past or present officer, employee, agent or related body corporate of FOS or NIBA.

### **5.2 Release of Code Compliance Committee**

- (a) Except as otherwise provided in this clause 5, FOS and NIBA will not make any claim, bring any proceedings or recover any losses or damage (including legal costs) arising from any act or omission or any conduct of the Code Compliance Committee of whatever nature and however arising in the performance of or arising out of their respective obligations, functions or powers, under or in relation to:

- (i) the Code;
- (ii) the Charter;
- (iii) the Code Procedures; or
- (iv) in the administration of the Code;

even if the Code Compliance Committee has acted negligently or beyond or in breach of its obligations, functions or powers under the Code, Code Procedures or the Charter.

### **5.3 Indemnity of Code Compliance Committee**

- (a) NIBA will indemnify the Code Compliance Committee in respect of:
  - (i) all claims of whatever nature and howsoever arising which may be brought against the Code Compliance Committee; and

- (ii) any loss or damage suffered by the Code Compliance Committee as a consequence of any claim by a person against the Code Compliance Committee (including, without limitation, any amount payable as a result of those claims), arising out of, or connected with any act or omission or conduct of the Code Compliance Committee under, or in relation to the Code, Code Procedures or the Charter, or in the administration of the Code or in the performance or obligations, functions or powers of the Code Compliance Committee under or in relation to the Code, Code Procedures or the Charter even if the Code Compliance Committee has acted negligently or beyond or in breach of its obligations, functions or powers under the Code, Code Procedures or the Charter.

#### **5.4 Exceptions and acknowledgement**

- (a) The provisions of clauses 5.2 or 5.3 will not apply to a Code Compliance Committee member in relation to any claim or proceedings in respect of any act, omission or conduct of that member where the act, omission or conduct has been engaged in knowingly and dishonestly by that member or is a result of that member's fraud..
- (b) FOS, NIBA and the Code Compliance Committee each acknowledges that it has no entitlement to damages for any breach of this Deed but the parties acknowledge that FOS or NIBA is entitled to seek specific performance or injunctive relief as a remedy if the Code Compliance Committee acts or purports to act beyond its powers conferred by the Code, the Code Procedures, the Charter and this Deed.

#### **5.5 Remedies for breach of Deed between FOS and NIBA**

- (a) In this clause, the reference to a party is limited to NIBA and FOS.
- (b) Subject to the following clauses, a party shall indemnify the other party and its directors, officers, employees, agents, contractors and other representatives and hold them harmless against all claims, demands, losses, liabilities, damages, judgments, actions, proceedings, settlements, penalties, fines, costs and expenses (including but not limited to all legal and other costs incurred in defending or settling any claim) of whatever kind asserted against, incurred by or imposed on them arising out of or in connection with any breach of the party's obligations under this Deed by the party or any of its directors, employees, agents, contractors or other representatives.
- (c) If a party (the First party) suffers loss:
  - (i) partly as a result of a breach of this Deed by the other party; and
  - (ii) partly as a result of the First party's own fault;the First party's entitlement to damages against the other party for breach of this Deed shall be reduced to such extent as is just and equitable, having regard to the First party's share of responsibility for the loss.
- (d) The benefit of the indemnity provided above by a party to the other party's directors, officers, employees, agents, contractors and other representatives, is held on trust by the other party for each of them.

## **6. TERMINATION**

### **6.1 Termination**

- (a) NIBA may terminate this Deed by giving at least 60 days prior written notice to each other party.
- (b) FOS may, by at least six months' written notice to each other party, cease to be a party to this Deed and unless NIBA obtains the agreement of another party to assume the roles and responsibilities under this Deed and that other party has agreed to be bound by this Deed within 6 months of the notice of termination by FOS, then this Deed will be taken to be terminated.
- (c) This Deed may be terminated by NIBA or FOS with immediate effect, by giving the other parties written notice, if another party:
  - (i) breaches any warranty specified in this Deed;
  - (ii) fails to comply with any material obligation under this Deed that is not capable of being remedied;
  - (iii) fails to comply with any material obligation under this Deed that is capable of being remedied and does not, within 14 days (or such other period agreed by the parties) of receiving written notice from the other party, remedy such failure and take reasonable steps to ensure that such failure does not occur again, to the reasonable satisfaction of the other party;
  - (iv) suffers from an Insolvency Event. An Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a Controller/controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event;
  - (v) engages in conduct which is fraudulent;
  - (vi) is the subject of any action or intended action by ASIC or another regulator that is likely, in the other parties' opinion, to have an adversely material effect on the ability of a party to fulfil material obligations under this Deed.
- (d) For the purposes of this termination clause, a "material obligation" means an obligation, the breach of which is reasonably likely to result in material loss or damage to the other party of a financial nature or material loss or damage to their reputation or goodwill.

### **6.2 Appointment of successor to FOS**

If FOS gives notice under clause 6.1, then NIBA may appoint another person or agree itself to perform the functions of FOS under the Code and in accordance with the terms of this Deed and the person so appointed will execute a Deed agreeing to be bound by this Deed on and from the date of the appointment.



### **6.3 Co-operation**

If, pursuant to clause 6.1, FOS ceases to be a party to this Deed, then it will co-operate with, and do all things reasonable or necessary to facilitate, the transfer of its functions and duties to the person taking over its role and, in particular, will:

- (i) transfer files and data relating to its role as the Code Administrator; and
- (ii) provide access to personnel to enable the party taking over its role to understand and obtain full information about any current or past complaints and issues that have arisen during the course of the monitoring of Code.

### **6.4 Effect of termination**

- (a) Upon termination of this Deed FOS's appointment as an agent of NIBA is automatically revoked, except to the limited extent specified in this Deed.
- (b) Nothing operates to discharge either party from its obligations arising under or in connection with this Deed prior to the date of termination, or expressly provided by this Deed to subsist following termination of this Deed, unless otherwise agreed by the parties in writing.
- (c) Those terms of this Deed which by their nature should continue to operate after termination shall continue to the extent relevant, in particular but not limited to, this provision and the provisions dealing with Confidential Information, Intellectual Property, Releases and Indemnities, Notices and Dispute Resolution.

### **6.5 Obligations after termination**

As soon as practicable after termination of this Deed:

- (i) the parties shall prepare an accounting of the services outstanding at the date of termination;
- (ii) each party shall pay all moneys owed to the other (if any) after taking into account any permitted adjustments;
- (iii) each party, at its expense, shall securely destroy, or upon written request return, all documents and other physical property that was supplied by the other party to it or its representatives in relation to the performance of this Deed which is in that party's possession or control or that of their representatives, except to the extent that it is the Confidential Information or Intellectual Property of the party.

## **7. INTELLECTUAL PROPERTY**

- (a) "Intellectual Property" in this clause means, in relation to a party, that party's intellectual property and proprietary rights (whether registered or unregistered) including Trade Marks, business, company and domain names, analysis, business methods, trade secrets, data, compilations, operations and affairs, management systems, systems used in the generation of business regardless of format and includes all modifications, permutations or derivations of same in any format.

- (b) All documentation, other physical property and Intellectual Property that a party creates itself and supplies to the other party is the Intellectual Property of that party, unless agreed or specified otherwise in this Deed.
- (c) Each party warrants that in relation to the Intellectual Property owned by that party or for which it is a licensee and which it is providing to another party in connection with this Deed that:
  - (i) it is the owner or licenced user of the Intellectual Property;
  - (ii) the use of the Intellectual Property in accordance with this Deed will not infringe any intellectual property rights of any persons; and
  - (iii) the Intellectual Property is fit for purpose and is suitable for the functions required for the purposes of this Deed.
- (d) All information collected by a party in relation to any Code Member or complaint or investigation or determination made under the Code, is the Intellectual Property of NIBA.
- (e) On termination of this Deed, each party must at its own expense return, destroy or de-identify any documentation (whether in hard copy or electronic form), other physical property and Intellectual Property of the other party which is in its possession or control if the other party requests it to do so in writing, provided that this does not breach any law.
- (f) Each party gives the other a non-exclusive royalty free licence to use the Intellectual Property of the other party for the purposes carrying out its obligations under this Deed.

## **8. CONFIDENTIAL INFORMATION**

- (a) Each party acknowledges that in performing its obligations and responsibilities under this Deed, the Charter and the Code Procedures, it may acquire and have access to the Confidential Information of the other party. This clause 8 applies to the extent it is not inconsistent with Clause 9.
- (b) For the purposes of this clause, Confidential Information means:
  - (i) this Deed, and
  - (ii) all information provided by a party to the other party in relation to or in connection with this Deed or received or generated by a party in relation to or in connection with this Deed, but excluding such information where it comes to the other party other than in connection with this Deed, unless it came to them because of a breach of this Deed or another confidentiality obligation or agreement by them or comes to them other than in connection with this Deed through a third party who is under no obligation of confidentiality (except where this is as a result of a breach of this Deed or another confidentiality obligation or agreement by the third party).
- (c) For the duration of this Deed and after termination of this Deed each party shall:
  - (i) use the Confidential Information solely for the purpose of performing its obligations and responsibilities under this Deed;
  - (ii) receive and maintain all Confidential Information in confidence;

- (iii) maintain and store all Confidential Information in accordance with any reasonable procedures prescribed by the other party and continue to maintain and store Confidential Information for the earlier of at least seven (7) years after termination of this Deed or such other period as required by any relevant law (except to the extent that such Confidential Information must be returned to the other party on termination); and
- (iv) not disclose (directly or indirectly) Confidential Information to any third party or allow any third party to make such a disclosure,

except where:

- (i) the party has received the prior written consent of the other party and this consent has not been revoked (such consent not to be unreasonably withheld);
  - (ii) disclosure is required by law or a regulator, however if a government, regulator or a court orders or requires the party to disclose Confidential Information of the other party, the party must immediately notify the other party;
  - (iii) disclosure is to the party's officers, representatives, consultants, reinsurers, employees, legal or accounting advisers and that disclosure is made on a "need to know" basis and in the normal course of business for the purpose of the party meeting its obligations under and in relation to this Deed; or
  - (iv) disclosure is made by any party to its related bodies corporate.
- (d) If the Confidential Information is to be disclosed to a third party (including related bodies corporate), the party must have obtained the third party's agreement to keep the information confidential in accordance with terms essentially the same as those in this clause 8 and this Deed (including the third party's subsequent disclosure of the information to other third parties).
- (e) The parties will return all physical or written records containing Confidential Information and all documentation relating to or concerning the Confidential Information including copies of the documentation then in existence regardless of whether the records or documentation were prepared by the party disclosing the Confidential Information, either:
- (i) forthwith on demand; or
  - (ii) without demand as soon as the same shall no longer be required, whichever is earlier.
- (f) However, each party shall be entitled to retain one copy of the Confidential Information for the purpose of avoiding any future misunderstanding about the extent of the disclosure.

## **9. CONFIDENTIAL INFORMATION OF CODE MEMBERS**

### **9.1 Interpretation**

- (a) In this clause 9, "Confidential Information" means all technical, commercial and other confidential information and materials the Code Member and the Code Member's related bodies corporate and includes any information or material that discloses or relates to:
  - (i) the Code Member's compliance or non-compliance with the Code;

- (ii) an actual or alleged breach of the Code;
- (iii) commercial, financial or legal affairs including but not limited to pricing policies, costing information, supplier lists and customer lists;
- (iv) a matter to which an obligation of confidence applies under a privacy law; and
- (v) 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.

## 9.2 Protection of confidential information

Subject to clause 9.3, a party to this Deed must not disclose, or use for a purpose other than contemplated by this Deed or in accordance with the Code Procedures, any Confidential Information supplied to it in connection with the Code or this Deed.

## 9.3 Exception

- (a) A party may establish rules for the protection of Confidential Information provided to it by a Code Member or any other person but those rules will not prohibit another party having access to the information for the purpose of carrying out its functions under this Deed or the Code.
- (b) A party may disclose any Confidential Information:
  - (i) to another party under the Deed or to any person to whom disclosure is reasonably required for the purpose of the party exercising its functions under the Code;
  - (ii) to any person to whom disclosure of confidential information is required by law;
  - (iii) in enforcing this Deed or in a proceeding arising out of or in connection with this Deed;
  - (iv) as required or permitted by this Deed;
  - (v) in accordance with a direction from the Code Compliance Committee for the purpose of enforcing a sanction imposed by the Code Compliance Committee in accordance with the Code; or
  - (vi) with the prior written consent of the Code Member.

## 10. NOTICES

- (a) Any notice given under this Deed:
  - (i) must be in writing addressed to the intended recipient at the address shown below or the address last notified by the intended recipient to the sender:
 

Financial Ombudsman Service Limited  
 Address: GPO Box 3  
 Melbourne Vic 3001

Fax: (03) 9613 6390

National Insurance Brokers Association  
 Address: Level 11, 20 Berry Street North Sydney, NSW, 2060  
 Fax: +61 2 9964 9332

Code Compliance Committee

Address: c/o the Secretary to the Committee, GPO Box 3 Melbourne VIC 3001

- (ii) must be signed by a person duly authorised by the sender; and
- (b) will be taken to be duly given or made (in the case of delivery in person or by post or facsimile) when delivered, received or left at the above address but if delivery or receipt occurs on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time) it will be taken to have been duly given or made at the commencement of business on the next day on which business is generally carried on in the place.

## **11. PRIVACY**

Each party agrees to comply with:

- (a) the Privacy Act 1988 (Cth); and
- (b) any other statute, regulation or law in Australia or elsewhere which relates to the protection of personal information and which a party must observe,

in relation to their obligations under this Deed.

## **12. DISPUTE RESOLUTION**

- (a) Each party agrees not to commence court proceedings (except proceedings seeking interlocutory relief) or arbitration in relation to any dispute relating to this Deed unless it has first attempted to resolve the dispute as set out in this clause.
- (b) The dispute resolution procedure is as follows:
  - (i) the party claiming that a dispute has arisen in relation to this Deed shall give the other party written notice specifying the nature of the dispute;
  - (ii) within fourteen (14) days of receipt of that notice, the parties must hold discussions and negotiations in good faith in order to attempt to amicably resolve the dispute, and
  - (iii) in the event that the parties cannot resolve the dispute through discussions and negotiations, the parties shall refer the dispute to an independent mediator as agreed or, failing agreement, as appointed by the Chief Executive Officer of LEADR (Association of Dispute Resolvers [www.leadr.com.au](http://www.leadr.com.au)) and will use their best endeavours to resolve the dispute in mediation.
- (c) Nothing in this clause limits the rights each party has to terminate this Deed.

## **13. GST**

- (a) If this Deed or any supply under or in respect of this Deed becomes subject to GST, and if the recipient of the consideration is liable to GST in relation to any supply under this Deed, the parties agree that the amount payable for any supply under or in respect of this Deed by any party shall be adjusted by the amount of the GST.

- (b) Each party:
  - (i) agrees to do all things, including providing tax invoices or other documentation in such form and detail that may be necessary to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Deed or in respect of any supply under this Deed;
  - (ii) warrants that it is registered for GST (where applicable); and
  - (iii) shall remain registered for GST during the appointment. If either party ceases to be registered for GST, it shall give the other party immediate written notice.

## **14. EXPENSES**

Except as otherwise provided in this Deed, NIBA and FOS shall bear their own expenses of performing their respective obligations under this Deed as well as any stamp duty chargeable on it or on any documents executed under it.

## **15. GENERAL**

- (a) This Deed can only be varied if all parties agree to the variation in writing.
- (b) A waiver of a provision of this Deed or a right or remedy arising under this Deed can only be made in writing that is signed by or on behalf of the party granting the waiver.
- (c) Any delay or failure by a party to enforce its rights under this Deed may not be deemed a continuing waiver or modification of this Deed.
- (d) The parties may not assign, transfer or novate their rights and obligations under this Deed without other parties' prior written consent.
- (e) If any provision of this Deed is held to be invalid or unenforceable in any way the remaining provisions shall not be affected and this Deed shall be construed so as to most nearly give effect to the intentions of the parties at the time it was executed.
- (f) If any statute or regulation relevant to the construction of this Deed is amended or replaced, this Deed shall be read as though the amended or new statute or regulation were incorporated in it. If this produces any ambiguity, this Deed shall be construed so as to most nearly give effect to the intentions of the parties at the time it was executed.
- (g) The rights and remedies of a party under this Deed do not exclude any other right or remedy provided by law.
- (h) This Deed may be executed in counterparts, in which case it is of no effect until the counterparts have been executed and exchanged.
- (i) No failure or omission to carry out or observe any term of the Deed will give rise to a claim by any party against another or result in a breach of this Deed if such failure or omission arises by reason of delay or inability to perform caused by war, whether declared or not, civil rebellion, strike, fire, storm or other severe action of the elements, accident, government or statutory restriction or from other similar causes which are unavoidable or beyond the reasonable control of the defaulting party.

- (j) This Deed is governed by the law of the State of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales.

**Signing page**

Executed as a Deed

Signed by **Financial  
Ombudsman Service  
Limited** ABN 17 131  
124 448 in accordance  
with section 127 of the  
Corporations Act

\_\_\_\_\_  
sign

\_\_\_\_\_  
sign

\_\_\_\_\_  
Position (Director or Secretary)

\_\_\_\_\_  
Position (Director or Secretary)

\_\_\_\_\_  
full name

\_\_\_\_\_  
full name

Signed by **The  
National Insurance  
Brokers Association  
of Australia** ACN 006  
093 849 in  
accordance with  
section 127 of the  
Corporations Act

\_\_\_\_\_  
sign

\_\_\_\_\_  
sign

\_\_\_\_\_  
Position (Director or Secretary)

\_\_\_\_\_  
Position (Director or Secretary)

\_\_\_\_\_  
full name

\_\_\_\_\_  
full name



## **SCHEDULE 1 - CODE COMPLIANCE COMMITTEE CHARTER**

### **1. Purpose**

This Charter sets out the terms on which the Code Compliance Committee is established and operates for the purposes of exercising its powers and duties under the Code and pursuant to the Code Compliance Committee Deed of Adoption under the Code.

### **2. Defined Terms**

Defined terms in this Charter are the same as those terms as defined in the Code Administration Deed.

### **3. Role of Code Compliance Committee**

The Code Compliance Committee has been established as an independent committee for the purposes of:

- (a) performing its functions under the Code; and
- (b) monitoring compliance with the Code to determine if there is a breach of the Code; and
- (c) considering alleged breaches of the Code unresolved by the Code Administrator; and
- (d) making and imposing such orders and sanctions permitted by the Code and Code Procedures as are appropriate on the Code Member in carrying out its functions as set out in the Code; and
- (e) engaging in the functions set out in this Charter.

### **4. Exercise of functions and powers**

The Code Compliance Committee must exercise its functions and powers under the Code in accordance with the Code.

In carrying out these functions and powers, each member of the Code Compliance Committee has a duty to:

- (a) act impartially and objectively;
- (b) act in an efficient, honest and fair manner and
- (c) act in accordance with the terms of the Code, the Code Procedures and this Charter.

### **5. Structure of Code Compliance Committee**

The Code Compliance Committee will consist of 3 members.

The Code Compliance Committee members will comprise:

- (a) an independent chair jointly appointed by the NIBA Board and FOS Board; and
- (b) 1 industry representative appointed by the NIBA Board; and
- (c) 1 consumer representative appointed by the FOS Board.

To maintain independence a member of the Code Compliance Committee cannot also be a member of the NIBA Board or the FOS Board.  
Alternate members shall be appointed for each Code Compliance Committee member.

The alternate members of the Code Compliance Committee will comprise of:

- (a) an independent alternate chair jointly appointed by the NIBA Board and FOS Board; and
- (b) 1 alternate industry representative appointed by the NIBA Board; and
- (c) 1 alternate consumer representative appointed by the FOS Board.

To maintain independence an alternate member of the Code Compliance Committee cannot also be a member of the NIBA Board or the FOS Board.

## **6. Meetings**

### **6.1 Meetings**

The Code Compliance Committee shall hold at least 4 meetings annually, at regular intervals of approximately 3 months between meeting dates.

In order to hold a meeting all 3 members (or their alternate members) must be present.

Subject to this Clause 6, a Code Compliance Committee meeting may be called by a member (or the secretary to the Code Compliance Committee) giving to every other member:

- (a) notice confirming the venue, time and date of the meeting no fewer than 10 business days prior to the meeting; and
- (b) an agenda of items to be discussed no fewer than five business days prior to the meeting.

A member may call a Code Compliance Committee meeting in relation to an urgent matter by giving to every other member prior notice of no fewer than two business days confirming the venue, time and date together with an agenda of items to be discussed.

A notice or agenda may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the member or at any other address given to the secretary of the Code Compliance Committee by the member or by any technology agreed by all the members.

A breach of this clause 6 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 Code Compliance Committee resolves unanimously to excuse the breach.

### **6.2 Minutes**

The secretary will minute the proceedings and resolutions of all Code Compliance Committee meetings, including the names of those present and in attendance.

Minutes of Code Compliance Committee meetings will be circulated to each member and will be approved by the Code Compliance Committee.

### **6.3 Meetings by Technology**

Each member consents to the use of each of the following technologies for holding a meeting of the Code Compliance Committee:

- (a) video;
- (b) telephone;
- (c) electronic mail;
- (d) any other technology which permits each member to communicate with every other member; or
- (e) any combination of these technologies.

Where the members are not all in attendance at one place and are holding a Code Compliance Committee meeting using technology and each member can communicate with the other members:

- (a) the participating members are, for the purpose of every provision of this Charter concerning Code Compliance Committee meetings, taken to be assembled together at a Code Compliance Committee meeting and to be present at that Code Compliance Committee meeting; and
- (b) all proceedings of those members conducted in that manner are as valid and effective as if conducted at a Code Compliance Committee meeting at which all of them were physically present in the one location.

## **7. Authority and Resources**

- (a) Each member shall have one vote with all resolutions being decided by a simple majority.
- (b) In order to perform its duties the Code Compliance Committee may obtain:
  - (i) any information that it requires from a Code member; or
  - (ii) retain independent professional, legal, accounting or other advice where it is reasonable to do so in the circumstances or with the written approval of NIBA.
- (c) The Code Compliance Committee may enter into appropriate arrangements with FOS for the purpose of facilitating:
  - (i) information exchange relevant to the Code Compliance Committee's functions; and
  - (ii) referrals to the Code Compliance Committee of an allegation that a Code member has breached the Code.

## **8. Resolutions**

A resolution in writing signed by all members entitled to vote on the resolution (not being less than the number required for a quorum at a Code Compliance Committee meeting) is a valid resolution of the Code Compliance Committee and is effective when signed by the last of all the members.

A resolution may consist of several documents in the same form each signed by one or more members.

For the purposes of this Clause 8, the references to members include any alternate member for the time being present in Australia who is appointed in place of a member not for the time being present in Australia but do not include any other alternate members. A facsimile transmission or other document produced by mechanical or electronic means under the name of a member with the member's authority is considered a document in writing signed by the member and is deemed to be signed when received in legible form.

## **9. Responsibilities of Code Compliance Committee**

### **9.1 Reporting**

The Code Compliance Committee will prepare and provide quarterly reports and an annual report for the Code Administrator and NIBA in accordance with the Code Procedures.

### **9.2 Reporting to ASIC**

The Code Compliance Committee is authorised to report systemic breaches of the Code and instances of serious misconduct by a Code Member to ASIC, with a copy of any such notification also being provided to FOS and NIBA.

### **9.3 Determinations by the Code Compliance Committee**

The Code Compliance Committee may investigate alleged breaches of the Code by a Code Member and issue determinations and sanctions in accordance with the Code Procedures.

If the Code Compliance Committee proposes to publish details of any non-compliance by a Code Member, including their name and the name of the company they represent (including reporting a serious or systemic breach to ASIC) the Code Compliance Committee will notify FOS and NIBA of this and provide a description of the proposed order or sanction at least 5 business days prior to making the order or imposing the sanction.

Other than in accordance with the Code Procedures, the Code Compliance Committee is not authorised or entitled to undertake any enforcement action, incur expenses or institute legal or other proceedings against a Code Member for non-compliance with an order or sanction imposed by the Code Compliance Committee. Any further enforcement action may only be undertaken at the sole and absolute discretion of NIBA and in accordance with its constitution and rules thereunder.

### **9.4 Monitoring Requirements**

The Code Compliance Manager and Code Compliance Committee will arrange for the development of a monitoring system by the Code Compliance Manager and Code Administrator to ensure the information to be reported on above by the Code Compliance Committee can be provided by the Code Compliance Committee in accordance with this Charter.

## **10. Material Personal Interests and Conflicts**

Each member who has a material personal interest in a matter that relates to the functions and powers of the Code Compliance Committee must give notice of the interest to each other member and to each party to the matter unless:

- (a) each other member is aware of the nature and extent of the interest and its relation to the affairs of the Code Compliance Committee; or

- (b) the person has given a standing notice of the nature and extent of the interest and the notice is still effective in relation to the interest.

The notice must:

- (a) give details of the nature and extent of the interest and the relation of the interest to the affairs of the Code Compliance Committee; and
- (b) be given at or prior to the Code Compliance Committee meeting as soon as practicable after the member becomes aware of their interest in the matter.

A member who has an interest in a matter may give each other member standing notice of the interest in the matter at any time by giving details of the nature and extent of the interest:

- (a) orally or in writing at a Code Compliance Committee meeting; or
- (b) in writing to each other member at any time - in which case the standing notice must be tabled at the next Code Compliance Committee meeting,

and the member must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the Code Compliance Committee meeting at which the standing notice is given or tabled and is also disclosed to each party to a matter in which the member has the interest.

A standing notice of an interest in a matter takes effect as soon as it is given and ceases to have effect if:

- (a) a person who was not a member at the time the standing notice was given is appointed to the Code Compliance Committee; or
- (b) the nature or extent of the interest materially increases above that disclosed in the notice.

The Code Compliance Committee must maintain a register of interests in which is recorded each interest disclosed under Clause 10. Details of any change to any such interest must be included in the register within seven days of the date of the change in the interest.

The requirements of this clause 10 have effect in addition to, and not in derogation of, any general law about conflicts of interest or conflicts of duties. Nothing in this clause 10 affects the duty of a member who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with that person's duties or interests as a member, to declare at a Code Compliance Committee meeting, the fact and the nature, character and extent of the conflict.

A member who has a material personal interest or conflict in a matter that is being considered at a Code Compliance Committee meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

in which case the member's alternate or the member for whom the alternate was appointed, as the case may be, may be present or vote in their stead in that matter.

If both a member and the member's alternate are prohibited from being present or voting, the Code Compliance Committee must request that the party appointing the member appoint another appropriately qualified person to be present or vote in their stead in that matter.

A member appointed by NIBA will not be taken to have a material personal interest in any matter merely because that person is an employee or consultant of, or holds an office of profit with, a Code Member unless it is with a Code Member that is a party to the matter under consideration.

## **11. Secretary**

FOS will provide secretariat services to the Code Compliance Committee in terms agreed between FOS, NIBA and the Code Compliance Committee.

A person will be nominated as the secretary to the Code Compliance Committee and that person will be responsible for the provision of secretariat functions to the Code Compliance Committee.

The functions of the secretary of the Code Compliance Committee will be determined by the Code Compliance Committee in its absolute discretion

If for any reason:

- (a) the secretary of the Code Compliance Committee is not able to fulfil a function; or
- (b) the Code Compliance Committee resolves that it is not appropriate in the circumstances for the secretary of the Code Compliance Committee to fulfil a function referred to,

the Code Compliance Committee may appoint a member to fulfil that function instead of the secretary of the Code Compliance Committee.

The Code Compliance Committee may at any time terminate the appointment of its secretary.

## **12. Complaints against the Code Compliance Committee**

NIBA, FOS or the Code Compliance Committee will refer a complaint that the Code Compliance Committee has not acted in accordance with its Charter or the Code, to the chair of the Code Compliance Committee within 5 business days.

Within 15 business days of the chair's receipt of the complaint, the chair will consider and/or investigate the complaint, and make recommendations to the Code Compliance Committee in respect of what, if any, steps should be taken in respect of the complaint.

If the chair believes that the complaint raises issues which involve the chair or a member of the Code Compliance Committee in a conflict of interest then, within 5 days of reaching that conclusion, the chair may appoint an independent person to consider and investigate and make recommendations to the Code Compliance Committee in respect of the complaint. In this case these requirements under clause 5 apply to the independent person.

The Code Compliance Committee will advise a complainant of its determination or the determination of the independent person within 5 business days.

The chair of the Code Compliance Committee shall report on complaints and their outcomes to FOS and the CEO of NIBA within 5 business days of the determination being issued.

## **13. Amendment**

This Charter may be amended by NIBA after consultation with FOS and the Code Compliance Committee, in which event a copy of the amended Charter must be provided to each member.

## SCHEDULE 2

### CODE COMPLIANCE COMMITTEE – MEMBER APPOINTMENT CRITERIA

In assessing the suitability of a person to be appointed as a member of the Code Compliance Committee the NIBA Board and/or the FOS Board (as appropriate) will require each member to satisfy the following criteria.

The process to appoint the member shall be, as far as practicable, transparent, accountable and cost-effective.

In identifying candidates, the NIBA Board and/or the FOS Board may:

- (a) consider the performance and composition of any existing incumbents;
- (b) consider any recommendations made to them about a potential candidate;
- (c) make personal approaches to suitable candidates;
- (d) call for nominations by circulating information amongst relevant stakeholder groups;
- (e) advertise positions so that a wide-range of appropriately skilled candidates may apply for the appointment.

In appointing a member, the NIBA Board and/or the FOS Board may:

- (a) Interview potential candidates; and
- (b) Require that candidates provide relevant information and reference details to support their application for appointment.

In appointing a member the NIBA Board and/or the FOS Board shall have regard to the candidate's:

- (a) Knowledge of the issues pertaining to the insurance and insurance broking industry;
- (b) Capacity to act independently;
- (c) Capacity and willingness to consult with relevant stakeholder organisations and interest groups;
- (d) Capacity and willingness to actively participate in relevant consumer forums and consultations;
- (e) Ability to be well informed and make objective decisions giving consideration to the objectives of the Code, the facts of the alleged breach, and the efforts to undertake appropriate corrective action;
- (f) Ability to negotiate and conciliate;
- (g) Ability to exercise sound and fair judgment;
- (h) Ability to command the respect of the other members of the Code Compliance Committee and the parties to this Deed;
- (i) Understanding of retail and small business consumers;
- (j) Links to relevant consumer, community and/or small business organisations;
- (k) Independence from the insurance and insurance broking industry (for consumer representative positions) and government.
- (l) Expertise in consumer affairs and/ or business affairs for the consumer representative and alternate consumer representative;
- (m) Experience in and knowledge of insurance broking industry affairs for the industry representative and alternate industry representative;
- (n) Legal qualifications and sound knowledge of the insurance broking industry in selecting a chair or alternate chair.

In appointing a member, the NIBA Board and/or the FOS Board must:

- (a) Apply any prescribed criteria detailed in Code and, as far as possible, satisfy the required skill set in selecting the most suitable candidate for the appointment.

- (b) Appoint the member for an initial term as outlined below:
- (c) The initial Chair and their alternative member shall be appointed for an initial term of 2 years;
- (d) The initial consumer representative and their alternative member shall be appointed for an initial term of 2 years;
- (e) The initial industry representative and their alternative member shall be appointed for a term of 3 years.
- (f) A successor to any initial member or their alternate member shall be appointed for a term of 3 years.
- (g) Each appointment must be in writing and a copy of the notice of appointment must be given to the boards of NIBA and FOS and to each member. The appointment takes effect at the time specified in the notice of appointment.

In reappointing a member for a further term, the NIBA Board and/or the FOS Board must:

- (a) Consider the member's performance in the role, if they are seeking re-appointment;
- (b) Reappoint the member for a further term of no more than three (3) years, up to a maximum tenure of three terms unless special circumstances apply. (For example a member may be reappointed for a further term if there are no other suitable candidates for the position or the candidate has a unique skill set that the Code Compliance Committee requires).
- (c) Advertise the position at its discretion if additional candidates are, or need, to be considered for the position.

Cessation of a Code Compliance Committee member

A member may be removed from the Code Compliance Committee by the party who appointed that person giving to that person at least one month's notice of removal. Each removal under this paragraph must be in writing and a copy of the notice of removal must be given to the boards of NIBA and FOS and to each member. The removal takes effect at the time specified in the notice of removal.

A member may resign from the Code Compliance Committee by giving to the party who appointed that person at least one month's notice of that person's resignation.

A member will immediately cease to be a member of the Code Compliance Committee if:

- (a) that person becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) that person becomes a member of NIBA Board or FOS Board;
- (c) that person dies; or
- (d) that person's term of office expires.

Where a party appointing a member:

- (a) gives notice of removal;
- (b) receives a resignation; or
- (c) becomes aware of an event by which the member will immediately cease to hold office,

then that party must notify each other party and each other member of that fact.