

INITIAL PROPOSED NIBA CODE CHANGES FOR CONSULTATION

FEBRUARY 2021

Background

This document contains, for consultation purposes only, draft changes to the Code developed by the NIBA Board after consideration of a variety of matters, including but not limited to:

- preliminary feedback raised by stakeholders as part of the Code review process;
- issues raised in the Financial Services Royal Commission;
- the post Royal Commission Government reforms (some of which are final and some which are yet to be finalised);
- issues raised by relevant regulators; and
- the recent changes made to the General Insurance Code of Practice.

Changes are indicated in mark up and commentary where relevant in yellow.

These changes and style and format of the Code are not final and this document is only submitted to promote discussion. They will be considered further (including their impact and presentation) after member and other stakeholder feedback.

[Note the introductory sections of the Code are not included in this document as they are only to be updated once feedback received and code content finalised. The appropriate end design and structure of the Code (including plain language) have also not been addressed in these initial comments and will be subject to consultation feedback]

SCOPE OF THE CODE

~~WHO DOES THE CODE APPLY TO AND FROM WHEN? (CODE MEMBERS)~~

~~SCOPE OF THE CODE~~

~~WHO DOES THE CODE APPLY TO AND FROM WHEN? (CODE MEMBERS)~~

~~1 NIBA Principal Member or Corporate Associate as defined in the NIBA Constitution.~~

~~From When~~

~~The later of:~~

- ~~• the time they become a Principal Member or Corporate Associate; and~~
- ~~• such time as the member becomes bound by the applicable NIBA Rules implementing the Code.~~

~~2 Anyone that has entered into a formal agreement with NIBA to be bound by the Code.~~

~~From When~~

~~The time they enter into an agreement with NIBA to be bound by the Code.~~

~~3 Such other type of NIBA member approved by the NIBA Board.~~

~~From When~~

~~The time they enter into an agreement with NIBA to be bound by the Code.~~

[Proposed to simplify above section – NIBA will require members and others to agree to be bound by the Code and enter into an agreement with the IBCCC. Rules will require existing NIBA Principal Member or Corporate Associate as defined in the NIBA Constitution to join by a specified date]

Who does the Code apply to?

The Code applies to any entity that agrees with NIBA to be bound by the Code (“we, our or us”).

A list of Code subscribers is available at www.#.com.au.

Code commencement and effect

The Code takes effect from the start of the day after we agree with NIBA to be bound by the Code or such later period specified in our agreement with NIBA (start date).

The Code applies in relation to any Covered Services provided by us to a Client from or after the start date.

If a Complaint is first made after adoption in relation to services provided before the start date and which are covered under an earlier version of the Code, we will apply Section Complaints and Dispute Resolution Process to that Complaint, as applicable. Otherwise, the terms of the earlier version of the Code will apply to those services.

To the extent this Code applies, then any earlier version of the Code does not apply.

SCOPE OF THE CODE

WHAT SERVICES ARE COVERED BY THE CODE? (COVERED SERVICES)

Covered Services

The Code applies to Covered Services provided by us (or our Representatives on our behalf) from the time we become bound by the Code (see **Who does the Code apply to and from when?** above).

Covered Services are made up of Insurance Services and Associated Services.

Insurance Services

†
means all:

- general insurance services; and
- life insurance services in relation to life policies (as defined in section 9 of the Life Insurance Act 1995 (Cth)).

†
Insurance Services do not include reinsurance services.

Associated Services

†
means services provided in association with the provision of the above two types of Insurance Services.

These services include but are not limited to:

- claims administration services;
- loss control and risk management advice;
- mutual fund or captive administration;
- risk inspection; and
- premium funding arrangement or referral.

Associated Services do not include reinsurance services.

SCOPE OF THE CODE

[Proposed to replace existing section above with following to simplify and include new service type Risk Management Services on a standalone basis rather than just as an Associated service as under old Code. Broader scope of coverage.]

WHAT COVERED SERVICES DOES THE CODE APPLY TO AND WHO CAN ACCESS THE BENEFITS OF THE CODE?

Generally [New intro to help consolidate new concepts and make clearer]

The Code applies to the following services:

- Insurance Services; and/or
- Associated or Risk Management Services.

provided by us (or our Representatives on our behalf) to any person, subject to the Covered Services Exclusions below. We refer to these services as **Covered Services** in the Code.

A person we (or our Representatives on our behalf) provide a Covered Service to is referred to as a **Client (you, your)** in the Code.

To the extent a person is not provided with a Covered Service, they will not be considered a Client entitled to the benefits of the Code.

Please note that the Covered Services merely set out what services can be caught by the Code and not what services you can expect or are entitled to receive.

Insurance Services

means any service provided to a person by us (or our Representatives acting on our behalf) on general insurance or Life Risk Insurance.

In relation to the above, this includes (but is not limited to):

- referring a person to an insurer;
- giving advice on insurance;
- arranging insurance;
- issuing, varying or cancelling insurance; and/or
- handling or settlement of any insurance claims.

It is also extended to catch general insurance services and/or Life Risk Insurance services provided by us as a wholesale broker to another insurance broker acting as retail broker on behalf of its client in relation to its client's proposed or actual purchase of general insurance and/or Life Risk Insurance. In such a case, the retail broker is the Client.

Associated or Risk Management Services

means any service provided to a person by us (or our Representatives acting on our behalf):

- in connection with the provision of an Insurance Service by us to them; or
- in relation to the management of the risk to them of particular circumstances happening, where this is not in connection with the provision of an Insurance Service by us to them.

In relation to the above, this includes (but is not limited to):

- referring them to an issuer in relation to the purchase of a connected non-insurance product such as premium funding or another form of risk management product by the person;

- advice, arranging or administration services in relation to a discretionary and/or mutual fund or captive;
- handling, settlement, administration or management of any insurance claims under an insurance deductible or excess;
- advice on loss control and risk management practices either connected with insurance or on a stand-alone basis; and/or
- administration or management of claims made and loss suffered by the person.

Covered Services Exclusions

Covered Services do not include:

- reinsurance services;
- health insurance products issued by a registered health insurer;
- any service provided by us:
 - on behalf of the person (or their Representative) which is the provision of a service to others (e.g the distribution or sale of the person's product or service as their referrer, or distributor or sales agent or the handling of claims made under their product by other persons); or
 - where we are acting on behalf of another person in engaging with them (e.g where we engage with a product issuer for a customer wishing to purchase their product or services or make a claim, no Covered Service is provided to the product issuer by us).

By way of further example, if an insurer uses our services to acquire insurance on their own behalf this is a Covered Service and they are a Client in relation to that insurance. However, if we act as their agent in selling insurance for them to others or act for an insured in arranging insurance with them as insurer this is not a Covered Service and they are not a Client in relation to these services.

Prev

SCOPE OF THE CODE

WHAT RIGHTS ARE PROVIDED BY THE CODE?

RIGHTS BETWEEN US AND NIBA

We have agreed with NIBA to comply with:

- the standards and provisions of the Code; and
- any orders made or sanctions imposed by the Code Compliance Committee as a result of our breach of the Code.

We are in breach of the Code if our Representatives do not comply with the Code when they are acting on our behalf.

RIGHTS BETWEEN US AND YOU

You have a right to make a complaint under the Code if you believe there has been a breach of the relevant standards or provisions and seek to have it resolved in accordance with the terms of the Code

The Code does not create any legal or other right as between us and you or any person other than NIBA.

This means that by agreeing to comply with the Code we do not make any representation to you, or agree with you that, we will meet the Code standards in providing our service (unless specifically stated otherwise in writing to you). Our agreement to do so is only with NIBA.

The Code does not limit your rights under law against a Code Member.

SCOPE OF THE CODE

HOW IS THE CODE APPLIED? (CODE PRINCIPLES)

The provisions of the Code will be applied having regard to the:

- requirement of Code Members to meet the standards established at general law and statute, in particular but in no way limited to the following (as amended from time to time):
 - Corporations Act 2001 (in particular Chapter 7);
 - Insurance Contracts Act 1984;
 - Australian Securities and Investments Commission Act 2001;
 - Competition and Consumer Act 2010; and
 - Privacy Act 1988

~~To the extent the Code may be found to be inconsistent with any Commonwealth, State or Territory law, that law always prevails.~~ [Moved below]

- fact that insurance policies and arrangements between Code Members, Clients and insurers and their agents are substantially governed by the above legislation;
- need for Code Members to provide fair, honest, efficient, transparent and diligent services to enhance and maintain public confidence in insurance brokers and insurance intermediaries;
- need for Clients of Code Members to be made aware of the provisions of the Code; and
- need to promote competition and cost efficiency in the insurance industry and to ensure flexibility and innovation in the development and enhancement of products and services for Clients of Code Members.

THE CODE AND THE LAW

To the extent the Code may be found to be inconsistent with any Commonwealth, State or Territory law, that law always prevails.

Where there is an obligation under the Code in addition to any Commonwealth, State or Territory law, we will also comply with the Code, unless doing so would be in breach of that law.

WHAT STANDARDS APPLY TO OUR COVERED SERVICES?

1 We will comply with all relevant law

In determining how to comply with the law we will act consistently with commercial standards of decency and fairness and with due regard to the interests of our clients.

[In the Board's view this provides a reasonable standard regarding how a broker should consider compliance with the law]

2 We will transparently manage any conflicts of interest that may arise

[Proposal seeks to clearly set out standards of communication with, and information for clients, regarding types of conflicts]

Conflicts of interest are circumstances where some or all of your interests are inconsistent, or diverge from, some or all of our interests.

We will develop and keep current a policy on how we will handle and manage conflicts of interest in relation to our Covered Services and will make it available to you.

When providing Covered Services this standard is met where we:

- identify any conflicts of interest;
- assess and evaluate these conflicts of interest;
- decide upon and implement an appropriate response to those conflicts, which can, depending on the circumstances, include:
 - clearly disclosing the relevant conflicts of interest to you and the reasons why and getting your informed consent to proceed;
 - allocating another representative to provide the relevant Covered Services to avoid the conflict; and
 - declining to provide our Covered Services.
- have monitoring procedures in place to ensure that:
 - our conflicts management arrangements are implemented and maintained; and
 - any non-compliance is identified, recorded and appropriately acted upon.
- keep appropriate records of our management of conflicts of interest;
- answer any questions you have about conflicts of interest and our procedures for handling them; and
- comply with any additional requirements imposed by relevant law regarding the management of conflicts of interest.

Where we provide Covered Services on your behalf, a conflict of interest can arise where we are acting for you and:

- we have a relationship with a third party (such as an insurer) that could reasonably be expected to influence us in providing the Covered Services;
- we receive remuneration from that third party, such as:

- commission out of an insurer's premium, including if the rates vary between insurers;
- remuneration based on the volume or profits of the insurance business; or
- we or our associates receive remuneration for related services provided by us or them in connection with the Covered Services (e.g premium funding, claims or loss adjusting or reinsurance services).

Where we are acting on your behalf in providing Covered Services to you and we identify a conflict of interest that could reasonably be expected to influence us in providing the Covered Service, we will:

- not describe ourselves as 'independent, 'impartial' and 'unbiased' or in equivalent terms in relation to the provision of those Covered Services; and
- explain the reasons why we cannot describe ourselves in that way in relation to those Covered Services.

3 We will clearly tell you if we do not act for you

[Proposal seeks to improve clarity regarding role disclosure to customers]

If we provide our Covered Service on behalf of another person, we will clearly tell you before or at the time we provide the Covered Service, who they are and the services we have been authorised to provide on their behalf.

When providing Insurance Services, we will clearly tell you if we are:

- acting as agent of the insurer, and not you, the services the relevant agency applies to and whether we can issue, vary, dispose of the insurance or deal with or settle a claim for the insurer as if we were the insurer, without reference to them (often called a binder)(including under binder) any Insurance Service; and
- using another person (e.g another insurance broker) to assist in the provision of the service to you and will explain their role and answer your questions. For example, in some cases we may use a wholesale broker to access certain insurance markets.

4 We will clearly tell you about the scope of our Covered Services

[Proposal seeks to improve clarity regarding disclosure of scope of services to customers]

~~Before or at the time we provide Insurance Services we will clearly tell you:~~

- ~~● if we are providing you with advice based on our consideration of whether certain insurance products are appropriate for your personal needs, objectives or financial situation or not (**Personal Advisory Service**); and~~

- ~~there are any material limits on the scope of any Personal Advisory Service being provided and what we believe are the relevant implications of this; and~~

[In relation to the proposed changes to content re Insurance Services below, this focuses on the need to make it clear if a broker is providing personal advice or not and if so, what limitations may apply. This is what ASIC and the Royal Commission have focussed on the importance of. We have proposed the following to seek to better clarify things and align with current law]

Before or at the time we provide Insurance Services, we will clearly tell you if we are providing you with advice based on our consideration of whether certain insurance products are appropriate for your personal needs, objectives or financial situation or not (Personal Advisory Service).

If we are not providing a Personal Advisory Service as part of our Insurance Services, we will clearly tell you that:

- any advice provided has been prepared without taking into account your objectives, financial situation or needs;
- you should consider the appropriateness of such advice having regard to your own objectives, financial situation or needs, before acting on the advice;
- you should consider whether you require a Personal Advisory Service; and
- you should carefully consider the documentation provided by the insurer in relation to the product (including the policy wording or Product Disclosure Statement where applicable) before making any decision about whether to acquire the product and on what terms.

If we are providing a Personal Advisory Service as part of our Insurance Services, we will clearly tell you if there are any material limits on the scope of any Personal Advisory Service being provided and what we believe are the relevant implications of this.

5 We will discharge our duties diligently, competently, fairly and with honesty and integrity

[Subheadings added to break up concepts more clearly]

Reasonable care and skill and clear and prompt communication

When providing Covered Services on your behalf we will exercise reasonable care and skill, including communicating with you in a clear and prompt manner.

[Following proposals included to seek to help improve standards regarding design and distribution]

Our approach to Design and Distribution of products

Where we are involved in or contribute to the design and/or distribution of any general insurance, Life Risk Insurance or Risk Management Product, we will:

- have a publicly available policy on our approach (where applicable) to the design and/or distribution of such products for appropriate target markets;
- seek to act in a manner that is consistent with commercial standards of decency and fairness with due regard to the interests of the class of customers it is targeted at (**target market**) and which will support the delivery of a good outcome for that target market; and
- consider (where reasonable to do so and where relevant information is reasonably available):
 - the suitability of the product for the target market;
 - what consumer testing or feedback may be appropriate or has occurred;
 - whether the product or distribution will align with what we believe are likely community standards and expectations, and if not, whether this is reasonable;
 - what distribution controls should be applied (in particular to avoid any poor sales practices, such as tactics which apply pressure, take advantage of consumer behavioural biases, avoid transparency or fairness or adopt poor choice architecture);
 - what monitoring and training will be adequate;
 - what and when data should be collected and reviewed to consider the ongoing effectiveness of the relevant design or distribution of the product as developed; and
 - the sufficiency of communication between us, the product issuer and others relevant to the above.

Acting for you in buying insurance

[We propose to remove the general qualifier and only apply it where appropriate and necessary for each requirement]

When you are buying insurance and we act on your behalf, we will do the following (unless we agree with you or tell you otherwise):

- **Personal Advisory Service**

[Proposal seeks to update and improve standards]

When we provide you with a Personal Advisory Service in relation to the insurance we will (unless we agree with you or clearly tell you otherwise):

- act in your best interests by:
 - identifying your objectives, financial situation and needs as disclosed to us by you through your instructions or otherwise;

- identifying the agreed subject matter of the advice that has been sought. If the agreed subject matter of the advice to be provided is different to that originally sought by you, we must form the view that this is appropriate and provide you with sufficient information to ensure you understand the relevant impact of this;

- discussing and agreeing the scope of our advice in relation to the agreed subject matter with you (in particular, if there is a limited range of products we will be providing personal advice on) and providing sufficient information to ensure you understand the relevant impact of doing so (e.g. if disclosed original objectives and needs won't be met as a result);

- identifying your objectives, financial situation and needs that would reasonably be considered as relevant to advice sought on the agreed subject matter (**Relevant Circumstances**);

- making reasonable inquiries to obtain complete and accurate information where it is reasonably apparent that information relating to your Relevant Circumstances is incomplete or inaccurate. Something is reasonably apparent if it would be apparent to a person with a reasonable level of expertise in the subject matter of the advice that has been sought, were that person exercising care and objectively assessing the information given;

- where recommending insurance, conducting reasonable investigation into products applicable to your Relevant Circumstances;

- where you have an existing product that may be replaced with another, conducting reasonable investigation and identifying how the replacement product meets your Relevant Circumstances and puts you in a better position compared to the existing product;

- assessing the information gathered in our investigation;

- assessing whether we have the expertise and capacity required to provide you with advice on the agreed subject matter and, if not, decline to provide the advice;

- basing all judgements in advising you on your Relevant Circumstances; and
 - placing your interests ahead of any interests we have; and
 - taking any other step that, at the time the advice is provided, would reasonably be regarded as being in your best interests, given your Relevant Circumstances;
- warn you if it is reasonably apparent that information relating to your objectives, financial situation and needs on which the advice is based Relevant Circumstances is incomplete or inaccurate, and tell you that because of this, you should, before acting on the advice, consider the appropriateness of the advice having regard to your objectives, financial situation and needs Relevant Circumstances;
- provide advice that is appropriate for your Relevant Circumstances (This can include, where appropriate in the circumstances, a reasonable explanation of the terms of the insurance that the advice is being provided on); and
- include in any advice document provided, reasonable detail to allow you to make an informed decision – including outlining the advantages and disadvantages of any recommendations made and information on what alternative products and alternative strategies were considered (if any).

- **Where insurance is with an unauthorised foreign insurer**

[Proposed changes update and seeks to improve standards]

Where the insurance is to be provided by a foreign general insurer that is not authorised under or subject to the provisions of the Insurance Act 1973 (which establishes a system of financial supervision of general insurers that carry on general insurance business in Australia), before you make a decision we will:

- inform you of the general risks we believe are involved in transacting insurance with such an insurer, including:
 - that the insurer is not authorised to conduct insurance business in Australia;

- that the insurer is not subject to provisions of the Insurance Act, which establishes a system of financial supervision for general insurers in Australia; and

- you should consider whether to obtain further information, including:
 - the country in which the insurer is incorporated, and whether the country has a system of financial supervision of insurers;

 - the paid-up capital of the insurer; and

 - which country's laws will determine disputes in relation to the insurance contract; and

- answer your questions;

Other services relevant to buying insurance

We will (unless we agree with you or clearly tell you otherwise):

- assist you to determine the level of insurance cover you may require;

- assist you to determine your policy requirements and arrange, acquire and maintain your insurance policies for you;

- only request an authority to obtain information from your insurers relevant to the services we are to provide for you;

- promptly provide to insurers any insurance proposal and application forms or other information required by them;

- only advise you that insurance is available on specified terms (insurance conditions, coverage or premiums) where the declared insurer has provided such terms;
- take all reasonable steps to promptly make available to you copies of any relevant insurance documentation we receive, including but not limited to policy wordings, schedules, certificates and endorsements;
- receive all general insurance notices from the insurer on your behalf and pass the notices or relevant information in the notices to you promptly (including but not limited to renewal information where relevant);
- in relation to Group Purchasing Arrangements (as defined below):
 - where the person can separately elect and pay to access the benefit and we act for the contracting insured, we will tell the contracting insured of the importance of:
 - taking reasonable steps to make copies of the relevant policy terms available to the relevant persons at or before the time they make the election and pay; and
 - complying with relevant law as it applies to them in relation to such arrangements.

[Proposed change seeks to reflect change in law]

A Group Purchasing Arrangement is where the policy provides the benefit of being able to claim under the policy to persons who are not ~~contracting insureds~~ parties to the contract but are specified or referred to in the contract, whether by name or otherwise, as persons to whom the benefit of the insurance cover provided by the contract extends. (e.g persons covered by reason of section 48 of the Insurance Contracts Act 1984 (Cth) who are defined in the Act as a “third party beneficiary”).

Acting for you in relation to claims

[Proposed improvement regarding remuneration notification]

When you have an insurance claim and we act on your behalf we will (unless we agree with you or tell you otherwise):

- assist you in making and progressing a claim (including but not limited to providing you with claim forms and claims advice), and will act in your best interests in doing so;
- on receiving an insurer’s response to a claim, inform you as soon as reasonably practical of that response;
- assist you and negotiate with insurers on your behalf in the event of a claim being disputed or rejected; and

- before providing claims services clearly inform you if and how we will charge for these services.

Acting for the insurer not you

When we act for an insurer and not on your behalf we will:

- tell you if we are acting for an insurer and not for you before or at the time we provide our services for certain transactions. This is important because in these circumstances we will not be acting on your behalf.

[Proposed change seeks to take into account changes made to the General Insurance Code of Practice regarding an insurer's obligations regarding licensees acting for them. Members must act consistently with the Code insurer's GICOP obligations where applicable to their conduct – in short, if the insurer uses the broker as its agent, the broker must, if performing conduct for the insurer, act consistently with the obligations that would apply to the insurer were it performing the conduct directly.]

Further change requires insurance broker acting for the insurer to warn a customer if the insurer is not subject to the protection afforded by the GICOP]

- ~~comply with any obligation that the insurer has under any law or code of practice the insurer subscribes to, relevant to our conduct and subject to our agreement with the insurer; if the insurer is:~~
 - subject to the General Insurance Code of Practice (GICOP), act consistently with the conduct obligations that would be imposed on the insurer under the GICOP in relation to our conduct, were the insurer to engage in that conduct directly (even if this Code may impose obligations on the same conduct); or
 - not subject to the GICOP and its additional benefits, notify you of this. We will do so in writing or if this is not reasonably practicable, orally and then in writing as soon as reasonably practicable, but in any case, no later than 14 business days, after giving the oral notice,
- take all reasonable steps to promptly make available to you or your agent copies of any relevant insurance documentation evidencing the insurance in force, including but not limited to policy wordings, schedules, certificates and endorsements; and
- reasonably assist with any requested acquisition, arrangement or management of your insurance policies, including but not limited to any endorsement, reinstatement, replacement, renewal or cancellation of such policies.

[The following changes seek to focus on matters that are likely to lead to a good consumer outcome, avoid breaching relevant remuneration requirements and reduce the risk of ASIC intervention and complaints. In summary, we believe brokers should focus on:

- proper disclosure of the remuneration [this standard focusses on this issue];
- clear disclosure of relevant roles and services to the customer [Covered above in Code Standards re role disclosure];
- proper management of any conflicts of interest [Covered above in Code COI changes; and
- forming a view that:
 - the remuneration is reasonable in the circumstances e.g paid for actual services provided and is reasonable compensation for the proposed services; [Added below]
 - the remuneration will not result in:
 - a poor value outcome for the consumer (e.g increased end cost to an unreasonable level to offset the payment of additional remuneration with no additional benefit to a consumer [Added below]; or
 - act as an incentive for poor conduct e.g pressure sales, misleading sales practices, acting in conflict of interest, selling unsuitable products etc [Covered in COI changes above and fairness below]

The following sets out proposed changes re level of disclosure and procedures behind the scenes regarding management of the risks regarding poor remuneration practices]

~~6 We will clearly tell you how our Covered Services are paid for before we provide them and answer any questions you have~~

~~Before or at the time you enter into an insurance policy we will clearly tell you:~~

- ~~• if we will receive remuneration (e.g a fee payable by you) in addition to or instead of commission/brokerage from the relevant insurer as a result of you accepting an insurance policy arranged by us (including renewals and variations).~~

~~The commission/brokerage is generally a percentage of the insurer's premium. It is included in the premium set out in our invoices and we receive it when you pay the premium or at such other time agreed with the insurer.~~

- ~~• if we intend to retain any of the commission/brokerage paid by the insurer or any fee paid by you if the insurance policy is cancelled before the period of insurance ends.~~

[Proposal is to replace the above with the following]

6 We will, before (or if this is not practicable, at the time) we provide our Covered Services:

- clearly tell you

- the type(s) of remuneration or other benefits that we are to receive in respect of, or that is attributable to, the provision of any of our Covered Services (e.g commission/brokerage forming part of the premium, fees or a combination of both etc)
 - the Covered Services each type of remuneration or other benefit relates to (e.g for arranging insurance, provision of advice or claims management etc);
 - who is responsible for providing us with the remuneration or other benefit (e.g upfront commission/brokerage on insurance is paid to us by the insurer);
 - when and how it is payable (e.g if it is payable before or after issue of the insurance and options for making payment such as credit card and/or direct deposit etc);
 - any limitations on your rights of refund in relation to such remuneration or other benefits (e.g if your insurance policy is cancelled before the period of insurance ends);
 - the type(s) of remuneration or other benefits our Associates receive that a reasonable person in the circumstances would consider could influence us in the provision of any of our Covered Services;
 - where a conflict of interest arises in relation to the above remuneration or other benefits, the nature of this conflict and how we manage it;
- **answer any questions you have about the above.**

Without limiting the above, where we act on your behalf in providing Insurance Services, before (or if this is not practicable, at the time) you enter into an insurance policy, we will clearly tell you about any:

- fees or other amounts that are payable by you in relation to our Insurance Services provided in relation to the insurance policy and what Insurance Services they relate to. We will set these out separately in any invoice we provide to you;
- commission/brokerage payable by the insurer to us as a percentage of the insurer's premium on the issue (including new business, variations, extensions, reinstatements or renewals) of the policy to you (i.e. called entry into the policy); and
- other forms of commission (e.g based on volume, retention of business or profitability of a portfolio etc), fees, remuneration or other benefits we or our Associates receive from the insurer or a related body corporate of the insurer or other third parties, that a reasonable person in the circumstances would consider could influence us in the provision of any of our Insurance Services;

- limitations on your rights of refund in relation to such remuneration or other benefits (e.g if your insurance policy is cancelled before the period of insurance ends).

[The following proposed change has been added to seek to improve remuneration standards based on FSRC and ASIC identified issues]

We will have a documented remuneration review policy which:

- requires us before approving any type of remuneration or other benefit we may receive for a Covered Service, to consider:
 - whether and form the view that it is reasonable having regard to the Covered Services being provided;
 - whether it might result in a conflict of interest and if so, form the view that we are reasonably able to manage that conflict;
 - whether it may result in any other type of poor consumer outcome (e.g pressure sales or misleading sales) and if so, form the view that we are reasonably able to manage this risk;
 - whether and form the view that that the proposed disclosure of the remuneration is clear, concise and effective and in particular, that it identifies:
 - the type of remuneration;
 - the Covered Services it relates to;
 - who is responsible for providing us with the remuneration;
 - when and how it is payable; and
 - any restrictions on refunds;
 - what consumer testing or feedback may be appropriate or has occurred;
 - whether the remuneration will align with what we believe are likely community standards and expectations;
 - what controls should be applied (in particular to manage any conflict or risk of poor sales practices) and form the view that these controls are adequate and can be implemented, maintained, monitored and reviewed;
 - what resources, monitoring, review and training will be adequate regarding the above matters;
 - what and when data should be collected and reviewed to consider the ongoing validity of the conclusions reached regarding the above matters and compliance with procedures;

- how any non-compliance will be appropriately acted upon; and
- the sufficiency of communication between us, the persons paying us and others relevant to the above.

7 We will handle any money received in accordance with relevant law and any agreement with you

We will answer any question you may have about the operation of any designated trust account we have established in accordance with the Corporations Act 2001. We use this account to hold certain insurance premiums paid to us by you and certain moneys owing to you that are paid to us by insurers.

8 We will ensure that we and our Representatives are competent and adequately trained to provide the relevant services and will maintain this competence

We will:

- ensure our Representatives receive adequate training to competently provide services on our behalf, including but not limited to:
 - an understanding of this Code or other relevant code applying to them and their obligations under them (where applicable to their activities); and
 - meeting any training standards identified by NIBA as applicable to the Covered Services;

[Proposed change seeks to improve standards and align to the extent relevant, with changes made to the GICOP]

- have policies and procedures for our Representatives that require them to conduct their services appropriately and to prevent unacceptable sales practices;
- only allow our Representatives to provide services that match their expertise;
- require our Representatives hold any licence the law requires;
- require our Representatives, when they are providing a service to you, to tell you the service we have authorised them to provide and that they are acting on our behalf;

- require our Representatives to first get our approval before subcontracting any services they perform on our behalf;
- require our Representatives to tell us about any Complaint received by them or breach of this Code by them when acting on our behalf, as soon as reasonably practicable by no later than 2 Business Days;
- require our Representatives to provide reasonable cooperation and make available to, the Code Compliance Manager or Code Compliance Committee, any information relevant to their and our compliance with the Code;
- ensure records of ~~their~~ our Representatives' training are kept for at least seven five years and make the records available for examination by the Code Administrator or Code Compliance Committee on request;
- measure the effectiveness of ~~their~~ our Representative's training by appropriately monitoring their performance;
- require additional or remedial training to address any identified deficiencies or improvements required in ~~their~~ our Representatives' training and ongoing development; and
- maintain and keep current a training and development plan for our Representatives that is appropriate for the services provided by them or to be provided by them in the future.

If:

- we are aware that our Representative's performance does not meet the relevant standards of the Code; or
- you raise any concerns you raise with us about the conduct of our Representatives,

then we will address this. For example, by terminating our contract with them, other disciplinary action or requiring them to go through further training.

9 We will respond to catastrophes and disasters in a timely, professional, practical and compassionate manner in conjunction with any industry-wide response

10We will ensure that we have an internal complaints and disputes handling process that meets the [Code Complaints and Dispute process standards section](#)

11We will support NIBA in promoting the Code and make information on the Code (including how to make a complaint) and our Covered Services readily available to you

12We will not engage in activity or inactivity that is reasonably likely to bring the insurance broking profession into disrepute

[Proposed change to add new Customer Vulnerability section 13, below for better protection of vulnerable customers in a manner similar to the GICOP, as amended to be relevant for insurance brokers]

13. We will support you if you are vulnerable in the following ways

You may be vulnerable in a number of situations, including those arising from age, mental health, disability, family violence, language, literacy and cultural background, location and financial hardship.

We will develop policies and procedures and training for our Representatives to help:

- identify if you are a vulnerable person and your particular needs and vulnerability – Where possible you should raise any vulnerability with us to ensure we do not miss it;
- if so, engage with you with sensitivity, dignity, respect and compassion; and
- decide how to provide support and to what extent. This may include:
 - referring you to people, or services, with specialist training and experience, such as an interpreter, a financial counsellor or an appropriate community support service.
 - reasonably allowing for additional support from someone else (for example, a lawyer, consumer representative, interpreter or friend) and recognising any valid authority of such support persons.

The support that we provide does not include support with paying the premiums under an insurance policy or other products or for our Covered Services.

COMPLAINTS AND DISPUTE RESOLUTION PROCESS

GENERAL STANDARDS

(A Code Member is referred to in these Standards as we, our and us and a Client as you and your)

Our internal complaints and disputes handling process for Covered Services (IDR Process) is a two-step process as set out to the right and must:

- meet any relevant standard required by law;
- be free of charge;
- be conducted in a fair, transparent and timely manner;
- require us to:
 - immediately (or if this is not possible as soon as practicable) acknowledge the receipt of Complaints or Disputes and address them promptly in accordance with their degree of urgency;
 - only ask for and take account of relevant information in considering a Complaint or Dispute;
 - immediately initiate action to correct any identified error or mistake in dealing with a Complaint or Dispute;
 - allow you to seek access to information we have relied on in assessing a Complaint or Dispute and provide you with access to the information, except in special circumstances, such as where this would breach any laws (e.g. privacy) or would prejudice us in relation to the Complaint or Dispute; and
 - provide reasons why we will not give you access to such information mentioned above (in writing if you request it); and
- handle Complaints and Disputes caused by our Representatives for Covered Services provided by them on our behalf.

T

COMPLAINTS AND DISPUTE RESOLUTION PROCESS

USUAL PROCESS FOR RESOLVING A COMPLAINT FROM START TO FINISH

STEP 1

Making a Complaint to us

Complaint means an expression of dissatisfaction made to us by you related to our Covered Services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

We will advise you on how we propose to resolve it by the earlier of:

- 21 days or such later time agreed with you in order to obtain information or undertake the relevant assessment or investigation. If a later time is agreed, we

- will keep you informed of progress on a regular basis as is reasonable in the circumstances; and
- such time limits required by law or the relevant ASIC-approved external dispute resolution scheme to which we belong.

If the Complaint is resolved and both parties are happy, the issue ends here. If not, the Complaint will proceed to step 2 as a Dispute.

STEP 2

Dispute

◆ Dispute ◆ means an unresolved Complaint.

If a Complaint is unresolved (for example, you tell us you are dissatisfied with our decision on a Complaint, or you or we ask to treat the Complaint as a Dispute) we will follow the procedure below.

We will refer the matter to our internal disputes resolution manager, who will consider and seek to resolve the dispute by the earlier of:

- 21 days or such later time agreed with you in order to obtain information or undertake the relevant assessment or investigation. If a later time is agreed, the manager will keep you informed of progress on a regular basis as is reasonable in the circumstances; and
- such time limits required by law or the relevant ASIC-approved external dispute resolution scheme to which we belong.

Our dispute resolution manager will:

- advise you of any decision they have reached in writing, including clear reasons for the decision; and
- if they have been unable to resolve a dispute with you through the above process, provide you with information on how you can seek to access the [the Financial Complaints Authority \(AFCA\)](#), or such other ASIC-approved independent external dispute resolution scheme we belong to (which is free of charge), as described in step 3 (right), and meet such other requirements of that scheme.

We will make information on our Complaints and Disputes resolution process available to you.

[The above is proposed to be deleted and amended to take account of the new ASIC RG 271 IDR requirements which will apply to retail client business. The proposed Code change seeks to apply the principles to a broader range of clients]

GENERALLY

(A ◆ Code Member ◆ is referred to in these Standards as ◆ we ◆, ◆ our ◆ and ◆ us ◆ and a ◆ Client ◆ as ◆ you ◆ and ◆ your ◆ or complainant)

You may make a Complaint to us and we explain what this is below along with the main steps in our Complaints handling process and other General standards we will meet.

WHAT WE TREAT AS A COMPLAINT

◆Complaint◆ means an expression of dissatisfaction made to us or about us, related to our products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

A response or resolution is:

- 'explicitly expected' if you clearly request it;
- 'implicitly expected' if you raise the expression of dissatisfaction in a way that implies that you reasonably expect us to respond and/or take specific action.

You are not required to expressly state the word 'complaint' or 'dispute', or put your complaint in writing, to trigger our obligation to deal with a matter.

Complaints can include but are not limited to:

- posts (that meet the definition of 'complaint') on a social media channel or account owned or controlled by us that is the subject of the post, where the author is both identifiable and contactable;
- complaints about a matter that is the subject of an existing remediation program or about the remediation program itself (e.g. delays, lack of communication); or
- complaints about the handling of an insurance claim (e.g. excessive delays or unreasonable information requests).

We will not categorise an expression of dissatisfaction that meets the definition of 'complaint' as 'feedback', an 'inquiry', a 'comment' or similar (and therefore not to be dealt with in the firm's IDR process) merely because:

- the complainant expresses their dissatisfaction verbally;
- we consider that the matter does not have merit; or
- a goodwill payment is made to the complainant to resolve the matter without any admission of error.

We understand it is the complainant's expression of dissatisfaction (that meets the definition of 'complaint'), not the referral of a complaint to a specialist complaints or IDR team.

The following are not considered under the Code to be Complaints:

- employment-related complaints raised by our staff;
- comments made about us where a response is not expected, such as:
- feedback provided in surveys; or
- reports intended solely to bring a matter to our attention—for example, that property used in provision of our services is damaged.

HOW TO MAKE A COMPLAINT

You may make a Complaint to us.

We will:

- be flexible about how complaints are lodged and offer multiple lodgement methods.
- allow your representatives (including financial counsellors, legal representatives, family, friends and members of parliament to lodge complaints on your behalf;

ACKNOWLEDGEMENT OF YOUR COMPLAINT

When we receive your Complaint, we will acknowledge to you that we have received it within 24 hours (or one business day) of receiving it, or as soon as practicable.

We may acknowledge your complaint verbally or in writing and when determining the appropriate method of communication, we will take into account the method that you used to lodge your complaint and any preferences you may have expressed about communication methods.

WHO WILL DEAL WITH YOUR COMPLAINT

We will tell you the name and relevant contact details of the person who will deal with you about your Complaint.

Your Complaint will be handled by a person with appropriate authority, knowledge or experience. The person will not be the person whose decision or conduct your Complaint relates to.

We may authorise others to act on our behalf to receive and handle your Complaint and if so, that person must notify us of Complaints made to them and they must handle Complaints in accordance with the requirements as set out in this part of the Code. Any breach of this part of the Code by them is a breach of the Code by us. We will have processes in place to monitor their handling of Complaints and take reasonable steps to ensure that they are meeting the requirements as specified in this part of the Code.

In addition, we must:

- have measures in place to ensure that due skill and care is taken in choosing suitable service providers;
- monitor the ongoing performance of service providers; and
- appropriately deal with any actions by service providers that breach service level agreements or fall short of their obligations.

We will make sure our outsourcing is done in a way that ensures accessibility for Clients and maintains a Client-centric approach.

HOW WE CONSIDER YOUR COMPLAINT AND COMMUNICATE WITH YOU ABOUT ITS STATUS

When we are considering your Complaint, we will only ask for, and rely on, information that is relevant to our decision.

We will keep you informed about the progress of your Complaint on the earlier of the following:

- at least every 10 Business Days if you are an individual, Small Business or Retail Client (or 21 days if you are not), unless:
 - it is resolved earlier;
 - you agree to a different timeframe; and
- within any time limit required by:
 - law;
 - the GICOP where applicable to our conduct on behalf of an insurer; or
 - AFCA.

WHAT RESPONSE YOU CAN EXPECT

IDR Decision

Unless one of the Exceptions apply below, we will provide you with an IDR Decision about your Complaint within 30 Calendar Days after receiving it.

An IDR Decision about your Complaint is one:

- which is in writing;
- includes the final outcome of your Complaint at IDR (we will either provide you a confirmation of actions taken by us to fully resolve your Complaint or reasons for rejection or partial rejection of your Complaint as set out below); and
- informs you about the right to make a Complaint to AFCA (subject to your Complaint falling within its Rules), its contact details, and the timeframe in which you are able to complain to it.

If we reject or partially reject your Complaint, our IDR Decision will clearly set out the reasons for our decision by:

- identifying and addressing the issues raised in the Complaint;
- setting out our findings on material questions of fact and referring to the information that supports those findings; and
- providing enough detail for you to understand the basis of the decision and to be fully informed when deciding whether to escalate the matter to AFCA or another forum.

The level of detail in our IDR Decision to you will reflect the complexity of your complaint and the nature and extent of any investigation conducted by us. We will not for example, provide information in an IDR Response that would breach our firm's privacy, confidentiality or legislative obligations or which would otherwise prejudice us in relation to the Complaint or Dispute (to the extent permitted by law).

Exceptions

We will not provide you with an IDR Decision if we have closed your Complaint by the end of the fifth business day after receipt because we have:

- resolved your Complaint to your satisfaction, or
- we have given you an explanation and/or apology when we can take no further action to reasonably address your Complaint,

unless:

- you request a written response; or
- the Complaint is about:
 - hardship;
 - a declined insurance claim; or
 - the value of an insurance claim.

In determining whether a Complaint has been resolved to your satisfaction, we will consider whether:

- you have confirmed (verbally or in writing) that you are satisfied with the action(s) taken by us in response to your Complaint and do not wish to take the matter further; or
- other circumstances exist that make it reasonable for us to form the view that the Complaint has been resolved to your satisfaction.

We may form the view that an explanation and/or apology is the only action we can take to address the Complaint if it relates only to:

- our commercial decision, such as a refusal to provide insurance cover or services on certain terms; or
- reasonable initial contact by us about debt collection.

We are not required to provide you with an IDR Response within 30 calendar days after receipt of your Complaint if there is no reasonable possibility for us to provide the response because:

- resolution of your Complaint is particularly complex;
 - We will consider a Complaint complex when it is about a transaction or event that occurred more than six years ago and requires reconstruction of account information; and/or
- circumstances are beyond our control which cause a delay in our consideration of your Complaint, such as when:
 - you are waiting on a medical appointment that we reasonably require you to attend;
 - you are unable to respond to us due to illness or absence; and
 - information must be obtained from third parties to a Complaint (excluding a Representative of ours who is involved in the Complaint).

However, before the relevant 30 calendar timeframe expires, we must inform you in writing about:

- the reasons for the delay;
- your right to complain to AFCA (subject to your Complaint falling within its Rules), if you are dissatisfied; and
- the contact details for AFCA.

The above does not:

- prevent you from exercising your right to escalate a complaint to AFCA (if within its Rules) and does not affect AFCA's ability to register a Complaint (if within its Rules);
- apply to the refer back timeframes applied by AFCA when a Complaint is escalated to AFCA.

If our IDR processes include internal appeals or escalation mechanism (multi-tier IDR processes), we are subject to the same 30 calendar days timeframe as normal IDR processes to provide you a written response to ensure you will not be disadvantaged.

MISTAKES

If it is identified that we have made a mistake when handling your Complaint, then we will take action to correct the mistake.

REQUESTS FOR AND ACCESS TO INFORMATION

If you are an Individual, Small Business or Retail Client and request the information that we relied on when making a decision about your Complaint we will provide it – free of charge – within 10 Business Days of you asking us for that information unless we refuse to give you access.

The information that you may access includes:

- documents and information we relied on to deny an insurance claim;
- copies of your product disclosure statement and insurance;
- copies of any reports from other persons that we relied on; and
- copies of any recordings and/or transcripts of any interaction we had with you that we relied on.

However, we may refuse to give you access to information:

- where permitted by law — for example, the Privacy Act 1988; or
- if doing so may be prejudicial to us in relation to a Complaint or Dispute in relation to our Covered Services or may have an unreasonable impact on the privacy of other individuals or government agencies.

Otherwise, we will not refuse unreasonably, and if we do, we will tell you:

- our reasons for doing so; and
- your right to make a Complaint under our IDR Process about this decision.

GENERAL COMPLAINT HANDLING STANDARDS

We will meet the following general standards in relation to our complaints handling process (as is relevant and appropriate having regard to the nature of our business).

In relation to our complaints **process**, we will:

Generally

- meet any relevant standard required by law;
- make sure that it is accessible, easy to understand and use and free of charge;
- conduct it in a fair, transparent and timely manner;
- take a proactive approach to identifying Complaints, including posts (that meets the definition of 'Complaint') made on a social media channel or account owned or controlled by us that is the subject of the post, where the author is both identifiable and contactable;
- ensure privacy is protected when responding to a Complaint made on social media;
- be flexible about how Complaints are lodged and offer multiple lodgement methods—including telephone, email, letter, social media, in person, or online;
- develop and maintain a positive Complaint management culture that welcomes and values Complaints;
- develop processes that ensure each Complaint is managed fairly, objectively and without actual or perceived bias;
- have processes and systems in place to ensure that we comply with our obligations under privacy laws when dealing with Complaints;

Representatives, Resourcing and training

- be resourced to operate fairly, effectively and efficiently with sufficient number of staff to deal with complaints in a fair and effective manner within the prescribed timeframe as required by law or the relevant standards by regulators;
- review the adequacy of IDR resources regularly;
- handle Complaints caused by our Representatives for Covered Services provided by them on our behalf;
- provide our relevant Representatives with appropriate authority to be able to resolve Complaints;
- ensure that the authorities for determining and/or approving Complaint outcomes (including product contract variations) and the financial delegations in place for paying amounts to complainants, facilitate the fair and efficient resolution of complaints;
- encourage our Representatives that are authorised to do so, to resolve Complaints, wherever possible, at the first point of contact;
- train staff to proactively to assist them to develop requisite skills and attributes to identify, support and assist people who need help to make a complaint;

Complaint outcomes

- consider a broad range of possible remedies when attempting to resolve Complaints;
- adopt a range of flexible Complaint management approaches that promote early resolution, wherever appropriate;
- ensure that Complaint resolution outcomes (e.g. refunds, fee waivers, correction of records, compensation payments) are implemented in a timely manner when a Complaint is closed;

Systemic Issues

- have systems in place to identify and manage Systemic Issues;
- take prompt action to identify affected consumers and provide fair remediation if we confirm that a Systemic Issue exists;

Complaints Policy and Client information

- have a publicly available, readily accessible Complaints policy
- have an internal Complaint management procedure to support the public Complaint policy.
- provide material that explains our IDR process free of charge to you;
- develop a policy for dealing with unreasonable or challenging complainant conduct to ensure each Complaint is managed in an equitable manner;
- implement proactive and innovative approaches to promoting awareness about the IDR process and sourcing Complaints from vulnerable people and groups;

Recording, reporting and review

- have an effective system for recording information about Complaints to enable us to keep track of the progress of each Complaint;
- provide reports about Complaints data regularly to senior management and board (or equivalent);

- postpone actions that could adversely affect a complainant until the Complaint has been finalised and our written response has been provided;
- regularly review the adequacy of Complaint management documentation, including the Complaints policy and internal Complaint management procedure;
- analyse Complaint data regularly to monitor the performance of our IDR process and identify possible Systemic Issues and areas where product or service delivery improvements are required, and matters that are likely to need to be reported to ASIC;
- monitor and review the performance of our IDR process including monitoring of Complaint metrics, ongoing quality assurance and regular reviews;
- conduct regular compliance audits to identify and address issues of non-conformity with the Code IDR requirements;
- genuinely consider any recommendations made by customer advocates to improve the IDR process (if applicable); and
- conduct or arrange regular reviews of the IDR process by senior management and consider other improvement activities.

MAKING INFORMATION AVAILABLE

[Proposed change seeks to increase standard regarding customer information]

We will make available information about:

- your right to make a Complaint;
- our IDR Process; and
- any external dispute resolution scheme we belong to. If we are an Australian Financial Services Licensee, we must be part of the independent external dispute resolution scheme administered by the Australian Financial Complaints Authority (AFCA).

This will be published on our website, other digital platforms and in our relevant written communications.

We will make sure our broader communications about our arrangements for managing complaints – including the public available complaint management policy, brochures explaining how to complain, relevant website frequently asked questions (FAQs) and call centre scripting should also effectively inform you of:

- your right to take a Complaint to AFCA (subject to its Rules) if you are dissatisfied; and
- the contact details of AFCA.

We must provide details about how you can access AFCA in our disclosure documents including Financial Services Guide and Product Disclosure Statements (PDSs), including short-form PDSs:

REFERRAL OF A COMPLAINT TO THE AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY (AFCA)

DISPUTE WITHIN AFCA TERMS OF REFERENCE

[Proposed change seeks to increase useful AFCA information for customers in Code]

If we are an Australian Financial Services Licensee, we must be part of the independent external dispute resolution scheme administered by AFCA. The scheme is for customers and third parties as allowed under its Rules.

AFCA's decisions are binding on us in the way set out in its Rules.

We may refer your complaint to AFCA for resolution if we have given you a response regarding our decisions to your complaint, but the complaint remains unresolved and you have not escalated it to AFCA. Before we make such referral, we will obtain your consent for us to do so.

If your complaints involve hardship notices or requests for postponement of enforcement proceedings, we may directly refer your complaint to AFCA. Before we make such referral, we will obtain your consent for us to do so.

COMPLAINT WITHIN CODE TERMS

If AFCA tells you that under its Rules it cannot assist you or consider your Complaint, then:

- it will arrange, as Code Administrator, to determine if it falls with the terms of the Code. If so, it will follow the process below. See Code Procedures for more detail, located at www.niba.com.au; or
- you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

REPORTING BREACH AND RESOLUTION BY CODE COMPLIANCE MANAGER

- Reporting a breach
 - For an alleged breach of the Code to be reviewed, the required Code ~~breach complaint~~ form must be completed and provided to the Code Compliance Manager ~~by a Client~~. A breach may be reported by a Client or any other third party. If appropriate, they will assist the ~~Client person~~ in completing the form.
- Review of Code compliance
 - The Code Compliance Manager may conduct compliance reviews of any Code Member whether a complaint has been received or not.
- Conciliation process
 - The Code Compliance Manager will, where appropriate, endeavour to resolve alleged breaches of the Code by a Code Member by conciliation.

They do not have the power to make any decisions which bind a Code Member or the complainant. They will refer any unresolved matter to the Code Compliance Committee.

BINDING DETERMINATION BY CODE COMPLIANCE COMMITTEE

- The Code Compliance Committee has the power to determine if there is a breach of the Code and make such orders and impose such permitted sanctions as are appropriate on the Code Member.
- These bind the Code Member but not the complainant.

COOPERATION

[Proposed change seeks to impose new positive obligation of cooperation with IBCCC]

We will cooperate with the Code Compliance Manager and Code Compliance Committee in their review of our compliance with the Code and investigations of any breaches of the Code.

BINDING ORDERS AND SANCTIONS

The following binding orders and sanctions can be made or imposed on Code Members at their cost for a Code breach:

- order rectification of the problem procedures within a specific time frame;
- order a Code Member to comply with the provisions of the Code or a specified provision of the Code;
- order a Code Member to comply with the provisions of the Code Procedures or a specified provision of the Code Procedures;
- order a Code Member to undertake through an independent and appropriately qualified person an audit of its compliance procedures;
- order a Code Member to publish corrective advertising;
- order a Code Member to undertake, or require their employees or agents to undertake, professional education of a specific type;
- impose a timetable for compliance with the above orders by a Code Member;
- publish details of any non-compliance by a Code Member, including their name and the name of the Company they represent; and
- recommend to NIBA that the Code Member be removed or suspended as a member of the Code and NIBA.

No monetary penalties can be imposed on a Code Member except in relation to a Significant Breach as set out below.

The Code Compliance Committee's decisions and sanctions are binding on us.

[Proposed changes seeks to allow for a new monetary penalty to be imposed by IBCCC for Significant Breaches. The feasibility of this is likely to depend on PI insurer feedback]

Significant breaches

If we identify a Significant Breach of the Code, then we will report it to the Code Governance Committee within 15 Business Days.

The Code Compliance Committee may impose additional sanctions for a Significant Breach of the Code, including requiring us to do any one or more of the following:

- compensate a Client for any direct financial loss, or damage, we caused arising from a Significant Breach, up to the amount of \$250,000. However, the Code Compliance Committee must not do so to the extent the Covered Services giving rise to the Significant Breach are subject to an impending or ongoing AFCA, ASIC or other enforcement agency review or investigation of the Covered Services. In such a case, any compensation order cannot be made until the conclusion of the other reviews or investigations and any amount of compensation must take into account any compensation awarded or remediation agreed as a result of those other reviews or investigations; and
- publish the fact that we have committed a Significant Breach of the Code.

The Code Compliance Committee will report Significant Breaches or serious misconduct to ASIC.

AFCA may report possible Code breaches to the Code Compliance Committee.

OUR CODE GOVERNANCE PROCEDURES

[Proposed change seeks to impose new Governance framework obligation regarding Code compliance to increase focus on importance of Code by members]

We will have a Code Governance framework that:

- requires us to report to our Board or our executive management, on our compliance the Code;
- requires us to have appropriate systems, processes and records regarding our compliance with the Code (including compliance by our Representatives);

We will prepare an annual compliance report to the Code Governance Committee on our compliance with the Code.

NOTICES

Where there is an obligation under the Code to tell, disclose or notify you of something, we will do so:

- in accordance with relevant law; or
- if no such obligation applies at relevant law, we will tell you in writing, or if this is not reasonably practicable, orally and then in writing as soon as reasonably practicable, but in any case no later than 14 business days, after giving the oral notice,

WORDS WITH SPECIAL MEANING AND INTERPRETATION

Defined Terms

AFCA

means the Australian Financial Complaints Authority Limited ABN 38 620 494 340 (AFCA), which administers the Code for NIBA - www.afca.org.au

AFCA RULES

means the relevant terms of reference issued by AFCA available at <http://www.afca.org.au>

ASSOCIATED OR RISK MANAGEMENT SERVICES **ASSOCIATED SERVICES**

~~has the meaning given to it in the section [Associated Services](#)~~

has the meaning given to it in the section What Covered Services does the Code apply to and who can access the benefits of the Code?

ASIC

means the Australian Securities and Investments Commission.

ASSOCIATES

[Proposed change made as a result of redrafting remuneration section.]

means

- any referrers of business to us;
- any of our representatives acting on our behalf;
- any of our related body corporates or their representatives acting on their behalf;
- any other person associated with us that you would reasonably expect us to tell you about.

CATASTROPHES OR DISASTERS

means any natural events such as fires, floods, earthquakes, cyclones, severe storms and hail, affecting a significant group of persons.

CLIENT

A person we (or our Representatives on our behalf) provide a Covered Service to.
~~has the meaning given to it in the section What Covered Services does the Code apply to and who can access the benefits of the Code?~~

CODE

means this version of the Code.

CODE ADMINISTRATOR

means the Australian Financial Complaints Authority (AFCA) or such other entity appointed by NIBA from time to time for this role.

CODE COMPLIANCE COMMITTEE

means the independent committee of that name operating under the Code Procedures that can amongst other things, make binding determinations for a breach of the Code.

CODE COMPLIANCE MANAGER

means the Code Compliance Manager appointed by the Code Administrator in accordance with the Code Procedures.

CODE MEMBER

has the meaning given to it in the section [Who does the Code apply to and from when? \(Code Members\)](#).

CODE OBJECTIVES

has the meaning given to it in the section [What does the Code seek to do? \(Code Objectives\)](#).

CODE PRINCIPLES

has the meaning given to it in the section [How is the Code applied? \(Code Principles\)](#).

CODE PROCEDURES

means the code procedures determined by the NIBA Board to apply in relation to the administration of the Code.

COMPLAINT

[Proposed change made as a result of new ASIC standards re IDR]

means an expression of dissatisfaction made to or about us, ~~by you~~ related to our products, services, staff or the handling of a complaint ~~Covered Services, or the complaints handling process itself~~, where a response or resolution is explicitly or implicitly expected or legally required.

COVERED SERVICES

has the meaning given to it in the section [What Covered Services does the Code apply to and who can access the benefits of the Code?](#)

DISPUTE

means an unresolved Complaint.

INSURANCE SERVICES

has the meaning given to it in the section [What Covered Services does the Code apply to and who can access the benefits of the Code?](#)

LIFE RISK INSURANCE means insurance which is a life policy as defined in section 9 of the Life Insurance Act 1995 (Cth). [Proposed change made as a result of redrafting of Covered Services section. No impact re existing coverage]

NIBA

means The National Insurance Brokers Association of Australia (NIBA) (ACN 006 093 849) which is the peak body for the insurance broking industry in Australia.

PERSONAL ADVISORY SERVICE

is when we provide you with advice based on our consideration of whether certain insurance products are appropriate for your personal needs, objectives or financial situation or not.

REPRESENTATIVE(S)

means anyone who acts on behalf of the relevant person (e.g for a Code Member in providing the Covered Services), including but not limited to an employee or sub authorised representatives.

RETAIL CLIENT

has the same meaning as in section 761G and GA of the Corporations Act.

SIGNIFICANT BREACH

[Proposed change made as a result of redrafting of new significant breach section]

means a breach that is determined to be significant by reference to:

- the number and frequency of similar previous breaches;
- the impact of the breach, or likely breach, on our ability to provide our Covered Services;
- the extent to which the breach, or likely breach, indicates that our arrangements to ensure compliance with the Code are inadequate;
- the actual, or potential, financial loss caused by the breach; and
- the duration of the breach.

SMALL BUSINESS

[Proposed change made as a result of redrafting of Complaints section]

means a business that had less than 100 employees at the time of the service that gave rise to the Complaint.

However, it excludes a business that is a member of a group of Related Bodies Corporate (as defined in the Corporations Act) and that group has 100 employees or more at the time of the service that gave rise to the Complaint.

SYSTEMIC ISSUE

means a matter that affects, or has the potential to affect, more than one consumer. Some examples include:

- a disclosure document that is inadequate or misleading;
- a systems issue that produces errors—for example, benefit calculation errors or interest calculation errors;
- a documented procedure that does not comply with legal requirements—for example, it permits privacy requirements to be breached;
- a procedural weakness that is liable to recur.

YOU AND YOUR

has the same meaning as Client.

WE, OUR AND US

has the same meaning as Code Member.

INTERPRETATION

A reference to:

- the doing of an act includes, where the context allows, a reference to a refusal or failure to do or cessation of the act;
- a person includes a natural person, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- the singular includes the plural and vice versa; and
- a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

The words “including”, “such as”, “for example” or “(e.g)”, when introducing an example, does not limit the meaning of the words to which the example relates, that example or examples of a similar kind.

Where a term is used that is not defined, the term is to be interpreted as having its everyday meaning and usage, unless the context otherwise requires.

Hyperlinks in this document are provided for ease of reference only and do not form part of the Code, unless otherwise specified.