

Insurance Brokers Code Compliance Committee

Supplementary¹ submission to the National Insurance Brokers Association (NIBA) Review of the Insurance Brokers Code of Practice (the Code) Response to NIBA’s discussion paper dated 12 February 2021

14 May 2021

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¹ The original IBCCC submission dated 9 April 2021 is available here
<https://insurancebrokerscode.com.au/resources/ibccc-submission-to-nibas-code-review-discussion-paper-9-april-2021/>

1. Introduction

- 1.1. This supplementary submission covers our broader responses to the proposed Code.
- 1.2. The questions in the consultation paper were highly targeted and focused on specific clauses. Whilst this is a necessary part of the process, it did not enable us to provide broader feedback.
- 1.3. This submission is directed at the Code as a whole and is focused on its overarching purpose and impact. It outlines our thinking on how the Code – and codes of practice more generally – can shift from focusing on processes and procedures, and instead focus on outcomes for each consumer. The aim is to encourage the insurance broking industry to be at the forefront of financial services, by operating with the best behaviours, and with a culture that places a primacy on achieving the best outcome for each particular customer.

2. It is important that the Code does not simply repeat legal obligations

- 2.1. The Financial Services Royal Commission flagged that more laws are not the answer to improving conduct. Rather, the focus should be on changing cultures within organisations, and improving behaviour. Simply re-stating legal obligations will not shift behaviour beyond basic compliance.
- 2.2. Notably, the Hayne Commission also argued for a simplification of the existing framework. One way to do this would be to find ways to align the Code with other instruments that are targeted at similar aims.
- 2.3. For example, the General Insurance Code of Practice (GICOP) covers some of the same issues. Aligning the Code with GICOP would have substantial benefits for consumers (as they would have a consistent explanation of their rights), and for brokers (as they would have a consistent explanation of their obligations).
- 2.4. Hence, the question should be – how can the Code be used to improve cultures throughout the industry, and improve behaviours? How do we encourage brokers to go beyond the minimum of legal compliance?

Recommendation 1: Align the Code with GICOP

This will have substantial benefits for consumers (as they would have a consistent explanation of their rights), and for brokers (as they would have a consistent explanation of their obligations). It will also help to simplify the compliance task for brokers.

3. The Code can be a key document in setting out ambitions to drive behaviour change

- 3.1. The Hayne Commission noted that laws should make an explicit connection between the specific rules, and the broader norms that the rules are designed to give effect to. In a similar way, the Code can tie provisions or sections to broader norms that the industry wants to promote.

- 3.2. The Code represents what the industry wants brokers to do. In that sense, the Code is an injunctive norm – it sets out standards of behaviours that are expected of the group.²
- 3.3. Importantly, injunctive norms can have significant power. Individuals behave in ways that they think others in the group behave, and that others within the group expect them to behave. The more that an individual associate with a group, the more powerful norms within that group can be on behaviour.
- 3.4. We would expect individual brokers to identify themselves as members of a broader community of brokers. Norms set out by NIBA in the Code will have some substantial power – they represent the norms of the community of brokers as a whole.
- 3.5. Hence, there is value in having ethical principles set out explicitly in the Code - even if it is a consumer facing document. Ethical principles in the Code will send a strong message about the norms that the industry wishes to promote. This can be used to encourage good behaviour beyond the legal minimum.
- 3.6. This will be particularly valuable where these principles set out norms of behaviour that are explicitly about serving clients – putting clients first, finding the best insurance for them, and acting as an advocate for clients during the claims process.
- 3.7. Whilst the Code is primarily targeted at consumers, a key component of the Code is setting out what brokers do for clients, and the principles and ethics that guide this interaction.
- 3.8. This can have two purposes – first, explaining to consumers the role a broker plays, and second, reminding brokers that they work ultimately for clients.

Recommendation 2: Set out ethical principles in the Code

Ethical principles in the Code will send a strong message about the norms that the industry wishes to promote. This can be used to encourage good behaviour beyond the legal minimum.

4. The Code should prescribe outcomes, not actions

- 4.1. Importantly, the focus should not be on actions that brokers need to take to be compliant.
- 4.2. Rather, the focus should be at a higher level – the focus of the Code should be on what outcomes the broker should aim to achieve. Specifically, brokers should be focused on ensuring the best outcome for each individual client. Ethical principles in the Code can help to support this.
- 4.3. Brokers should be encouraged to take the actions that they believe are most appropriate to achieve the best outcome for each client, noting that the actions may be different depending on the circumstances.

² Cialdini, R. B., Kallgren, C. A., & Reno, R. R. (1991). [A focus theory of normative conduct: A theoretical refinement and reevaluation of the role of norms in human behavior](#). In *Advances in experimental social psychology* (Vol. 24, pp. 201-234). Academic Press.

- 4.4. For example, when disclosing the limits of a broker's role – the Code should focus on what a well-behaved broker will do, without necessarily prescribing specific actions.
- 4.5. In this case, the aim is to ensure that each client understands the specific limits of what a broker will and will not do for them.
- 4.6. The way this is disclosed will vary from client to client, and from broker to broker. Some brokers may have relatively simple roles, whilst others might have more complex arrangements. Similarly, regular clients who are well versed in the intricacies of working with brokers may require a different approach to newer or less experienced clients.
- 4.7. Brokers should be encouraged to take actions to ensure that they are confident that the client has understood the issue in question.
- 4.8. NIBA can support this by providing supporting guides and documents that demonstrate examples of good behaviour. Importantly, these would not necessarily prescribe specific actions or checklists in every case, but rather give guidance around what sorts of behaviours might be expected in different situations.

Recommendation 3: The Code should prescribe outcomes, not actions

NIBA can support brokers to achieve the best outcomes by providing supporting guides and documents that demonstrate examples of good behaviour. Importantly, these would not necessarily prescribe specific actions or checklists in every case, but rather give guidance around what sorts of behaviours might be expected in different situations.

5. Conflicts of interest should be minimised - disclosure is not always a solution

- 5.1. As a first step, conflicts of interest should be eliminated wherever possible. Our previous submission covered this topic at length.
- 5.2. However, we recognise that some conflicts may arise in the normal course of business which are unavoidable, and which may be necessary to drive innovation or provide better services for consumers.
- 5.3. Even in these circumstances, care should be taken to ensure that these conflicts are minimised to the maximum extent possible.
- 5.4. Whilst conflicts should be disclosed, disclosure is not a panacea. Regulators are – rightly – increasingly sceptical of purely disclosure-based regimes to address consumer issues.³ Disclosure should be seen as a “last resort” for addressing issues such as conflicts of interest.
- 5.5. Where disclosure is used, it should follow some key principles, namely:
 - 5.5.1. Information should be in plain English wherever possible.

³ ASIC Rep 632 [Disclosure: Why it shouldn't be the default](#)

- 5.5.2. Information should be tailored to the client’s specific situation wherever possible.
- 5.5.3. Where financial or numerical information is provided, it should be given as a whole dollar figure rather than a percentage amount. That is, rather than disclosing a percentage commission, brokers should instead explain the actual dollar amounts that are involved wherever possible.
- 5.6. Notably, there is even some evidence that disclosure of conflicts of interest can actually “backfire”, leading to worse outcomes for consumers.^{4 5}
- 5.7. However, if designed correctly, there is some evidence that disclosures can be effective at influencing the behaviour *of the advisor*. Experimental evidence shows that when advisors are required to disclose conflicts – and that disclosure acts as a reminder of a professional norm – it can reduce biased advice.⁶
- 5.8. In the context of brokers, this might mean the Code encourages brokers to disclose conflicts, but the Code couches this in terms that remind brokers that this is done for the client’s best interest. Again, a statement of ethics that highlights the professional norm of serving client’s interests first will help to reinforce this.

Recommendation 4: Conflicts of interest should be eliminated wherever possible

Disclosure should be a last resort – where the Code encourages brokers to disclose conflicts, this should be couched in terms that remind brokers that this is done for the client’s best interest.

Recommendation 5: Where disclosure is used, it should follow some key principles

Specifically:

- Information should be in plain English wherever possible.
- Information should be tailored to the client’s specific situation wherever possible.
- Where financial or numerical information is provided, it should be given as a whole dollar figure rather than a percentage amount. That is, rather than disclosing a percentage commission, brokers should instead explain the actual dollar amounts that are involved wherever possible.

⁴ Sah, S., Loewenstein, G., & Cain, D. (2019). [Insinuation anxiety: Concern that advice rejection will signal distrust after conflict of interest disclosures](#). *Personality and Social Psychology Bulletin*, 45(7), 1099-1112.

⁵ Sah, S., Loewenstein, G., & Cain, D. M. (2013). [The burden of disclosure: increased compliance with distrusted advice](#). *Journal of personality and social psychology*, 104(2), 289.

⁶ Sah, S. (2019). [Conflict of interest disclosure as a reminder of professional norms: Clients first!](#). *Organizational Behavior and Human Decision Processes*, 154, 62-79.

6. Summary of recommendations

Recommendation 1: Align the Code with GICOP

This will have substantial benefits for consumers (as they would have a consistent explanation of their rights), and for brokers (as they would have a consistent explanation of their obligations). It will also help to simplify the compliance task for brokers.

Recommendation 2: Set out ethical principles in the Code

Ethical principles in the Code will send a strong message about the norms that the industry wishes to promote. This can be used to encourage good behaviour beyond the legal minimum.

Recommendation 3: Prescribe outcomes, not actions

NIBA can support this by providing supporting guides and documents that demonstrate examples of good behaviour. Importantly, these would not necessarily prescribe specific actions or checklists in every case, but rather give guidance around what sorts of behaviours might be expected in different situations.

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Appendix 1: About the Code

The 2014 Insurance Brokers Code of Practice ([the Code](#)) sets standards of good industry practice for the insurance brokers that have agreed to follow its standards when dealing with current and prospective individual and small business clients. The Code is owned and published by the National Insurance Brokers Association ([NIBA](#)) and forms an important part of the broader national consumer protection framework and financial services regulatory system.

The 2014 Code contains 12 key service standards that apply to all insurance broking services delivered to individuals and small businesses by Code subscribers across Australia.

By subscribing to the Code⁷, insurance brokers have committed to continuously improving their standards of practice and service in their sector; promoting informed decision-making about their services; and acting fairly and reasonably in delivering those services.

In September 2018, NIBA appointed Marigold Magnaye to undertake a review of the Code. This [review](#) is still in process.

Appendix 2: About the Committee

The Insurance Brokers Code Compliance Committee ([the Committee](#)) is an independent compliance monitoring body established under the Code and the Code Compliance Committee Charter ([the Charter](#)). It comprises an independent chair, a person representing the interests of the insurance broking sector and a person representing the interests of consumers (including small businesses).

Committee members as at April 2021 include:

- Michael Gill – Independent Chair
- David Duffield – Industry Representative
- Julia Davis – Consumer Representative

The Committee supports insurance brokers to implement best practice and culture in service and advice provided to their clients which meet consumer expectations

The Code and Charter entrusts the Committee with several functions and responsibilities, including to:

- independently monitor compliance of Code subscribers with obligations under the Code
- enable and encourage robust self-reporting
- identify current and emerging industry wide problem
- provide guidance to stakeholders about implementing best practice and culture in service and advice to clients
- promote professionalism and change in company culture to achieve compliance, and

⁷ As at 31 May 2021, there are 457 Code subscribers. A full list of Code subscribers can be found here <https://insurancebrokerscode.com.au/about/about-the-code/code-subscriber-register/>

- consult and keep stakeholders informed about the Committee’s activities.

Information about the work undertaken by the Committee and its publications can be found at its website www.insurancebrokerscode.com.au.

Appendix 3: About the Compliance Manager

The Australian Financial Complaints Authority ([AFCA](http://www.afca.gov.au)) provides Code monitoring and administration services⁸ to the Committee and NIBA by agreement. AFCA has appointed a dedicated team of staff (Compliance Manager⁹) within its office to undertake that task.

In addition to shared administrative and support staff, as at April 2021 dedicated staff to the Insurance Brokers Code Compliance Committee include:

- Rene Van de Rijdt – acting General Manager, Code Compliance and Monitoring
- Daniela Kirchlinde – Code Compliance and Operations Manager

⁸ As per the *Insurance Brokers Code Compliance Committee Administration Deed and Charter (Charter)* section 1.1 (a) (iv) the Code Administrator means AFCA or such other person appointed by NIBA from time to time to act on NIBA’s behalf in administering the Code.

⁹ As per *Charter* section 1.1 (a) (vii) means the person appointed by the Code Administrator to act on its behalf for the purpose of the Code Procedures.