

Further Discussion Paper for NIBA Code of Practice Review

Following submissions received in response to the Discussion Paper released on 12 February 2021, the National Insurance Brokers Association of Australia (NIBA) has undertaken a further review of the proposed revised NIBA Code of Practice.

The further review has been conducted by the NIBA Board in conjunction with the independent reviewer, and with the support and input of NIBA Member leadership to ensure that the revised Code of Practice represents strong Membership commitment to the Code and the standards of service it articulates beyond statutory obligations.

In undertaking this review, NIBA has taken into account the input of all stakeholders, and in particular the detailed issues raised in submissions from the Insurance Brokers Code Compliance Committee and the Consumer Federation of Australia. Having reflected on the at times strong criticisms levelled at the current Code of Practice, NIBA proposes an entirely revised Code that seeks to meet current consumer expectations and build on NIBA's commitment to greater professionalism as an industry.

The approach to the proposed Code is to seek to assist consumers of insurance broking and risk services to better understand what to expect from the NIBA member they retain, as well as enable NIBA members to better serve consumers in many areas. With this in mind, the proposed revised Code will be accompanied by NIBA Guidance documents for consumers and for brokers on best practice and how the Code is intended to operate in practice. Given the proposed Code has been rebuilt from the ground up, NIBA also plans to make training available to NIBA members to assist in adoption and promotion of the Code. Other implementation strategies will also be considered to support NIBA members to prepare for launch of the revised Code.

The NIBA Board seeks submissions from interested stakeholders in relation to the proposed revised Code of Practice which is [attached](#). The independent reviewer has considered the submissions received earlier in the year and has provided a report in relation to the extent to which the proposed revised Code of Practice addresses these submissions. This report follows below to assist in consideration of the Code.

The NIBA Board appreciates your contribution to this important process in ensuring that the NIBA Code of Practice is fit for purpose and remains a leading benchmark for industry self-regulation, including setting the standard for professional commitment to clients in the insurance broking industry internationally.

Submissions may be made using the link [here](#). Submissions may be made confidentially, or you may choose to make a public submission which will be available on the Code Review Submission [page](#).

Submissions will remain open until **10 Dec 2021**.

Philip Kewin

CEO, NIBA

5 November 2021



A S P E R D E L

UPDATE REPORT ON
THE NIBACODE OF PRACTICE REVIEW
November 2022

The purpose of this report is to assist in facilitating feedback from stakeholders in relation to the proposed revised NIBA Code of Practice (**Revised Code**). The Revised Code has been completely revised following consideration of the submissions from stakeholders in response to the Discussion Paper released on 12 February 2021 (**Discussion Paper**).

1. Submissions Received

Ten submissions were received in response to the Discussion Paper: six were submitted by members of NIBA, and the balance came from:

- Australian and New Zealand Institute of Insurance and Finance;
- Australian Finance Industry Association Limited;
- Consumer Federation of Australia (**CFA**); and
- Insurance Brokers Code Compliance Committee (**IBCCC**).

Each of the submissions provided valuable contributions for further consideration of the NIBA Code of Practice.

The submissions from NIBA members were generally short but supportive of the NIBA Code and change to improve industry professionalism. One submission from a large broking firm suggested winding back some of the changes proposed by NIBA due to implementation challenges and the extension of commitments beyond that required at law.

The CFA and IBCCC separately provided lengthy and detailed submissions. Their submissions largely provided further support to the key issues articulated in the Discussion Paper, while adding further to the discussion with case studies and practical implementation suggestions. Overall, the CFA and IBCCC submissions strongly criticised the existing and proposed NIBA Codes of Practice and advocated for a complete re-write.

2. Request for Submissions on the Revised Code

While there has been a delay in sharing a further version of the NIBA Code of Practice for feedback, the time has been spent in the meantime deeply considering the submissions received and a proposed Code of Practice built from the ground up. Significant discussion with NIBA Member leadership has occurred and I understand that the Revised Code is presented for stakeholder feedback with the support of the NIBA Board and Member leadership. This is a significant achievement given that subscription to Codes of Practice is currently voluntary. Buy in and engagement by subscribers is critical to the success of the Code as a way of setting and elevating standards of practice to a level above the law.

This report seeks to facilitate feedback from stakeholders on the Revised Code. For ease of reference, Table 1 below sets out:

1. a high-level summary of submissions received in response to the Discussion Paper;
2. whether/how the Revised Code responds to the key issues; and
3. cross references the relevant parts of the Revised Code.

While the Revised Code does not reflect every suggestion made in submissions to the Discussion Paper, the Revised Code represents a significant change to the existing Code of Practice and addresses many of the strong criticisms raised by the CFA and IBCCC in their respective submissions. Feedback on the Revised Code will be invaluable in providing the NIBA Board with insight on how closely the Revised Code represents consumer expectations, while balancing the practical concerns of industry implementation.

The significant changes made in the Revised Code in response to the submissions on the Discussion Paper demonstrates the importance of consultation and value placed on feedback received. I look forward to considering feedback on the Revised Code from all interested stakeholders.

Marigold Magnaye – Asperdel Consulting
Independent reviewer
8 November 2021

TABLE 1: Response to the Discussion Paper

The table below provides a high-level summary of some of the submissions relating to the key issues and whether/how the Revised Code responds:

Discussion Paper Key Issue	Submission Overview	Revised Code: Key Changes
<p>Higher standards – The Code should go beyond the law and not simply restate it. The revised Code should set higher standards and set direction for the profession, including in relation to ethical conduct</p>	<ul style="list-style-type: none"> • The current Code does not exceed legal requirements and simply restates the law. • By failing to exceed obligations at law, the Code has no or little value to consumers and misses the point. • The Code should represent the norms of behaviour that are expected of professional brokers. • Introducing ethical obligations should not be onerous. • The biggest areas where the Code should extend standards beyond legal obligations are eliminating conflicts of interest and conflicted commission-based remuneration. The law currently does not require much more than information disclosure. NIBA should commit to much more than that. 	<ul style="list-style-type: none"> • Section 1 sets out a Vision Statement and Code Approach. • Section 4 sets out Key Principles and subscriber commitments to professionalism, ethics, and transparency. The clause reflects behavioural expectations to respond to submissions made. • The commitments are stated to extend to interactions with clients and prospective clients, insurers, others in the industry, and authorities. • The commitment to holding other subscribers accountable has been introduced in the Revised Code (Clause 4.1(c)(iii)). • Clause 9.2 sets out subscriber obligations to promote the Revised Code internally and externally, and implementing the Revised Code through training and policy development. • Clause 13.1(c) sets out how a subscriber will promote the Revised Code internally, including by endeavouring to embed the Revised Code in decision making and reporting to management on Code compliance. • See further below in relation to conflicts of interest and remuneration.
<p>Broad application – The Code should apply to all services provided by a broker to a client, with behavioural standards applicable in all interactions with a client</p>	<ul style="list-style-type: none"> • The Code should cover all situations in which the subscriber is acting in the course of its business with an individual consumer, whether a current, past or prospective client. • The Code should cover all services, whether core or associated ones. 	<ul style="list-style-type: none"> • The commitments are no longer limited to clients. • Clause 4.2 provides that the Code Principles extend to interactions with clients and prospective clients, insurers, others in the industry, and authorities. • The limitations relating to “Personal Advisory Services” have been removed, as has the ability to opt out of certain commitments.

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		<ul style="list-style-type: none"> The existing Code does not distinguish between Wholesale and Retail Clients in relation to remuneration disclosure. The Revised Code limits remuneration disclosure obligations in the Revised Code to Retail Clients (Clause 8.1).
<p>Agents and third parties – A Code subscriber should ensure that its third-party agents and service providers abide by the Code to the extent applicable</p>	<ul style="list-style-type: none"> Code subscribers should ensure (through their contracts) their third-party agents and service providers abide by the Code to the extent applicable. Code subscribers should be accountable for actions of their third-party agents and should guarantee their performance. 	<ul style="list-style-type: none"> Clause 9.1(a) states that Code subscribers are responsible for ensuring agents comply with the Code. Clause 4.2(b)(iv) acknowledges that a Code subscriber is in breach if its agent is in breach of the Code. Clause 6.2(b) states that subscribers will not tolerate bullying and harassment by agents. Clause 9.2 outlines further obligations undertaken by subscribers to oversee agent compliance with the Code.
<p>Broker's role – The limits of a broker's role need to be clearly spelled out to a client prior to insurance being placed to allow informed decision making</p>	<ul style="list-style-type: none"> The current Code does not require a broker to inform a client at the outset if a broker plans to canvas a limited number of insurers to enable the client to make an informed decision about proceeding. Brokers should be required to tell consumers how much of the market they cover, and where they only work with a select few insurers they should say who these are and why they won't go out to the wider market Written disclosure is not enough. Proper discussion and engagement with the client at the outset is key. There should be no distinction in the information disclosed to clients of personal or general advice. The client should be told and 	<ul style="list-style-type: none"> Clause 5.1 sets out an obligation to inform a prospective client of the extent of services to be provided including limits on insurance products the broker can arrange. If a client agrees to engage a broker, Clause 5.2 states that the client will be provided with terms of engagement, including "how" the broker will seek quotations from insurers. The clause does not go so far as to require the broker to inform the client of the number of number of insurers to be approached for a quotation. Further, the obligation arises once a client engagement is formed, rather than providing information before the broker is retained during the decision-making process.

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	<p>be clear about what they are paying for and what is excluded.</p>	<ul style="list-style-type: none"> • Clause 5.2(c) is a commitment to provide clear information to clients so they understand the services they will receive. • No distinction is made between clients and the types of advice they receive.
<p>Conflicts of Interests – The Code should contain a revised Conflicts of Interest section promoting transparency and informed consent from clients where a conflict of interest may arise</p>	<ul style="list-style-type: none"> • There needs to be a commitment to endeavour not to have conflicts of interest. If there are conflicts, management of the conflict should include explaining to the client in genuine engagement. Disclosure is not enough to solve the problem. 	<ul style="list-style-type: none"> • The Revised Code deals with conflicts of interest generally in clauses 5.1 (at the point of engaging the broker) and 6.3 (during the course of the engagement). • These clauses do not specifically state that subscribers will endeavour not to have conflicts of interest, however, the Code Principles (clause 4.1(b)) include commitment to adherence to the law and a commitment “...<i>not to engage in any conduct with the intent to avoid or limit our obligations under the Code.</i>” • Clause 6.3 provides that, where there <u>may</u> be a conflict of interest, the subscriber will only continue to act with the client’s express written consent. This addresses the problem of disclosure embedded in fine print, however, reliance is placed on the subscriber to identify and action the commitment to ensure there is informed consent. • Concern about a client understanding the consent they provide is an ongoing issue where disclosure is relied upon as the solution. NIBA has made a commitment to Code Guidance and Code training under clause 13.1. It is reasonable that Code Guidance, training, and policies address and embed all of the standards of the Revised Code and provide support to subscribers on how to comply with complex issues such as ones relating to disclosure.

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<p>Remuneration disclosure – The Code should promote transparency in remuneration disclosure, not simply abiding by the letter of the law. Questions remain about what should be disclosed and how in order to promote transparency and assist effective decision making</p>	<ul style="list-style-type: none"> • NIBA should commit brokers to removing conflicted remuneration arrangements, such as volume-based incentives, within the industry. • There is a place for some types of market derived income where a key outcome is greater efficiency and cost effectiveness for a client. • NIBA has a chance to be a leader and pre-empt the 2022 review in relation to conflicted remuneration practices. NIBA should consider funding a piece of research as to the premium commission model. If NIBA intends to submit to the 2022 review that the premium commission model should remain, it would seem sensible to undertake some form of research to understand how premium commission affects buying habits. • Premium funding commissions should be disclosed alongside placement remuneration at the start of the engagement, rather than when premium funding is offered. • The CFA suggests subscribers not only avoid receiving remuneration which could be perceived as a conflict, but also to stop paying commissions to third parties like body corporate managers. The CFA cites instances where such distributors earn about 30% commission and there is no indication of what the body corporate manager has done to earn that commission. 	<ul style="list-style-type: none"> • While the Code does not remove broker commissions or market derived income entirely, clause 8.2 removes volume-based incentives and profit-sharing arrangements with insurers <u>except</u> when acting under a binder arrangement with an insurer. As it is not unusual for a broker acting for an insured to place insurance under a binder arrangement, it is not clear to what extent the clause 8.2 prohibition will have an impact on existing practices. • Non-monetary remuneration from insurers is outlined and is allowed where it does not reasonably influence a broker’s advice (clause 8.3). • Retail Clients will receive greater information about remuneration amounts at the time they are provided with their broking advice (clause 8.1). The provision of information should be considered alongside the commitments made to clear communication (clause 6.1) and in the context of the Code Principles. In this way, the Code Guidance will be an invaluable tool for brokers implementing the Code in practice. • As clause 8.1(a) refers to “any remuneration”, this should include premium funding commissions. • There is no prohibition against subscribers paying commission to body corporate managers for referrals or otherwise.
<p>Enforceability, remedies, and sanctions – The Code should be clear on how obligations are enforced and allow</p>	<ul style="list-style-type: none"> • There was support for the view that the Code standards should be incorporated into the broker service contract and enforceable as such. This reflects one of the 	<ul style="list-style-type: none"> • The Revised Code departs from the existing Code which states that the existing Code does not create legally enforceable obligations. However, the Revised Codes does not state that the obligations

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<p>anyone to report a breach of the Code. While a “Client” can make a complaint, the Code states that a Client cannot rely upon the Code and no legal rights exist between an insurance broker and a Client in relation to Code standards</p>	<p>recommendations from the Hayne Royal Commission, although it was noted that the GICOP did not go this far and RG 183 does not require a Code to be enforceable by a consumer to be accepted for approval.</p> <ul style="list-style-type: none"> • Standing to enforce the Code should not be limited to clients. • There should be commitments in the Code about the Committee’s role, powers, independence and adequate resourcing to fulfil its role. • The CFA suggests that the IBCCC’s recommendations to own motion inquiries should be binding on subscribers. However, the IBCCC disagrees as each subscriber should adapt to its own requirements. 	<p>are enforceable under a contract of engagement. It is open to a subscriber to incorporate the Revised Code into their client terms of engagement if they wish to differentiate their services from competitors.</p> <ul style="list-style-type: none"> • Clause 12.3 outlines the IBCCC’s powers to sanction subscribers who have breached the Revised Code (including naming and shaming, and informing ASIC). While there is no additional power to fine a subscriber or award compensation, there is a power to refer the matter to the NIBA Board for further sanctioning. The NIBA Board has the power to sanction a Member by imposing a fine of up to \$50,000. • The Revised Code includes a commitment from NIBA to reasonably resource the IBCCC to “...carry out its responsibilities in an effective way.” (Clause 12.4(a))
<p>Complaints process – The Code should be clearer on how the complaints process works and consideration be given to whether the timeframes are appropriate. Small enterprises should be provided early in the process with information about options available and sources of support</p>	<ul style="list-style-type: none"> • The current Code does not allow anyone but a client to report a breach. Anyone should be allowed to report a breach of the Code. It should not be limited to “clients”. • The current Code does not have a user-friendly Complaints section. It is too long, wordy, and unduly complex with multiple paragraphs about what is and is not a complaint. It takes 300 words to explain what is a “complaint” where the GICOP simply states: “<i>You may complain to us about any aspect of your relationship with us.</i>” • Greater clarity is required about what IDR and an alleged breach investigation process involves. Overall, there should be a standard information document used by subscribers for 	<ul style="list-style-type: none"> • Clause 12.2 states that “<i>Anyone can report alleged breaches of the Code to the IBCCC.</i>” • The Code Principles provide that subscribers will “...hold each other accountable...for observing Code obligations.” (Clause 4.1(c)(iii)). • Clause 10 sets out in a page how to make a complaint, how complaints are handled, and timeframes. • NIBA has flagged the intention to release a Code Guidance document to assist brokers and consumers in the operation of the Revised Code. It is reasonable that the consumer Code Guidance include practical details on how to make a complaint to their broker and otherwise provide information about other avenues of complaint (ie AFCA, IBCCC).

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	<p>consumers, describing the complaints investigation process in a simplified way.</p>	
<p>Vulnerable clients – The Code should make provision for the need for Code subscribers to identify and support vulnerable clients</p>	<ul style="list-style-type: none"> • The Code should include the special needs of vulnerable clients. • Groups should be identified and described, similar to the GI Code. • Brokers should be able to identify vulnerable clients and support them. • Economic abuse is particularly concerning. • Third party service providers (eg premium funders and debt collectors) may not have hardship policies in place. 	<ul style="list-style-type: none"> • Clause 6.1 states a subscriber commitment to clients to communicate in plain English (subject to regulatory disclosure requirements) and will help clients understand the advice provided. • Clause 11.1 sets out how a client may be vulnerable and states a subscriber commitment to support those experiencing these vulnerabilities. • Clause 11.2 sets out ways in which a subscriber will provide support vulnerable clients, provide training to employees, and develop policies and procedures. • It is reasonable that further guidance to brokers is provided in Code Guidance documents on vulnerable clients and supporting them. • It is not entirely clear whether the Revised Code requires agents and representatives to adhere to the provisions relating to vulnerable clients. Clause 9.2(a)(iv)(A) refers to compliance with provisions of the Code relevant to the services provided.
<p>Accessibility – The Code should be accessible to consumers, for example, through adopting plain language, having non-English language versions, and ensuring the Code can be accessed by the visually or hearing impaired. Promoting awareness and training are important ways of increasing accessibility to subscribers and consumers.</p>	<ul style="list-style-type: none"> • The current Code: <ul style="list-style-type: none"> • relies upon “legalese”; • is written in a hedged way to reduce the strength of commitments; and • is otherwise “very hard to read”. • The need for plain language is reflected in ASIC RG 183.55 which states that as a starting point to considering whether to approve a Code, the Code: <p style="margin-left: 20px;"><i>“...must contain plain language provisions that clearly describe what the code is about.”</i></p> 	<ul style="list-style-type: none"> • The Revised Code is a complete revision of the current Code with a clear effort to adopt plain language and tone. • The formatting of the Revised Code has also been considered to respond to feedback that the current Code is difficult to cross-reference or navigate through. • Subscribers will arrange an interpreter if required where reasonable to do so (Clause 11.2(b)). • NIBA commits to making multi-lingual versions of the Revised Code available (Clause 13.2(a)(ii)).

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	<ul style="list-style-type: none"> The GI Code refers to the use of interpreters and access where practicable. 	<ul style="list-style-type: none"> NIBA commits to developing Code Guidance documents to improve understanding of the Code (Clause 13.2(a)(iii)). NIBA might wish to consider whether certain aspects of the Code Guidance documents are made available in multi-lingual versions, such as in relation to how consumers make a complaint and what remedies might be available to them.