



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

8 May 2025

Mr Phil Khoury
Cameron, Ralph, Khoury
NIBA Code – Independent Review
Via email: phil@crkhoury.com

2025 Review of the NIBA Code of Conduct

Introduction

The Consumers' Federation of Australia is the peak body for consumer rights advocates and input has been sought from the following member bodies for this submission into the 2025 review of the NIBA Code of Conduct:

ARC Justice	Indigenous Consumer Assistance Network
Australian Consumers Insurance Lobby	Legal Aid NSW
Care FS	Legal Aid Qld
Centre for Women's Economic Safety	Legal Aid WA
Consumer Action Law Centre	Owners Corporation Network of Australia
Consumer Law	Public Interest Advocacy Centre
COTA (Council of the Ageing)	Redfern Legal Centre
Economic Justice Australia	South Australian Financial Counsellors Association
Financial Counselling	South East Community Links
Financial Rights Legal Centre	Uniting Communities
Flequity	West Justice
Good Shepherd	

This submission responds directly to the Consultation Paper and the question raised. While all the above members were given an opportunity to provide commentary and feedback on an initial draft, substantial input was received from Financial Rights Legal Centre, Financial Counselling Australia, Australian Consumer Insurance Lobby and Owners Corporation Network of Australia.

Key recommendations:

- 1) One-page summary of consumer rights for brokers to provide to their clients with disclosing engagement, remuneration and policy documentation.
- 2) The objectives should be drafted as a commitment to consumers rather than as directives or guidance to brokers and include a preamble that articulates the guiding principles of the Code.



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

- 3) The Code should commit brokers to identify and avoid all actual and perceived conflicts of interest. Where a conflict cannot be avoided, it should be managed in accordance with strict, publicly available policies that are regularly reviewed. More clarity and specificity on conflicts of interest is needed to assist brokers identify those that can be managed through disclosure and those that should be avoided.
- 4) The Code should commit brokers to developing and providing standardised templates for all classes of general insurance to disclose third-party remuneration (monetary and non-monetary) and how this is consistent with a duty to the client's best interests.
- 5) Brokers must commit to providing, in plain English and in writing, full details of all remuneration they receive before engagement and at renewal time. Fully informed, voluntary, express and specific as to purpose consent must be sought from the client and recorded.
- 6) Disclosures should commence at engagement with a plain-English outline of remuneration, and expanded upon:
 - i) When presenting a proposal, a written explanation of why a particular insurer was selected, including comparisons made and any alternative quotes obtained, and
 - ii) When acting for the client in the event of a claim, commissions received from the relevant insurer.
 - iii) Non-monetary benefits (e.g. travel, events, marketing subsidies) that relate to placement volume or premium targets should be prohibited under the Code.
 - iv) Include a commitment that remuneration will remain reasonable and proportionate to the level of work in anticipation of the impact of market volatility on percent-based commissions.
- 7) The Code must clearly define client best interests to serve as a practical framework (e.g. prioritising price, coverage, exclusions, and insurer reputation) to assist both consumers and brokers to assess how this obligation should be reflected in their relationships.
- 8) The Code must cease to rely on the Retail Client definition or the distinction between General and Personal Advice as a threshold.
 - i) The default position should be the application of the Code and full disclosure for all clients, with limited exceptions based on a clear test of client best interests.
- 9) Strengthen the commitment to support vulnerability to one that more closely aligns with the standards set in the General Insurance Code by:
 - i) avoiding any language requiring consumers to identify as being in vulnerable circumstances to access support
 - ii) committing to proactive measures to identify clients' needs for additional support
 - iii) include a definition of vulnerability drawn from ISO 22458
 - iv) expand the list of example vulnerabilities
 - v) commit to training in vulnerability, particularly with respect to First Nations cultural training



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

- vi) commit to specific support measures such as making interpreter services available, facilitating client contact with support services and other resources and providing interpreter access.
- 10) The Code should extend the minimum 14-day renewal notice period to 28 days and articulate a clear expectation that adequate notice is a key consumer protection mechanism.
- 11) The language of the Code must be reviewed to:
- i) remove vague or ambiguous commitments and replace these with specifics including hard maximum timeframes,
 - ii) ensure that the commitments are clear, robust, and are in fact commitments to the consumer
 - iii) specific reference to acting professionally, diligently and with competence.
- 12) Consumer groups would support a move to five-year review cycle strictly under three circumstances:
- i) the Code is approved by ASIC
 - ii) there are explicit mechanisms for timely adjustments to the Code and its operation between reviews should the need arise, and
 - iii) clarity is brought to bear on the five year cycle i.e. five years means the period between the introduction of a new Code and the introduction of an updated Code.
- 13) Independent monitoring must be strengthened by:
- i) clarifying the obligations under paragraph 11.4 to require brokers to have systems in place to report breaches to the IBCCC
 - ii) enhancing sanctions powers by allowing the IBCCC to name subscribers who breach their Code commitments
 - iii) embedding an independent approach to funding the IBCCC to ensure it is adequately resourced to provide effective monitoring in line with the objectives of its charter
 - iv) NIBA to ensure Code monitoring has adequate resources and support smaller brokers to have access to sufficient professional development opportunities to improve record keeping, breach reporting and understanding the benefits of Code compliance.
- 14) To be appropriately enforceable the Code should form part of the contract with the client.
- 15) NIBA must seek ASIC approval of the Code.

1. Have we understood the key issues confronting the sector and the Code of Practice and what have we missed?

Of the six broad investigation areas highlighted, our submission will primarily focus on (a) remuneration, (d) consumer benefits, (e) complaints frequency and (f) resourcing.



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

As we discuss further below, adequate resourcing of compliance monitoring and reporting will be critical for the Code's development as a credible consumer protection and market integrity mechanism.

2. Would you support these objectives? Is anything missing or need changing? Do you have a view about their relative importance? If they were agreed, would they assist you to form a view about potential changes to the Code?

We generally agree with the objectives in general terms but as drafted the language is too internally focussed on the needs of the industry rather than the clients. Codes of Practices are commitments to consumers and the objectives of the Code should be framed in those terms:

- a) We will treat clients fairly and with integrity
- b) We will act with diligence, competence and lift professional standards to provide the community with confidence in the sector
- c) We will provide minimum standards irrespective of size, sophistication and structure of the broking firm
- d) We will be responsive to community expectations and lift standards as these evolve.

Accessibility is also an issue as the Code is dense and consumers must navigate across many sections to understand their rights. As the IBCCC's submission points out, it would also benefit from a clear statement of guiding principles around the value of the Code to broker clients.

It would benefit from a simple one-page summary for brokers to provide to clients outlining key rights under the Code, including complaint handling timeframes, conflict management, remuneration transparency, and vulnerability support.

3. Are the current arrangements under the Code that are intended to manage potential or perceived conflicts sufficient? If not, how could they be strengthened through the Code?

No, the current arrangements under the Code are wholly insufficient.

The recent controversy around the strata insurance market is symptomatic of a broader cultural issue in insurance intermediation. Broking by its nature is a relationship business where trust and familiarity can become seen as more important than the specific value proposition of the insurance transaction.



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

Professionally managed, they can be of great benefit to consumers. But they can also influence behaviour which may fall short of the highest professional standards and undermine consumer confidence in the integrity of the market.

The Code has an important role to play in establishing those standards and providing guardrails for brokers large and small in managing relationships.

The Code should commit brokers to identify and avoid all actual and perceived conflicts of interest. Where a conflict cannot be avoided, it should be managed in accordance with strict, publicly available, policies that are regularly reviewed.

It should go further and identify examples of conflicts that cannot be managed by disclosure and should be avoided at all costs, including engaging strata managing agents as authorised representatives.

It should then clearly identify different types of conflicts of interest with specific examples and advice as to where and how a conflict can be managed through disclosure, as well as a clear statement as to how this serves the best interests of the client. We provide further examples of specific Code drafting below.

Market integrity would be assisted through the Code by a requirement to document and explain in disclosures why a particular insurer was selected, including comparisons made and any alternative quotes obtained, unless waived by the client in writing.

This would support the 'best interests' duty and facilitate external review of broker conduct in the event of a complaint.

The strata management industry is moving to adopt a standardised template for broker quotations and invoices, including a minimum set of eight financial items with common definitions.

This enhances transparency, allowing owners and strata committees to better understand and compare insurance offerings.

They were based on strong consumer-centric recommendations by industry consultant John Trowbridge but there has been limited progress to date in their implementation.

The Code review is an opportunity to consider the applicability of the Trowbridge Review more generally with a view to full implementation, extending disclosure reforms to all classes of general insurance where brokers are involved. This should include mandatory, standardised disclosure of all broker and third-party remuneration (monetary and non-monetary), along with clear articulation of service value.

The structural issues identified in strata insurance — such as conflicts of interest, complex and opaque remuneration, and limited consumer understanding — are not unique to strata. A broader rollout of these reforms would deliver consistent and meaningful improvements in transparency and



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

accountability across the insurance industry, ensuring all clients — not just strata owners — are empowered to make informed decisions.

4. Are you aware of or concerned about areas of remuneration or ownership where the potential for a conflict of interest in recommending insurance cover should be dealt with differently by the Code? Can you provide examples?

Yes. The strata market serves as a case study of where ambiguity, uncertainty or ignorance — wilful or otherwise — of conflicts of interest and how they should be managed can undermine consumer confidence in the role of brokers.

The conflict inherent in common ownership of both underwriting agencies and brokers demands, at a minimum, a very high level of transparency about the nature of those relationships. This is necessary both in direct financial terms, such as volume incentives, and indirectly through the operation of broking platforms and their impact on competition given that a level playing field is a core objective of the Code.

The relationships between brokers and strata managing agents, whether as authorised representatives or referrers, provide many good examples where the trust, familiarity and dependency between key market participants has resulted in business models and outcomes that are designed more for the benefit of the intermediaries than the end consumer.

Other specialised insurance markets have similar characteristics which may be conducive to similar behaviour. The code can play an important role in providing guidance to participants in those markets as well.

Currently, Section 6.1 only requires disclosure of commission and fees “at the same time” as advice or “prior to payment” where no advice is provided. We do not believe this is consistent with a genuine commitment to obtaining informed consent.

Brokers must commit to providing, in plain English and in writing, full details of all remuneration they receive - be it in the form of commissions, non-financial benefits or otherwise - at time of on-boarding/quoting (before the engagement) and at renewal time.

Fully informed, voluntary, express and specific as to purpose consent must be sought from the client and recorded. This would accord with best practice. Clients are often unaware of how their broker is paid and early disclosure enhances transparency.

Similarly, percentage-based remuneration can amplify the impact on consumers of sharp rises in premiums, such as experienced in northern Australia in recent years.



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

Section 6.5 currently only requires brokers to “periodically review” remuneration structures. It would benefit from an additional requirement to ensure that remuneration remains reasonable and proportionate to the level of work.

This would provide a checkpoint for brokers to demonstrate a consumer-centric mindset and that they do not benefit unfairly from high premiums where there is no corresponding increase in workload or value provided.

The language of Section 6.3 permitting the receipt of non-monetary benefits unless it “reasonably influences” advice is problematic, particularly but not exclusively in the strata market based on recent experience.

This section would benefit from more explicit guidance on what may be seen as “reasonably influences” on advice and explicitly ban non-monetary benefits (e.g. travel, events, marketing subsidies) that relate to placement volume or premium targets.

5. If the Code went further in requiring disclosure or limiting remuneration or ownership structures, what would the practical implications be for broker firms? Can you suggest practical solutions that could be implemented?

We acknowledge that a Code that prescribes greater clarity and transparency around the conflicts arising from different ownership structures and remuneration models will create challenges for some businesses.

The test for those businesses should be a simple one based on their over-arching fiduciary duty to their clients: Is this model or structure serving the best interests of our clients?

If the answer is not unambiguously yes, then the next question would be what needs to change?

Similar to conflicts of interests, the Code could assist this process by providing a clear definition of best interests in practical terms. Adding a practical framework (e.g. prioritising price, coverage, exclusions, and insurer reputation) would help both consumers and brokers understand and measure this obligation.

Brokers engaging strata managing agents as authorised representatives or agents, for example, on a commission basis creates fundamentally unreconcilable conflicts of interest. While strata managing agents do play an important role in arranging insurance for owners corporations, their remuneration needs to be clearly aligned with their fiduciary duty to those clients.

The sector needs to unwind these arrangements as expeditiously as possible because they are unfair and inconsistent with good outcomes for owners corporations.



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

A broker who engages a strata managing agent has a 'best interest' duty to their clients under the Code of Practice.

Clause 5.3(a) states:

When a client engages us as their insurance brokers and/or risk advisers, we have a duty to act in their best interests when acting on their behalf in accordance with relevant law.

The client here clearly is the owners corporation, yet we have seen brokers argue that the duty is to the strata managing agent. On this view, the Insurance Broker essentially owes a duty to itself through the authority vested in the strata managing agent as an authorised representative.

This is circular logic and patently unworkable.

Strata managing agents also have best interests duties to owners corporations under state laws, such as the NSW Property and Stock Agents Act 2022.

It is unclear how a strata managing agent in this situation can owe competing duties to the broker, itself, and the owners corporation.

This nesting doll of fiduciary duties cannot be resolved through disclosure.

In the absence of a prohibition of strata managing agents becoming authorised representatives (counter to our recommendation), the Code needs to make explicit who the client is in these situations.

6. Does the Code sufficiently address potential conflicts of interest that can arise in assisting a client with a claim? Can you provide examples of issues that can arise and suggest how these should be dealt with?

No, it is insufficient.

Where there is an established professional relationship with an independent broker, the client will rarely question whether the broker is acting in their interests rather than the insurer's. But many brokers are part of larger groups that also have relationships with insurers and underwriting agencies and in some cases other service providers that might be engaged in an insurance claim.

Transparency around those relationships will assist in maintaining consumer confidence in the claims process.

A specific issue is the role of strata managing agents in lodging and managing claims, as discussed earlier.

Clause 5.3(b) states:



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

We may at times act for insurers during the course of an insurance transaction, for example by arranging insurance and submitting claims electronically. While engaged by a client, we will not act for an insurer or another party where doing so would be contrary to our duty to act in our client's best interests in accordance with relevant law.

Despite this, brokers continue to engage strata managing agents as authorised representatives with all the complications outlined above. Either this is a breach of this clause or there needs to be more explicit wording to address the issues outlined above. The best solution is an explicit prohibition of strata managing agents acting as authorised representatives or agents.

7. If the Code went further in requiring disclosure or limiting incentive fees or structures, what would the practical implications be for broker firms? Can you suggest practical solutions that could be implemented?

As per question 5, the test for all businesses should be their fiduciary duty to clients. If greater transparency or limitations on fees represent a risk for those businesses, the question needs to be asked – why? Any business model that cannot withstand an appropriate level of consumer scrutiny should not be supported by the Code.

This would include the role of brokers acting on behalf of clients in making a claim where they also receive commission income from the insurer. As a minimum, full disclosure of the details of the relationship and informed consent should be obtained from the client at the time. Such disclosure should demonstrate how the broker's fiduciary duty to the client is being served, for example through functional separation of claims from sales. A better solution might be to outsource the claims function to a third party.

Strata managing agents play a significant role in the claims process, where they are also acting as agents of brokers, in addition to being an agent for the client. This part of the Code is also relevant:

8.1 Our responsibility

We are responsible for ensuring that our employees, agents and representatives comply with the Code when they are acting on our behalf then Insurance Brokers will (at 8.2):

require all our employees, agents and representatives to receive appropriate education and training:

(A) to provide their services competently; and

(B) on the Code at least once every year

We have seen no evidence that this is actually occurring in practice.



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

As a starting point, the Code requires clearer definitions. For example “agent” is too broad and risks confusion/uncertainty for industry and the IBCCC. This needs to be clarified.

The current 2022 Code states at clause 5.3(c):

We will have policies and procedures in place so that we can identify and manage any conflicts of interest.

This previously read:

We will have policies and procedures in place so that we can identify and avoid instances where we may act contrary to a client’s best interests.

The commitment changed from "acting contrary to a client's best interests" to simply "conflicts of interest" which is not the same thing. It then waters down the requirement to “avoid” to simply “manage” conflicts. This followed internal NIBA member complaints to the NIBA Board after the announcement of the new Code in 2021.

The Code goes to state at clause 5.3(b)

We may at times act for insurers during the course of an insurance transaction, for example by arranging insurance and submitting claims electronically. While engaged by a client, we will not act for an insurer or another party where doing so would be contrary to our duty to act in our client’s best interests in accordance with relevant law.

and at Section 5.3(d)

Where there may be a conflict of interest, we will contact the client in a timely manner and clearly inform them that there may be a conflict of interest. Where there is or is likely to be a conflict of interest, we will engage with the client regarding steps to manage the conflict in their best interests in accordance with relevant law and we may only continue to act on behalf of the client with their consent.

These two provisions are fundamentally at odds with one another; and the imbalance of knowledge, experience and power between clients and brokers will always compromise the concept of informed consent.

It is unreasonable just to tell a client about a conflict and expect them to make an informed and objective assessment that this is not against their interests.

This goes against the nature of the broker-client relationship, which as the draft Code notes is founded on consumer confidence in the broker’s advice.

Clause 5.3(c) requires policies and procedures to be in place to identify and avoid acting against the client’s best interests, but it is unclear how adequate this will be in practice.



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

By way of comparison, the FASEA Code does not leave any grey area for financial advisers:

You must not advise, refer or act in any other manner where you have a conflict of interest or duty.

8. Is there more that the Code should be doing to address the needs of vulnerable clients? Should the Broker Code maintain a close alignment with the relevant provisions of the GI Code?

We do not believe the current Section 5.2 (c) adequately responds to questions of vulnerability by simply requiring “reasonable steps” and to “introduce training.”

Many broker clients would meet the test of vulnerability in the GI Code. Language, literacy, cultural and remoteness are relevant considerations for a wide range of insurance product lines including small business, strata and industrial special risks.

Arguably, an owners corporation confronted with an unbudgeted exponential increase in premium due to defects or claims history – an all too common scenario – could be considered vulnerable.

The GI Code’s application purely to Retail clients may not map neatly to broking given the product and client mix. But the substance of Part 9 provides a useful framework for adaptation.

The onus should be on the broker to work to identify vulnerability, rather than just relying on the client, whose vulnerability may be a barrier to this. Often consumers who are in vulnerable circumstances may say or do something that indicates their vulnerability, without explicitly talking about it. The best businesses are able to hear and act on this.

The tone of Clause 93 of the GICOP is arguably better than clause 10.1(c), though neither gets across the importance of active listening to identify consumers in vulnerable circumstances.

In line with recommendation 18 of the General Insurance Code Review Initial Report the commitment should avoid any language requiring consumers needing to identify as being in vulnerable circumstances to access support.

It would be better to start with a more positive, proactive commitment:

We will work to identify where clients are in vulnerable circumstances and in need of additional support including by asking clients directly. This may not always be possible, and we will encourage clients to tell us so that we can provide the extra help they need.

The Code should include a definition of vulnerability drawn from ISO 22458 and which is likely to be adopted in the General Insurance Code in line with the recommendation of the review that has been supported by the ICA. The Code should expand its list of example vulnerabilities and commit to training in this regard – particularly with respect to First Nations cultural training. Commitments to



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

providing specific support measures would bring the Code more in line with other financial services codes, including making interpreter services available and facilitating clients' contact with support services and other resources is also critical/ and provide interpreter access.

9. What practical problems could arise from the Code adopting similar or the same obligations from a new GI Code?

Brokers, particularly smaller independent brokers, may not have ready access to the specialised resources or expertise to fully comply with the GI code on vulnerability. There may be a role for NIBA in creating a support network and CFA members would welcome an opportunity to contribute to this work. As we discuss later, an investment in resourcing will be critical to the longer term success of the Code.

10. Should the obligation to disclose remuneration apply only to Retail Clients? Should it also apply to an expanded group of small business products? Or to all clients and all Covered Services?

The Retail client restriction in our view unnecessarily limits the ability of the Code to drive professional standards and underpin consumer confidence, given the diversity of broker markets. There is simply too much scope to subjectively interpret its provisions as not applicable to specific markets or transactions.

For example, there is ambiguity as to whether a Retail client under clause 6.1 includes strata insurance or not, such as in mixed use developments with commercial, retail and residential stratum. This illustrates the fundamental problem in using the statutory concept of "retail client" as sometimes it is not so clear cut.

Strata insurance should be captured by applying the Code to all insurances for consumers and small businesses.

Clause 6.1 currently states:

If the client is a Retail Client (as defined in the Corporations Act 2001 (Cth)) and we are acting on their behalf, we will provide them with information about any remuneration (including commissions) or other benefits we will or expect to receive as a result of providing Covered Services.

It previously stated:



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

If the client is an individual or a small business and we are acting on their behalf, we will provide them with information about any remuneration (including commissions) or other benefits we will or expect to receive as a result of providing Covered Services.

A small business in this clause means a business employing less than: if the business is or includes the manufacture of goods <100 people, or otherwise <20 people.

This was also removed following complaints by NIBA members in a significant backward step, reducing important protections for small business consumers. The previous wording should be reinstated and strengthened, as discussed elsewhere in this submission.

A robust Code would have full disclosure to all consumer and small business clients regardless of the products as the default position across the board and not limit itself to the legal definition of a Retail client, which serves a different purpose in the Commonwealth statute.

Exceptions could be permitted on a case-by-case basis on commercial or efficiency grounds - but not simply convenience. They must be based on a clear test of whether the clients' best interests would be served.

11. How well does the regulatory distinction between general and personal advice work in insurance broking? Are there ways in which the Code could address areas of ambiguity?

As with the Retail client distinction, the general and personal advice distinction becomes very subjective in broking. This is not the appropriate mechanism for determining the application of the Code. The very nature of broking and its individualised service means that all advice could be considered personal because the broker helps clients compare different covers and policy features and find the best solution for their specific needs and circumstances.

12. Should the Code provide for a 28 day notice period for renewals?

Timely communication on renewal is of critical importance to clients, and with a well-managed, smooth, transparent and proactive communications schedule, clients will be better served.

The current 14 days (at clause 7.2(a)) does not provide sufficient time to consider the renewal and options.

Adequate notice periods are important to consumer protection but whether 28 days is an appropriate benchmark is not clear because we suspect the requirements of different types of consumer may vary. However this should serve as a minimum requirement. More complex



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

insurances may require more time to consider. In extending the notice period, the Code should articulate a clear principle that adequate notice is an important element of consumer protection.

13. As a general proposition, should the Code wordings be revised to be more explicit about the standards being set?

To be effective and increase confidence in a sector a sector's commitments under a Code, the drafting needs to be clear, robust and enforceable. This would meet ASIC's expectations with respect to Code approval.

Language that is vague or ambiguous without specifics needs to be removed. For example, any reference to "timely" (for example, Clause 7.1(a) and 7.2(b)) or "as soon as it is reasonably practical" (Clause 7.1(b)) need to be replaced with strict timeframes.

Where there are no timeframes, they need to be included (such as Clause 7.2(a)). We submit that the following timeframes would be appropriate for these clauses in line with the General Insurance Code:

- Clause 7.1(a): 20 days
- Clause 7.1(b): 10 days
- Clause 7.1(f): 10 days
- Clause 7.2(a): 28 days
- Clause 7.2(b): 15 days

Aside from remuneration models, most broker issues raised with our members tend to focus on the quality of the advice and professionalism, diligence and competence or lack thereof.

The Code lacks an explicit commitment to act professionally, to be diligent or competent apart from a reference in the President's message

- Clause 3.1 (a)(i) merely commits subscribers to maintain relevant qualifications, education and training.
- Clause 3.1 (a)(ii) commits to upholding ethical standards but does not spell these standards out beyond, presumably, ethical behaviours mentioned in Clause 3.2.
- Clause 3.2 (b)(i) commits to honesty and integrity – but these are only a subset of the qualities of professionalism, diligence and competency.

This falls short of what is required to address the issues raised by consumers. The Code needs to make explicit a commitment to these principles.

The FASEA Code provides useful terminology:



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

All advice you give, and all products you recommend, to a client must be offered in good faith and with competence and be neither misleading nor deceptive.

This language is not in the Code, other than a reference to professional competence in the introduction then in 9.2 in the context of training. Similarly:

You must take into account the broad effects arising from the client acting on your advice and actively consider the client's broader, long-term interests and likely circumstances.

is also applicable to advice on matters such as risk management, retentions and excesses.

14. Has the Code kept pace with changes to the insurance environment? Has the Code helped the sector to maintain credibility as a self-regulator?

The review is timely in that community attitudes around conflicts of interest and remuneration transparency have clearly hardened in recent years. The responsibilities of brokers as an integral part of the insurance value chain between capital and risk, including for consumer protection, are becoming more formalised for example through APRA's CPS230 standard for operational risk management, which includes regulatory and reputational risk.

It is important that the Code continue to evolve with an eye to the future as well as the present, noting the nascent developments of Artificial Intelligence as a tool in insurance as well the increased presence of broker platforms and networks in the market.

15. Can the broking sector do more to ensure community support for insurance generally? If more is needed from the Code, where would you support change?

Brokers at their best are highly effective advocates for their clients' interests. An example is leveraging client relationships to creating a groundswell for removal of stamp duty.

Brokers could play a larger role in policy development and building community support for proactive risk management, particularly in specialist areas such as strata, small business, liability and industrial special risks.

That advocacy on behalf of clients' interests must be founded on an industry culture that reflects the same values. As outlined elsewhere in this submission, there is work to do to build the level of trust and confidence that is essential for credible advocacy.

16. What do you think the benefits and risks would be of maximum 5 year (rather than 3 year) review cycle? Would you support change to 5 years?



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

We understand there is a trade-off between the frequency and scope of reviews. While the current three year cycle can be resource intensive, it enables the Code to be kept up to date more frequently and therefore be more responsive to issues that arise and lifting community standards. A move to a five year cycle would therefore be a step backwards with respect to consumer rights and if increased in a vacuum prima facie we could not support this. However, consumer groups would be open to a shift to a five year cycle under two circumstances:

- a) the Code is approved by ASIC bringing the necessary assurance to the community that they can have confidence in the Code, and
- b) there are explicit mechanisms for timely adjustments to the Code and its operation between reviews should the need arise.

Clarity needs to be brought to bear on the nature of a five year cycle, which years should be between the date of the introduction of a new code and the introduction of an updated code, not begin five years after a new code has been brought in. Otherwise this becomes a seven to eight year cycle given the length of time the average code review, industry response, drafting and implementation period adds to the process.

17. Is the Code helping to create a level playing field within the sector? In particular is it helping to lift standards of professionalism amongst the smallest firms?

Aggregation and consolidation of brokerages brings both benefits, including depth in expertise and technology, as well as risks in lessening competition and continuity in personal relationships with clients.

Holding all signatories to the same standards should assist small firms in understanding their responsibilities and providing guidance around client expectations.

More should be done to support smaller firms in keeping records and reporting potential breaches, presented as a professional development opportunity rather than purely a compliance matter.

18. What more could the Code provide to support high standards for small firms?

The Code can play a limited role in supporting the viability of small firms by creating clear benchmarks for professionalism and ensuring that all signatories have the support and confidence to meet those standards, regardless of size.



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

Breach reporting should be encouraged and incentivised as an opportunity to respond to gaps in competency or capability and improve the performance of the brokerage.

19. Do you have experience or evidence of under-reporting of complaints in the broking sector? Do you have a view about the key causes for the relatively low numbers of reported complaints?

The available experience, while largely anecdotal, suggests there may be explanations other than high levels of compliance for what is perceived to be a relatively low level of complaints. Factors are likely to include low levels of awareness, low levels of self-reporting by code signatories and, given the more personal relationships between brokers and clients, a greater likelihood of direct redress with the broker.

This is an issue that warrants greater study as it goes to the credibility of the Code and its effectiveness in achieving its objectives.

The FASEA code includes this requirement:

You must ensure that your records of clients, including former clients, are kept in a form that is complete and accurate.

Brokers similarly should be able to provide records to clients on request as well as to ensure compliance with the code is documented.

***20. Should the Code be strengthened in the complaint-handling provisions?
Should the IBCCC be doing more to test and validate the rate of self-reporting.***

See the previous answer.

21. Do you think that the Code monitoring function is providing credibility that the Code is being effectively monitored? To your knowledge, does the Committee have sufficient powers to deal with non-compliance?

This would seem to be a question of resources rather than powers. The objective should be to achieve best practice in identifying, recording, handling and reporting complaints.

An apparently low level of complaints, as documented by the IBCCC, combined with a lack of clarity around the reasons for this, does raise questions about the credibility of the Code as a whole. Indeed the mere fact the question is being asked suggests that is an issue that needs to be taken seriously.



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

The dedication of resources to actively monitoring the Code's operation would help identify any deficiencies in terms of powers and remedies.

Independent monitoring must be strengthened by:

- a) Clarifying the obligations under paragraph 11.4 to require brokers to have systems in place to report breaches to the IBCCC
- b) Enhancing sanctions powers by allowing the IBCCC to name subscribers who breach their Code commitments
- c) Embedding an independent approach to funding the IBCCC (similar to the best practice approach taken by the Insurance Council and funding of the Code Governance Committee) to ensure that it is adequately resourced to provide effective monitoring in line with the objectives of its charter.

22. Do you have suggestions for additional or new activities that the Code Compliance Committee could be doing?

See previous answer. A specific focus needs to be an improved understanding of the level of under-reporting and how to encourage Code signatories to see interaction with the Code as a professional development opportunity rather than a compliance matter.

23. Please feel free to raise issues not covered by the questions above.

ASIC approval of the Code should be sought. This will require the Code to be enforceable. To do so, the easiest way would be for the Code to be made a part of the contract with the client.

In large part the credibility of the Code hinges on the commitment of NIBA and its signatory members to embrace its objectives and invest in its development through adequate resourcing.

The level of this commitment will have a direct bearing on the willingness of external stakeholders to support ongoing self-regulation as an alternative to more prescriptive, intrusive and costly interventions in the market.

As the IBCCC submission points out, a strengthening of the Code on its own will not be enough. Better articulation of conflicts of interests and more robust disclosure standards must be supported by access to training and support for brokers to identify and remedy any deficiencies in their own business models and practices. Embedding the Code's standards into all professional development programs is essential to its long-term sustainability.



**CONSUMERS'
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

Consumers' Federation of Australia welcomes this opportunity to contribute to the Independent Review. We and our member organisations would be happy to provide any further assistance that may be valuable to the review.

Yours sincerely,

Dr. Gareth Downing
Chair, Consumers' Federation of Australia