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Dear Mr Khoury

### **2025 Independent Review of 2022 Insurance Brokers Code of Practice**

We welcome the opportunity to provide feedback on the consultation issues paper for the 2025 Independent Review. This review is an opportunity for the National Insurance Brokers Association (NIBA) to promote the benefits of insurance broking, by articulating in its Code of Practice the full ambition and value-proposition of the industry to clients, including small businesses.

Further, by clarifying and encouraging high standards of practice and ethical behaviour through the code, the industry can address issues as they emerge, reinforce the value of self-regulation, maintain public confidence and avoid interventionist responses.

The cost, availability and coverage of insurance is a critical challenge facing small and family businesses. The code review presents an opportunity for insurance brokers to emphasise that they are active allies of small businesses and to dispel any perception that brokers are merely the passive agents of insurance companies. The ASBFEO encourages the National Insurance Brokers Association to enhance the code by:

- refocusing its content on customer benefits and the full scope of services provided
- ensuring protections apply to small business by adopting the definition used by the Australian Financial Complaints Authority (AFCA)
- explaining how standards of practice exceed legal compliance obligations
- specifying timeframes for action
- improving processes and training to detect, report and swiftly address code breaches
- increasing the resourcing of the Insurance Brokers Code Compliance Committee
- submitting the next iteration of the code (incorporating recommendations of the 2025 Independent Review) to the Australian Securities Investments Commission for approval
- fully and clearly disclosing all pecuniary and non-pecuniary benefits flowing to brokers, how these benefits relate to the products recommended (or to related-party transactions) and requiring clients to acknowledge and accept these proposed benefits in writing
- bolstering provisions relating to vulnerability, economic hardship and coercion.

We elaborate on these recommendations below.

**Recommendation 1: The Code guiding principles should focus on advancing the interests of clients, including small businesses, and commit members to act honestly, fairly and with integrity.**

The ASBFEO considers that the code should speak primarily to clients, including small businesses, and emphasise how insurance brokers can support and benefit them. A study by Vero Insurance highlighted that businesses rely on brokers to gain expert knowledge of policies, a deep understanding of their business needs and help when processing claims.<sup>1</sup>

The current version of the code gives the impression that the insurance broker is a helpful bystander, rather than an active agent for customers and small businesses. The code should expound the full value of insurance brokerage for small businesses, including:

- understanding the small business' situation, risks and needs
- recommending suitable insurance options
- explaining what insurance products cover and do not cover
- identifying risk-mitigation strategies to ensure or expand coverage, and/or reduce premiums
- assisting small businesses with disputes or delays involving an insurer.

**Recommendation 2. Ensure protections apply to small business clients by:**

- a. aligning the definition of small business with that used by the Australian Financial Complaints Authority; that is, an organisation with fewer than 100 employees**
- b. decoupling this definition from those of 'retail client' and 'wholesale client' in the Corporations Act 2001**
- c. applying all parts of the code to small business.**

The code should adopt a definition of small business as an organisation with fewer than 100 employees, consistent with the Australian Financial Complaints Authority and other financial services codes. Applying this definition would prevent small businesses purchasing insurance from being treated as wholesale clients, rather than retail clients, under section 761G of the Corporations Act.

A small business may be classified as a wholesale client if it is:

- a non-manufacturing business with 20 or more employees
- purchasing a product with a value greater than \$500,000.

For example, a retail business with 25 employees that purchases public liability insurance (to cover claims for injury or damage caused to customers or suppliers) would be treated as a wholesale client, as would a digital technology start-up with 10 employees that spends \$550,000 to acquire a cyber insurance policy.

The distinction between retail and wholesale client is important because wholesale clients are assumed to be more sophisticated than retail clients and less needing of support and supervision. Conversely, retail clients receive greater statutory protections, including in relation to disclosure requirements and application of the best interests duty.

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<sup>1</sup> Vero Insurance, 2025 SME Insurance Index – Insights Illuminated, Vero Insurance, 2025, p 15.

The Insurance Brokers Code Compliance Committee's 2023-24 annual report notes that:

[C]urrent definitions of retail and wholesale clients, as well as small businesses, are inadequate and can leave small businesses with reduced safeguards, including in the Code. We believe that the nature of the consumer, rather than the type of insurance product, is important and all small businesses should be treated as retail clients regardless of their insurance needs.<sup>2</sup>

The code should provide the same degree of disclosure, protection and support to all small business clients, many of whom lack the time, resources or expertise to explore or negotiate appropriate insurance coverage at a competitive price.

By defining a small business in the Insurance Brokers Code of Practice as an organisation with fewer than 100 employees, the industry can reinforce both its value to small businesses and commitment to upholding standards beyond legal compliance.

**Recommendation 3. Strengthen the integrity of the code by:**

- a. clarifying how the standards of practice for brokers in the code complement or exceed legislative requirements**
- b. specifying measurable timeframes and actions for commitments and obligations**
- c. ensuring code breaches and complaints are detected, reported and promptly addressed by brokers, by requiring them to have robust processes to support accountability and assure compliance, including monitoring the effectiveness of remediation actions (both short and long term)**
- d. requiring members to undertake regular training on the code as part of their continued professional development**
- e. providing additional resourcing to the Insurance Brokers Code Compliance Committee that is sufficient to support code improvements and enhance compliance**
- f. submitting the next iteration of the code (incorporating recommendations of the 2025 Independent Review) to the Australian Securities Investments Commission for approval.**

Section 3.2(b)(v) and (vi) of the Insurers Brokers Code of Practice states that:

[T]he Code is designed to work with laws that cover Code Subscriber conduct and *go beyond standards required at law* ... When other codes apply to services being performed by us, we will comply with the higher of the standards that apply in performing those specific services.<sup>3</sup>

In contrast, section 5.3(a) and (b) of the code stipulates that:

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*.

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

<sup>2</sup> Insurance Brokers Code Compliance Committee (IBCCC), *Annual Report 2023-24*, IBCCC, 2024, p 8.

<sup>3</sup> National Insurance Brokers Association of Australia, *Insurance Brokers Code of Practice*, 1 November 2023, p. 9, emphasis added.

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*.<sup>4</sup>

Similarly, section 7.1(g) of the code says:

Where we act under a claim's authority from the insurer, which is relevant to the client's claim, and exercising that claims authority may be a conflict of interest, we will contact the client in a timely manner, engage with them, and take reasonable steps to ensure that the claim is managed in their best interests *in accordance with relevant law*.<sup>5</sup>

The ASBFEO considers that small businesses and other customers would more readily perceive the benefits of the Insurers Brokers Code of Practice, if it explained where and how code obligations go beyond legal compliance. For example, the code should specify how the standards set for member insurance brokers exceed:

- the statutory best interests duty, which applies to insurance brokers when they provide personal (or tailored) financial advice to a retail client as an Australian Financial Services Licensee or an authorised representative
- design and distribution obligations, which apply to insurance brokers involved in distributing financial products, and ensure those products are distributed in a way that is both:
  - consistent with the target market determination set by the product issuer
  - suitable for the client's needs and objectives.

As argued above, extending the code's protections to all small businesses, as defined by the Australian Financial Complaints Authority, would be an efficient and effective means of demonstrating above-legal compliance.

Further, there is scope to enhance the robustness of the code by specifying measurable timeframes and actions for commitments and obligations. Many sections of the code rely on the vague criteria of 'timely', 'reasonable steps', or 'as soon as practical' (or 'reasonably practical'); notably sections 4.2(a), 4.1(c), 5.1(a), 5.2(c), 6.1(d), 6.5, 7.1(a), (f) and (g), 7.2(b), 8.2(a)(v), 9.2(a), 10.2(a) and 11.4(b). A better approach is presented in sections 7.2(a), 8.2(a)(iv)(B) 9.2(b), 9.4(a) and (b), which commit members to act within a certain number of days.

By further detailing the actions and timings that constitute better practice in the code, the National Insurance Brokers Association can help members detect, report and address code breaches. The Insurance Brokers Code Compliance Committee issued guidance in March 2024 to address 'a critical concern: the prevalence of brokers reporting zero breaches and complaints.' The committee noted that:

In the 2022 Annual Compliance Statement, 45% of brokers reported zero breaches and 39% reported zero complaints ... Rather than reflecting perfect compliance, we are concerned that this may reflect oversights or gaps in systems and processes and potentially a culture of not reporting.

<sup>4</sup> National Insurance Brokers Association of Australia, Insurance Brokers Code of Practice, 1 November 2023, p. 9, emphases added.

<sup>5</sup> National Insurance Brokers Association of Australia, Insurance Brokers Code of Practice, 1 November 2023, p. 14, emphasis added.

The Insurance Brokers Code Compliance Committee further observed that:

- brokers who report zero breaches often cite a reliance on staff to identify and report breaches
- too many brokers do not appreciate that they must report all the complaints they receive, even if they are about an insurer or resolved immediately
- the committee expects that every broker, regardless of their size, reports all complaints in the annual compliance statement.

To help address these concerns, the ASBFEO recommends enhancing the current requirement under the Insurers Brokers Code of Practice for employees, agents and representatives to receive appropriate education and training (section 8.2(a)(ii)) – including on the code at least once a year. Code education and training should focus on improving:

- identifying and reporting code breaches and complaints
- monitoring the effectiveness of remediation actions, both short and long-term
- addressing disputes and manageable conflicts and avoiding unmanageable conflicts
- supporting customers experiencing vulnerability (see recommendation 5 below).

In addition, the ASBFEO considers that submitting the Insurance Brokers Code of Practice to the Australian Securities and Investments Commission for approval would strengthen the integrity of the code. According to ASIC:

We believe that codes sit at the apex of industry self-regulatory initiatives ...

[W]here approval by ASIC is sought and obtained, it is a signal to consumers that this is a code they can have confidence in. An approved code responds to identified and emerging consumer issues and delivers substantial benefits to consumers ...

We expect an effective code to do at least one of the following:

- (a) address specific industry issues and consumer problems not covered by legislation;
- (b) elaborate on legislation to deliver additional benefits to consumers; and/or
- (c) clarify what needs to be done from the perspective of a particular industry, practice or product to comply with legislation.<sup>6</sup>

Seeking ASIC approval for the Insurance Brokers Code of Practice would show that the industry is committed to encouraging pre-emptive good conduct, rather than reacting to misconduct. This is especially important given that insurance brokers, unlike financial advisers, are neither subject to a broad statutory best interests duty, nor prohibited from receiving commissions for certain general insurance products (see recommendation 4).

The Insurance Brokers Code Compliance Committee's charter states that the committee 'will be funded and reasonably resourced by NIBA in order to carry out its responsibilities under the Code and this Charter in an effective way.'<sup>7</sup> These responsibilities include assisting code subscribers,

<sup>6</sup> Australian Securities and Investments Commission, *Regulatory Guide 183: Approval of financial services sector codes of conduct*, March 2013, p. 4f.

<sup>7</sup> Insurance Brokers Code Compliance Committee, *Insurance Brokers Code Compliance Committee Charter*, 1 November 2022, p. 3



recommending better practices, publishing information and guidance, and monitoring, investigating and enforcing code compliance by code subscribers.

Given the evident need for the insurance brokerage industry to increase reporting of code breaches and complaints, clarify above-compliance commitments and improve disclosures, the ASBFEO urges the National Insurance Brokers Association to expand the resourcing of the Insurance Brokers Code Compliance Committee.

**Recommendation 4. Enhance transparency of remuneration and the management of conflicts by:**

- a. requiring brokers to disclose transparently, and in writing, all pecuniary and non-pecuniary incentives, in accessible language and simple tables**
- b. specifying what share of a given financial incentive is fee-for-service and what is commission-based**
- c. disclosing any benefits – financial or otherwise – from related-party transactions or relationships**
- d. if fewer than 3 product options are recommended, requiring brokers to explain why**
- e. clarifying who is the true beneficiary of a policy if an authorised representative acts on behalf of multiple clients**
- f. stipulating what constitutes an ‘unmanageable conflict’ and how to avoid them**
- g. requiring clients to confirm their understanding and acceptance of these fully disclosed incentives in writing, both at commencement and renewal.**

As noted above, insurance brokers are exempt from the broad prohibition on conflicted remuneration for general insurance products under the Corporations Act. The rationale for this exemption is that charging commissions on premiums is integral to the business model of insurance brokers, reflecting their role as intermediaries.

Additionally, while financial advice often involves long-term investments or superannuation, insurance brokers deal in more transactional and standardised products, with less incentive to skew recommendations.

In November 2024, the Australian Securities and Investments Commission released guidance explaining that general insurance brokers that are providing, or likely to provide, personal advice to retail clients must obtain permission to be paid a commission.

ASIC has stipulated that if an Australian Financial Services Licensee or representative receives monetary benefits (e.g., commissions) in connexion with issuing or selling general insurance, certain life insurance or consumer credit insurance to a client while providing, or being likely to provide, personal advice to that client, they must:

- obtain the client’s informed consent to receive the benefit before the insurance is issued or sold
- have the client’s written consent (or a copy of it), or a written record of any verbal consent that the client gave, and
- as soon as practicable after the client provided informed consent, give the client a copy of the written consent, or a copy of the written record of the client’s verbal consent

Before a client can give informed consent, the licensee or representative must disclose (among other things):

- the name of the insurer under the relevant product (if known)
- the rate of the monetary benefit the licensee or representative will receive:
  - expressed as a percentage range of the policy cost for general insurance (e.g. 10–20% of the premium), or
  - expressed as a percentage of the policy cost payable for life risk insurance and consumer credit insurance
- the frequency with which the licensee or representative will receive the monetary benefit, and the period over which the benefits covered by the consent could be given (if more than one monetary benefit will be given in connection with the issue or sale).<sup>8</sup>

Informed consent requirements apply to benefits given on or after 9 July 2025, in relation to insurance products issued or sold on or after that date (except renewals of general insurance products originally issued before this date).<sup>9</sup>

The informed consent requirement does not apply to the giving of non-monetary benefits (e.g., education and training) to Australian Financial Services licensees or representatives in connection with issuing or selling insurance.

Non-monetary benefits may still be conflicted remuneration even if the informed consent requirement does not apply to these benefits. Some non-monetary benefits that are not conflicted remuneration include:

- benefits whose value is less than \$300, provided identical or similar benefits are not given on a frequent or regular basis, and
- benefits for education and training purposes, or information technology software or support.<sup>10</sup>

The ASBFEO considers that the Insurance Brokers Code of Practice should anticipate and exceed these regulatory requirements, by:

- seeking informed consent for all non-pecuniary benefits
- disclosing any benefits from related-party transactions or relationships
- requiring brokers to justify if fewer than 3 product options are recommended
- clarifying who is the true beneficiary of a policy if an authorised representative acts on behalf of multiple clients
- stipulating what constitutes an ‘unmanageable conflict’ and how to avoid them.

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<sup>8</sup> Australian Securities and Investments Commission, *FAQs: Informed consents for insurance commissions*, November 2024.

<sup>9</sup> Australian Securities and Investments Commission, *Regulatory Guide 246: Conflicted and other banned remuneration*, November 2024.

<sup>10</sup> Australian Securities and Investments Commission, *FAQs: Informed consents for insurance commissions*, November 2024.

**Recommendation 5. Strengthen section 10 of the code: ‘Supporting clients experiencing vulnerability’ by clarifying obligations on code subscribers and including responsibilities to clients facing economic hardship and abuse.**

The ASBFEO encourages the National Insurance Brokers Association to update and expand the provisions of section 10 of the Insurance Brokers Code of Practice, including by mirroring relevant improvements proposed by the Independent Review of the General Insurance Code of Practice.

In improving the code, we recommend expanding the categories of people supported under section 10 to include those who are vulnerable, suffering hardship **or** subject to economic abuse/coercion. Although vulnerable people may also suffer hardship and abuse, others who should be supported may be subject only to hardship or forms of abuse.

We recommend that the code should:

- adopt broad definitions of vulnerability, financial hardship and economic abuse/coercion, which recognise that these situations may arise from both personal circumstances and market practices, and may cause clients to unknowingly become personally liable for debts and penalties
- actively identify clients facing vulnerability, financial hardship or economic abuse/coercion, so that clients do not have to self-identify to receive support
- add the following risk factors to section 10.1(b): ‘sexual orientation, gender identity, and sex characteristics,’ ‘trauma,’ ‘cognitive impairment,’ ‘bereavement’ and ‘elder abuse’
- expand the term ‘family and domestic violence’ to ‘family and domestic violence, including financial abuse and coercion’
- require brokers to take extra steps for experiencing vulnerability, financial hardship or economic abuse/coercion, including:
  - enabling access to assistance provided by insurers
  - recognising the authority of a support person
  - recording and protecting client information
- require brokers to notify insurers of a client’s financial hardship and vulnerability within 3 business days, so that insurers can fast-track claims, hardship requests or other forms of support.

If you require further information, please do not hesitate to contact [advocacy@asbfeo.gov.au](mailto:advocacy@asbfeo.gov.au).

Yours sincerely



**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman