



GENERAL INSURANCE  
Code Governance Committee



## Life Code Compliance Committee

ASIC ENFORCEMENT REVIEW – POSITION AND CONSULTATION PAPER 4

INDUSTRY CODES IN THE FINANCIAL SECTOR

JOINT SUBMISSION – CODE COMPLIANCE COMMITTEE CHAIRS

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## Introduction

The independent Chairs of committees that monitor compliance with five industry codes in the financial sector welcome the opportunity to make a joint submission and provide information and feedback to Treasury's review into the enforcement regime of the Australian Securities and Investments Commission (ASIC), specifically in relation to *Position and Consultation Paper 4 - Industry Codes in the Financial Sector* released on 28 June 2017 (Consultation Paper).

This submission has been prepared by the Code Compliance and Monitoring team at the Financial Ombudsman Service (FOS) Australia (the code team) in its capacity as administrator and secretariat to code monitoring and compliance committees for the following five industry codes of practice. Appendix A of this submission also provides a broad overview of the respective committee's mandated functions and focus areas.

CODE OF PRACTICE	OWNED BY	CODE COMMITTEE	COMMITTEE CHAIR
Banking	Australian Bankers' Association (ABA)	Banking Code Compliance Monitoring Committee (CCMC)	Mr Christopher Doogan AM – Independent Chair of the CCMC
General Insurance	Insurance Council of Australia (ICA)	General Insurance Code Governance Committee (CGC)	Ms Lynelle Briggs AO – Independent Chair of the CGC
Customer Owned Banking	Customer Owned Banking Association (COBA)	Customer Owned Banking Code Compliance Committee (COBCCC)	Dr Sue-Anne Wallace AM – Independent Chair of the COBCCC
Insurance Brokers	National Insurance Brokers Association (NIBA)	Insurance Brokers Code Compliance Committee (IBCCC)	Mr Michael Gill – Independent Chair of the IBCCC
Life Insurance	Financial Services Council (FSC)	Life Insurance Code Compliance Committee (LCCC)	Prof David Weisbrot AM – Independent Chair of the LCCC

## Role and functions of a code compliance committee

The code compliance committees that monitor the above listed codes of practice are independent of the industries responsible for each of the codes and have powers to identify and address breaches of code obligations. They currently operate in an environment of industry owned self-regulated codes. These codes are voluntary and financial service providers can decide whether to subscribe to the relevant industry code. A financial service provider that has decided to subscribe to the code is required to comply with it.

Some 579 financial service providers subscribed to the five codes in 2016–17. This number does not include those that have now subscribed to the Life Insurance Code of Practice which commenced on 1 October 2016 and provided a transition period until 30 June 2017 for subscribers to be bound (22 subscribers as at 1 July 2017).

By subscribing to a code, each subscriber has made a commitment to:

- work to improve standards of practice and service in their industry;
- promote informed decisions about their products and services; and
- act fairly and reasonably in delivering those products and services.

The governance arrangements of each committee differ slightly but they are each comprised of an independent Chair, a consumer representative and an industry representative. Their individual missions and purpose are aligned to the extent that they each conduct their monitoring activities with the intention of improving the conduct of code subscribers, encouraging continuous improvement in standards of practice within the relevant industry and providing assurance to the community.

These tasks are achieved through risk based monitoring and a suite of targeted monitoring tools such as (but not limited to):

- annual Compliance Statements;
- industry data collection;
- own Motion Inquiries;
- desktop Audits;
- mystery shopping;
- consumer code breach allegations; and
- referrals from FOS and the industry associations.

The committees each meet approximately seven times a year on average and, in addition to those meetings, the committees and the code team regularly engage with industry and consumer stakeholders and ASIC in its capacity as the regulator. In addition to monitoring functions and the production of annual reports, industry data reports, guidance notes and own motion inquiry reports, the committees also review concerns regarding possible code breach allegations. These referrals can come directly from consumers, consumer advocates, FOS or other external dispute resolution schemes or directly from the relevant industry association.

## **ASIC Approval – Position 1**

The Consultation Paper notes that one of the two key issues that it seeks to address is that codes of practice are not currently required to be approved by ASIC. The codes represented in this submission meet most of the benchmarks set out in ASIC's *Regulatory Guide 183* (RG183) for the approval of codes. We note that the Consultation Paper suggests that it may be necessary for ASIC to review and update that document and welcome this development.

In principle, the Chairs of the committees support approval of the codes by ASIC and any steps that would achieve a strengthening of the codes. They recognise that the codes are comprehensive documents that form an important part of the Australian consumer protection framework and are defined by high levels of industry compliance. Nevertheless, approval is a matter for each of the respective industry associations to consider and act upon. The current requirements of RG183 align with the governance and constituency arrangements of the five code committees represented in this submission.

ASIC approval would raise the visibility of the codes of practice and, from a consumer's perspective, may improve their level of trust and confidence in the particular industry. The Chairs recognise that ASIC approval would potentially send a message to consumers and industry participants that the codes are part of a co-regulatory consumer protection framework, functioning to enhance or clarify existing consumer protections and to provide those protections where they don't currently exist in law. It would provide an additional incentive for participating code subscribers to comply with the relevant code.

The Consultation Paper also suggests that, as codes are currently not required to be approved by ASIC, they are therefore not subject to a requirement to contain a minimum set of consumer protections. The suggestion is that a code should set out base level rather than best practice service standards. Code Chairs would agree that codes should be drafted in plain language, be accessible and outline expectations and obligations. In many respects, the law has caught up to codes and many of the industry sectors have a significant amount of regulation that dictates minimum requirements. Nevertheless, to foster trust and comfort for consumers it remains important for a code to include expectations that industry commit to continuous improvement and best practice.

## **Mandatory Subscription – Position 2**

The second key issue noted in the Consultation Paper is that not all players in relevant industry subsectors are code subscribers and that entities engaging in activities covered by an approved code should be required to subscribe to that code. We note that under the current approval framework some consumers may miss out on code protection if the relevant financial service provider has not subscribed to the code.

However, there is often a flow-on effect to non-code subscribers because industry codes are seen as a benchmark of appropriate conduct or standards of service in that particular sector of the industry. To remain viable and competitive, those providers may need to adopt the standards of the relevant code into their business practices. This is most evident in FOS decision making that takes into account applicable industry codes when considering what is fair in all the circumstances of a dispute.

There are mixed views among the Code Chairs as to whether a requirement to subscribe would necessarily achieve improved outcomes.

## **Enforceability – Position 3**

The status of contractual enforceability varies for each of the codes referred to in Appendix A of this submission.

For example, the General Insurance Code of Practice is not incorporated by reference into the contract of insurance, and the code itself states that it does not create legal or other rights between a code subscriber and any person or entity other than the industry association. However, code subscribers are contractually bound to comply with the code by a formal agreement with the industry association. As a result, the GI Code Governance Committee may enforce the terms of that code. The independent reviewer of the previous GI

Code stated that there were several ways in which the former code was legally enforceable and the same principles apply to the current iteration of that code.

By contrast, under the Code of Banking Practice, once a bank subscribes to that Code it becomes mandatory for that bank to comply and the obligations under the Code are incorporated into the contracts between the bank and those customers to whom the Code applies.

In both circumstances, the mandate or charter of the governing body should be sufficiently robust and contain adequate provisions for monitoring and enforcement. In these circumstances, it is difficult to see clearly what value contractual enforcement would add to enforceability of the codes by the code governing body.

## **Redress for Customers – Position 4**

All the codes represented in this submission provide the ability for an individual customer to seek appropriate redress through the participant's internal and external dispute resolution arrangements. In fact, it is actively anticipated by each of the codes that if a breach of the code leads to a consumer experiencing financial loss, then the most appropriate forum for the consumer to seek redress would be through internal or external dispute resolution and not through an investigation by the code monitoring committee. In some cases, the committees have the power to deal with non-compliant behaviour, whether it is isolated or widespread in its effect. In relation to significant breaches, some committees can require the code subscriber to implement corrective measures, which might include redressing financial or non-financial impact on affected consumers resulting from the non-compliant behaviour.

The Consultation Paper also suggests that the jurisdiction of codes of practice should be aligned with the new Australian Financial Complaints Authority (AFCA). However, this alignment could inadvertently result in some consumers being excluded from the scope of the relevant code. For example, currently uninsured third parties have access to the GI Code in relation to financial hardship but they are not covered by the current FOS Terms of Reference.

Ideally, a code of practice should apply equally to all consumers within a particular industry and consumers should not be disadvantaged because the financial service provider does not subscribe to a code or is not captured by the jurisdiction of its external dispute resolution mechanism. There may also be unintended impacts of aligning jurisdiction, particularly as the application of a code does not necessarily have to align with the monetary limits of jurisdiction.

## **Code Monitoring Body – Position 5**

This submission seeks to outline the governance and structure of five independent code compliance committees in the financial services industry. The current provisions of RG183.79-81 already dictate the arrangements and expected responsibilities of a code monitoring body, all of which are demonstrated by these committees.

In addition to the independence of such committees (or equivalent monitoring bodies), this submission wants to highlight the value of robust resourcing, which is also independently set

by the body, as well as the value of the power to sanction. The addition of the ability to refer or escalate matters to the regulator would add further credibility to the ability of a code monitoring body to provide robust protection to consumers.

## **Concluding Remarks**

Collectively, the Chairs of the code compliance and monitoring committees outlined above support the review and development of Industry codes to ensure they remain relevant and provide appropriate protections for consumers. In addition, the Chairs acknowledge the need for robust governance arrangements that ensure independence and equip the monitoring functions with appropriate powers to monitor industry's compliance with the code and to investigate and report on areas of non-compliance.

The Chairs recognise the importance of their roles and that of their committees in providing both consumers and industry with a meaningful monitoring program that focusses on emerging issues and encourages continuous improvement. The Committees are committed to working with both industry and external stakeholders, including regulators and consumer advocates, to develop and implement best practice initiatives and to provide assurance to consumers that code subscribers are meeting their code obligations.

If the Taskforce has any questions or would like to discuss any aspects of the Committees' work or this submission, please do not hesitate to contact General Manager, Sally Davis, on 03 9613 7341 or by email at [sdavis@codecompliance.org.au](mailto:sdavis@codecompliance.org.au).



## Appendix A – About the Industry Codes of Practice

### The CCMC and the Code of Banking Practice

The CCMC is an independent compliance monitoring body established under clause 36 of the [2013 Code of Banking Practice](#) (Banking Code). It is comprised of an independent chair, a representative of the code subscribers and a representative of individual and small business consumers.

The CCMC's Mandate (which is an attachment to the Banking Code) sets out its powers and functions, which include:

- monitor Code-subscribing banks' compliance with the Banking Code's obligations;
- investigate an allegation from any person that a bank has breached the Banking Code; and
- monitor any aspect of the Banking Code that is referred to the CCMC by the ABA.

The Banking Code is a voluntary code of conduct which sets standards of good banking practice for subscribing banks to follow when dealing with persons who are, or who may become, an individual or small business customer of a Code-subscribing bank, or a guarantor. The Banking Code and Mandate were developed and published by the ABA. Once a bank subscribes to the Banking Code it becomes mandatory for that bank to comply with the Code and the obligations under the Code are incorporated into the contract between the bank and those customers to whom the Banking Code applies.

Thirteen banking groups currently subscribe to the Banking Code. These banking groups cover approximately 95% of the Australian retail banking industry.

### Reviews of the Banking Code and the CCMC

In April 2016, the ABA announced that it would be reviewing the Banking Code as part of a package of measures to improve trust in the Australian banking industry. An independent review was undertaken by Mr Philip Khoury of Cameron Ralph Khoury throughout 2016. Mr Khoury's [report](#) of the review of the Banking Code was published in February 2017.

In accordance with clause 14.3 of the CCMC's Mandate, the CCMC arranged a review of its operations to coincide with the review of the Banking Code. This [review](#) was also undertaken by Mr Khoury, who through his review, made six recommendations that seek to improve the effectiveness of the CCMC's monitoring program.

In response to the reviews, the ABA released a report stating that they support 61 of the 99 recommendations. 33 recommendations were either supported in principle, supported in part, or the industry required additional time to consider, and five recommendations were not supported. It is the CCMC's understanding that the ABA has commenced redrafting the Banking Code and Mandate, through this revision process it is understood that the ABA will be engaging with ASIC to have the new Banking Code and Mandate approved under section 1101A of the Corporations Act 2001. A revised Code is due to be completed by the end of 2017.

Copies of the CCMCs 2017–20 Workplan, Inquiry reports and other publications are available on its website [www.ccmc.org.au](http://www.ccmc.org.au).

## The CGC and the General Insurance Code of Practice

The Code Governance Committee (the CGC) is the independent body responsible for the administration, monitoring and enforcement of Code Subscribers' compliance with the [General Insurance Code of Practice](#) (the GI Code). In addition, the GI Code's governance framework empowers the CGC to provide quarterly reports to the Board of the Insurance Council of Australia (ICA) with recommendations on any GI Code improvements, Code-related issues and matters of importance.

The CGC has wide powers to monitor and enforce compliance with the GI Code, including the power to issue sanctions. Each year the CGC develops a work plan which incorporates a compliance framework having regard to several factors including the relevance, benefits and value of the activity and the areas being targeted from a risk perspective and areas of emerging risk. Some of the compliance monitoring tools utilised by the CGC are Own Motion Inquiries (OMI); Desktop Audit (DTA); Compliance Investigations; and Significant Breaches.

The ICA developed the GI Code as a voluntary industry code that seeks to:

- commit Code Subscribers to high standards of service;
- promote better and more informed relations between consumers and Code Subscribers;
- maintain and promote trust and confidence in the general insurance industry;
- provide fair and effective mechanisms for the resolution of complaints and disputes between consumers and Code Subscribers; and
- promote continuous improvement of the general insurance industry through education and training.

The current version of the GI Code, which became operational on 1 July 2015, applies primarily to retail (rather than wholesale) general insurance products. It contains standards on a range of areas of general insurer practice including standards for claims and complaints handling.

Currently, 49 general insurers and 132 Lloyd's Australia Limited coverholders and claims administrators voluntarily subscribe to the GI Code. These Code Subscribers represent a substantial sector of the Australian retail general insurance market.

### Overview of the CGC's work

The CGC produces information periodically on its activities and to provide guidance on compliance with the GI Code to Code Subscribers and other interested persons.

The [General Insurance Code of Practice Annual Report 2015–16](#) details the CGC's compliance, monitoring and other activities and examines Code Subscribers' compliance with the GI Code during the period 1 July 2015 to 30 June 2016 (2015–16).

The CGC's [Industry Data Report 2015–16](#) contains, for example, a 'year at a glance' summary of statistics regarding personal insurance policies and claims, disputes, industry-identified and reported breaches and the general insurance workforce. The Industry Data Report also contains the CGC's key observations across the financial year,



recommendations to improve Code Subscribers' compliance with the GI Code and identifies broad industry trends.

In May 2017 the CGC published its [Own Motion Inquiry](#) report which provides an in-depth look at the claims investigation and outsourcing practices of a selection of general insurers who subscribe to the GI Code. The Own Motion Inquiry has resulted in 30 recommendations aimed at helping general insurers and other industry participants who subscribe to the Code to improve compliance with GI Code standards. These recommendations include several in relation to the conduct of Investigators within a claims environment, including a recommendation that Code Subscribers work with the ICA to develop a set of best practice standards.

### Review of the General Insurance Code of Practice

On 17 February 2017, the ICA launched its review of the GI Code. The CGC provided a submission to the ICA in relation to various sections of the Code and suggested additional standards, ways to address gaps in the existing standards, and provide clarification on the application of standards where this is necessary.

### The COBCCC and the Customer Owned Banking Code of Practice

The COBCCC is an independent compliance monitoring body established under Section 4 of the Customer Owned Banking Code Compliance Committee Charter and Part E of the Customer Owned Banking Code of Practice (COB Code). It is comprised of an independent chair, an industry representative and a consumer representative.

The COBCCC Charter sets out its powers and functions, which include:

- monitor compliance with COB Code obligations, including conducting Own Motion Inquiries;
- investigate complaints made by any person or as a referral that a Code subscriber has breached the COB Code; and
- engage with stakeholders about COB Code compliance and advise on COB Code matters and Committee operations.

The COB Code sets standards of good industry practice for the institutions that have agreed to comply with its provisions when dealing with current and prospective individual and small business customers. It includes:

- 10 key promises containing general principles or values that apply to all customers, as well as the broader community;
- 30 specific sections detailing how these key promises are to be delivered by Code subscribers; and
- Information about how the COB Code is administered.

The COB Code is owned and published by the Customer Owned Banking Association ([COBA](#)) – the industry advocate for Australia's customer owned banking sector – and forms an important part of the broader national consumer protection framework and financial services regulatory system.

By subscribing to the COB Code, institutions have voluntarily committed to uphold good industry practice, promote informed decision-making about their services, and act fairly and reasonably in delivering those services. The COB Code is incorporated by reference in institutions' written Terms and Conditions for products and facilities to which the Code applies.

There are currently 67 customer owned banking institutions subscribing to the Code, comprising credit unions, mutual banks and mutual building societies.

## Reviews of the Customer Owned Banking Code of Practice and the COBCCC

The COB Code has recently been revised to accommodate changes ASIC made to [Regulatory Guide 221](#) *Facilitating digital financial services disclosures* and the *e-Payments Code*. The revised Code has been effective from 1 July 2016.

In accordance with Part E Section 23 of the COB Code, COBA in consultation with the Committee will arrange for a review of the Code to be undertaken at least every five years. COBA has yet to provide any specific information regarding a scheduled Code review.

## Overview of the COBCCC's work

The COBCCC promotes compliance with the COB Code to encourage best practice by Australian customer owned banking institutions to benefit their customers and communities. To do this the COBCCC engages in the following activities:

- deliver efficient and effective Code compliance monitoring and reporting practice;
- enhance public role and stakeholder engagement; and
- ensure efficient and effective operations and sustainability.

The COBCCC has therefore designed its Work Plan 2017–18 with its primary focus on:

- improved interaction and engagement with Code subscribers, consumer advocates and regulators;
- innovative analytical work in risk based areas to ensure compliance with Code obligations; and
- a collaborative approach to encourage good industry practice.

The Committee's work program priorities will include:

- The 2017 Annual Compliance Statement (ACS) program.
- A compliance verification program.
- One minor and one major Code monitoring activity to actively assess compliance with a specific area of Code obligation in more detail.
- Continued communication with stakeholders sharing observations and insights on Code monitoring activities, including the development of webinars.
- Engagement with both COBA, industry groups, consumer advocates and Code subscribers to promote understanding of the Committee's operations, and encourage good industry practice.

Information about the COBCCC activities, Inquiry reports and publications are available on its website [www.cobccc.org.au](http://www.cobccc.org.au).

## The IBCCC and the Insurance Broker Code of Practice

The IBCCC is an independent compliance monitoring body established under Section 3 of the Insurance Brokers Code Compliance Committee Charter and formally approved by the National Insurance Brokers Association ([NIBA](#)). It is comprised of an independent chair, an industry representative and a consumer representative.

The IBCCC Charter sets out its powers and functions, which include:

- monitor compliance with IB Code obligations, including conducting Own Motion Inquiries;
- investigate complaints made by any person or as a referral that a Code subscriber has breached the IB Code; and
- engage with stakeholders about IB Code compliance and advising on IB Code matters and Committee operations.

The [Insurance Brokers Code of Practice](#) (IB 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 IB Code contains 12 key service standards that apply to all insurance broking services delivered to individuals and small businesses by Code subscribers across Australia.

The IB Code is owned and published by NIBA and forms an important part of the broader national consumer protection framework and financial services regulatory system. It is mandatory for NIBA members to subscribe to the Code.

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

There are currently 318 insurance brokers subscribing to the IB Code.

### Reviews of the Insurance Brokers Code of Practice and the IBCCC

Prior to 1 January 2014, insurance brokers reported against obligations of the 2007 version of the IB Code, and their compliance was monitored directly by the Financial Ombudsman Service (FOS) Australia.

From 1 January 2014, a revised IB Code came into effect, establishing a new governance structure – the IB Code Compliance Committee, to monitor compliance with the Code.

Neither the IB Code nor the Charter requires any formal review of the Code within a certain timeframe. However, page six of the IB Code states that:

*The Code is a living Code that can be updated by NIBA at any time to take into immediate account where necessary any significant market developments and industry experiences. NIBA will arrange for the Code to be reviewed every three years. In making any changes NIBA will consult with relevant stakeholders, including consumer representatives, Code Members, FOS, the Code Compliance Committee and relevant government agencies.*

NIBA has yet to provide information regarding any scheduled Code review.

## Overview of the IBCCCs work

The IBCCC's vision is to support insurance brokers to achieve service standards Australians can trust. Its mission is to independently monitor compliance with the IB Code to improve professionalism, including standards of practice and service in the Australian insurance broking industry.

To do this the IBCCC engages in the following activities:

- deliver an efficient and effective Code breach monitoring and reporting process;
- enhance public role and stakeholder engagement; and
- ensure efficient and effective organisational development and sustainability.

The IBCCC has therefore designed its Work Plan 2017–18 to focus on:

- improved interaction and engagement with Code subscribers about their IB Code obligations; and
- the ongoing development of investigations and code monitoring processes and procedures.

The Committee's work program priorities will include:

- The 2017 Annual Compliance Statement (ACS) program.
- A compliance verification program.
- One own motion inquiry.
- Continued communication with stakeholders sharing observations and insights on IB Code monitoring and activities.
- Engagement with NIBA, industry cluster groups, consumer advocates and Code subscribers to promote understanding of the Committee's operations, and encourage positive breach and complaints monitoring and reporting.

Information about the IBCCC activities, Inquiry reports and publications are available on the FOS website at <http://www.fos.org.au/publications/code-compliance-publications/>.

## The Life CCC and the Life Insurance Code of Practice

The [Life Code Compliance Committee](#) (Life CCC) is an independent compliance monitoring body governed by the Life Insurance Code of Practice (LI Code) section 12 and supplemented by the Life Insurance Code Compliance Committee Charter (LI Charter), which sets out the Committees functions and responsibilities.

The LI Code became operational on 1 July 2017 and is the first iteration of an industry code that sets standards of good industry practice for life insurance companies and friendly societies in Australia. The LI Code was developed by the Financial Services Council (FSC) and is a voluntary industry code that seeks to:

- commit Code Subscribers to high standards of service;
- ensure continuous improvements within the life insurance industry; and
- increase community trust and confidence in the insurance industry.

The FSC will work with the Life CCC, relevant regulators and stakeholders to encourage all life insurers and other industry participants that carry on business in Australia to adopt the Code. Currently there are 29 life insurance companies and 12 friendly societies registered to conduct life insurance business in Australia under the *Life Insurance Act 1995*. Of the 29 life insurance companies registered with APRA, 22 have subscribed to the LI Code, representing approximately 78% of all life insurance companies. Of the 12 friendly societies registered with APRA to conduct life insurance business, only one has subscribed to the LI Code.

### Overview of the Life CCC's work

On 20 July 2017, Life CCC convened its inaugural meeting and is now responsible for the independent administration and enforcement of the LI Code. The Life CCC is made up of three members: an independent industry representative, a consumer representative and an independent chair.

The Life CCC has the responsibility to monitor compliance, investigate and issue sanctions for breaches of the code. In addition to investigation and monitoring work, the Life CCC is responsible for publication of an annual report and aggregated industry data. The aggregated industry data the Life CCC produces will take into account any industry data already published by any regulator or the FSC, to avoid duplication. The Life CCC is also responsible for providing regular reports to the FSC Life Board Committee, with recommendations on any suggested Code improvements and industry issues, including where non-compliance with any standards of the Code indicates a systemic industry issue or highlights weaknesses in the Code.