

Strengthening transparency and trust in broker-agent arrangements



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Acknowledgement of Country

We acknowledge the traditional owners of Country throughout Australia and pay our respects to Elders past and present.

Introduction

With more Australians living in apartments, townhouses and multi-dwelling communities, the need for strata insurance is expanding rapidly. For owners corporations, insurance is one of the most significant financial decisions, often involving substantial premiums and complex risk considerations.

Brokers and strata managers play a critical role in supporting these decisions. When these relationships operate effectively, they can deliver efficiency and improved outcomes. However, they also introduce risks, particularly when remuneration structures and commercial relationships may influence advice or placement.

The Insurance Brokers Code of Practice (the Code) mitigates some of these risks by setting clear expectations for how brokers operate and how they ensure their representatives operate appropriately.

The Code requires that brokers remain accountable for the conduct of people acting on their behalf (section 8.1). This ensures that clients receive a consistent standard of service, regardless of whether they are dealing directly with a broker or through a representative of the broker.

To support this, brokers must ensure their agreements with representatives include obligations that require compliance with the Code, including obligations to report breaches and complaints (section 8.2(a)(iv)). This helps ensure representatives understand what is expected of them and brokers can hold them accountable if the representatives fail to meet requirements.

The Code also requires brokers to actively monitor Code compliance, including regularly reviewing how well their staff and representatives are meeting Code standards and taking steps to address any gaps (section 8.2(v)).

In addition, brokers must ensure that clients know how they are paid, including any commissions, fees or benefits they receive (section 6.1). This transparency allows clients to understand any potential influences on the advice or service they receive.

If a conflict of interest arises, the Code requires more than disclosure. Brokers must clearly explain the conflict, manage it in the client's best interests, and obtain the client's informed consent before continuing to act (section 5.3(d)).

These requirements are foundational safeguards designed to ensure clients can make informed decisions and maintain confidence in the advice and service they receive.

Executive summary

We conducted a review of seven brokers collectively operating with 1,088 representatives in strata management.

Our review identified weaknesses in how some brokers oversee and take responsibility for strata insurance arrangements involving their authorised representatives and distributors.

We found that brokers are not consistently implementing the safeguards required by the Insurance Brokers Code of Practice (the Code).

In our review of seven brokers, we observed:

- › Agreements with representatives that do not meet Code requirements.
- › Over-reliance on representatives to disclose remuneration, without verifying that disclosures reach the owners corporation as the client.
- › Conflicts of interest not actively managed in the client's best interests.
- › Limited oversight of representative conduct and compliance.

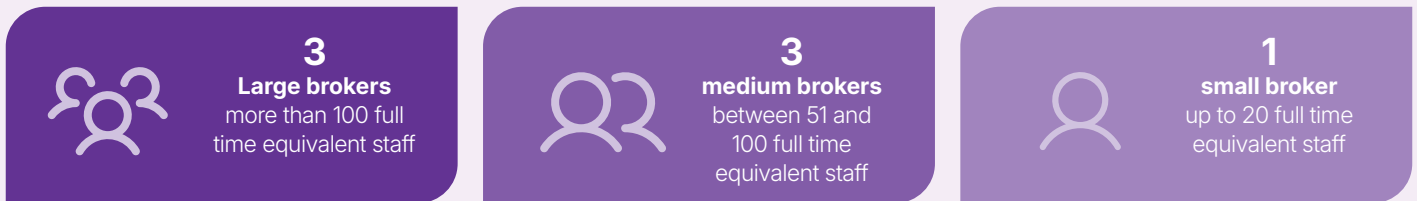
Owners corporations rely on brokers and strata managers to act in their best interests in complex, high-value insurance decisions. The Code commitments exist to support transparency, accountability and informed client decision-making.

We expect brokers to take a more structured and proactive approach to managing these risks. Brokers should strengthen their representative agreements, identify and manage conflicts of interest, review remuneration arrangements that may create poor incentives, and implement oversight mechanisms to verify that disclosures and representative conduct meet Code requirements in practice.

In this report, the term "representatives" is used as a collective reference to authorised representatives, distributors and agents engaged by insurance brokers.

Our review

Our review involved seven brokers of different sizes:



The review focused on:

- ✓ The nature of relationships and formal agreements between brokers and their representatives acting as strata managers.
- ✓ Identification of the owners corporation as the client in these arrangements.
- ✓ Oversight of compliance with Code commitments.
- ✓ Disclosure of conflicts of interest and remuneration.
- ✓ Commitments in the Code and obligations in NIBA's Strata Insurance Guidance.

We asked the brokers to provide information for us to assess their oversight:

- ✓ Arrangements with their representatives, including copies of relevant agreements, policies, procedures, and guidance.
- ✓ Contractual agreements between their representatives and their clients.
- ✓ Details of how they identify and manage potential conflicts of interest.
- ✓ Details of how they oversee and manage their representatives.

Key outcomes

Following the review, we issued nine formal breach determinations across all seven brokers. Five brokers received one breach determination each, and two brokers received two breach determinations each.

The breach determinations included:

- › Seven breaches of the commitment to ensure representative agreements include specific Code commitments (section 8.2(a)(iv)).
- › One breach of the commitment to ensure remuneration information is disclosed to the client (section 6.1(a)).
- › One breach of the commitment to identify, disclose and engage clients on conflicts of interest (section 5.3(d)).

Following our formal breach determinations, we referred:

- › Two brokers to the Australian Securities and Investments Commission (ASIC) for consideration of non-compliance with relevant conflict management requirements under the *Corporations Act 2001 (Cth)*.
- › Our concerns about strata insurance management to NSW Fair Trading for consideration under obligations in *Strata Schemes Management Act 2015 (NSW)*.

Our review resulted in immediate improvements to practices, with most brokers keen to address the gaps we identified and all brokers updating agreements and strengthening oversight arrangements once issues were identified. One matter remains subject to an ongoing investigation.

This report sets out our findings and clear expectations. All brokers should review their practices in light of these findings and take steps to address any risks they identify.

We will review the extent to which brokers have taken on our recommendations in our review of conflict management practices.

Findings

Contractual agreements do not meet Code commitments

All seven brokers had formal agreements in place with their representatives. However, none of the agreements that we reviewed met the requirements of section 8.2(a)(iv) of the Code.

These agreements did not:

- › include explicit obligations requiring representatives to comply with the Code and its principles
- › require representatives to report breaches or potential breaches within five days; and
- › require representatives to immediately report complaints related to Code breaches.

Instead, brokers advised us that they rely on general obligations to comply with “relevant law”. Three agreements we reviewed defined relevant law to include the Code alongside other legislative requirements. While these agreements contain clauses that refer to the Code at a high level, they do not provide the specific details that the Code requires.

What this means

Using broad clauses that refer to “relevant law” does not meet the Code’s requirements.

Three brokers went further by expressly including the Code within the definition of “relevant law”. However, this does not identify the specific Code commitments that representatives are expected to meet. Nor does it clearly communicate what representatives need to do to support compliance with the Code.

The Code is not legislation, so a general requirement to comply with “relevant law” is not enough.

Brokers need to set out the Code commitments clearly in their agreements with representatives, including requirements to report breaches and complaints as well as accountability arrangements.

Broad clauses in agreements do not empower brokers to effectively monitor and oversee that their representatives are meeting requirements. This creates several risks:

- › **Unclear expectations** – Representatives are not given specific direction on how Code obligations apply in their day-to-day conduct.
- › **Delayed or missed escalation of issues** – Without defined reporting requirements, brokers may not identify or escalate breaches and complaints in a timely way.
- › **Reduced visibility of risk** – Brokers do not receive information across their representative networks to identify patterns or emerging issues.
- › **Limited enforceability** – General clauses do not provide the specific elements to hold representatives directly accountable for actions in practice.

Taken together, this weakens the effectiveness of agreements as a tool for embedding accountability, supporting oversight and enabling early identification of issues.

What we expect

All brokers should review their representative agreements to ensure they clearly require the representative to:

- › comply with the Code Principles and other provisions of the Code relevant to the services they are providing
- › report breaches or potential breaches of the Code within five days of identifying them; and
- › report to us immediately when they receive a complaint about a breach.

Agreements should not rely solely on general legal compliance clauses. They should be specific about the Code’s requirements and provide clear, practical direction and accountability.

Conflicts of interest are not always well understood or effectively managed

Our review found instances where brokers had not properly identified or managed conflicts of interest in their arrangements with representatives.

In some cases, this meant representatives were placed, or risked being placed, in a position where their obligations to the broker could conflict with their duties to the client.

The Code requires brokers to identify, disclose and actively manage conflicts of interest in the client's best interests (section 5.3(d)). Brokers need to consider whether arrangements create a conflict, explain that conflict clearly to the client, and demonstrate how the conflict will be managed in the client's best interests.

For two brokers, which have 498 representatives between them, we identified provisions in agreements that required strata managers (acting as distributors of the brokers) to solely promote and protect the interests of the broker. However, strata managers have legal duties to act in the best interests of the owners corporation, their client.

This created a clear tension between the representative's contractual obligation to act in the interests of the broker and their obligation to act in the best interests of the owners corporation.

In these cases, there was no evidence that the broker and the strata managers were acting in the interests of the owners corporation. We raised this issue with both brokers, and both acknowledged it and amended their agreements to remove the provisions in their agreements.

While the brokers amended their agreements, we referred these matters to NSW Fair Trading which has engaged with the strata managers involved.

In another instance, we investigated a broker with seven representatives. One of those representatives was a strata management company that wholly owned the broker. As the broker's owner, the strata management company had a financial interest in the broker's business, including the business placed through its relationship with the broker. There was a profit-sharing arrangement in place.

This arrangement presents a conflict of interest. However, the broker did not recognise it as one. Although arrangements were disclosed in some client-facing documents, the disclosures set out why the arrangement was beneficial for the client. The disclosures did not acknowledge that the ownership model presented a conflict, nor did it explain the steps that the broker would take to deal with this conflict.

We determined this broker in breach of the commitment in the Code at section 5.3(d) to identify, disclose and actively manage conflicts in the client's best interests.

What this means

Conflicts of interest can arise in a range of ways, including the structure of arrangements and in the provisions of agreements, particularly where brokers and strata managers are related entities.

If these conflicts are not properly identified, declared and managed, representatives may be placed in a position where they have competing obligations to the broker and the client. Clients may also be left without a clear understanding of how the broker's relationships could influence the advice or service being provided.

Unmanaged conflicts can disadvantage clients if the advice, recommendations or services they receive are influenced by interests other than their own. This creates a risk of consumer harm and undermines confidence in the integrity of the broking profession.

Disclosure alone is not enough if it does not clearly identify the conflict and explain the steps a broker will take to manage it. Similarly, describing an arrangement as beneficial to the client does not resolve the conflict if the broker has not also explained the risks the arrangement creates and how it intends to mitigate them.

If a conflict is not recognised as a conflict, it cannot be effectively managed.

What we expect

Brokers should take a structured and proactive approach to identifying and managing conflicts of interest. This includes:

- › Reviewing representative agreements to identify and remove provisions that create conflicting duties.
- › Ensuring arrangements do not place representatives in a position where they must balance competing obligations to the broker and the client.
- › Identifying structural conflicts early, including any that may arise from ownership, distribution or profit-sharing arrangements.
- › Explaining conflicts to the client clearly, including how they may influence advice or service.
- › Demonstrating how the conflict will be managed in the client's best interests, with documented evidence.
- › Obtaining informed client consent to continue to act on their behalf.
- › Providing ongoing training and guidance to staff and representatives to ensure they understand how to identify, escalate and respond to conflicts of interest.

Not all conflicts can be effectively managed. Brokers should critically assess whether the controls and safeguards available are sufficient to address the risks from the conflict. If they are not, the broker should decline or cease the engagement.

Disclosure practices rely on assumption rather than assurance

Our review found instances where brokers relied on their representatives to pass remuneration disclosures to owners corporations, without having adequate mechanisms to verify that the disclosures had reached the client.

The Code is clear that brokers remain responsible for ensuring that their employees and representatives comply with the Code when acting on their behalf (section 8.1). This includes ensuring that they meet key Code commitments in practice, such as disclosing remuneration.

We assessed how brokers ensured their representatives complied with the Code's disclosure provisions (section 6.1). We reviewed correspondence between the brokers, strata managers and owners corporations to assess whether brokers could be confident that their remuneration disclosures were being provided to the client (the owners corporation).

In the matters we reviewed, brokers provided remuneration disclosure information to the strata manager (acting as their representative), then relied on the strata manager to pass that information on to the owners corporation. However, the brokers did not have adequate mechanisms to verify that this had occurred.

In effect, brokers treated providing disclosure information to their representative as sufficient to meet their Code commitments. That approach does not provide assurance that the client actually received the disclosure.

In one case, after our engagement, one broker was able to show evidence that the disclosure had occurred. This demonstrated that verification is possible, and highlighted the importance of building assurance mechanisms into oversight.

What this means

Brokers cannot assume that remuneration disclosures have reached the client simply because they provided the information to a representative. The commitments in the Code are to the client.

In the case of strata insurance, the client is always the owners of the apartments, often represented by an owners corporation. A strata manager is never a broker's client.

If a broker relies on representatives to communicate disclosures, they need a way to verify that the disclosure was actually provided to the client. Without this, brokers may be unable to demonstrate that they have met their Code commitments.

The lack of verification creates a risk that:

- › clients do not receive clear information about commissions or remuneration
- › brokers do not know if their representatives are consistently meeting disclosure commitments
- › brokers are unable to show compliance if the disclosure is later questioned.

Effective oversight is achievable. However, our review found that it was not consistently embedded, with some brokers relying on assumptions rather than mechanisms that provide assurance.

What we expect

Brokers should put mechanisms in place to ensure remuneration disclosures are effectively communicated to clients.

This may include:

- › Establishing a process to verify that disclosures reach the client.
- › Requiring evidence of disclosure, such as correspondence or records.
- › Requiring representatives to confirm when they provide disclosure to a client.
- › Conducting periodic audits or spot checks of disclosure practices.
- › Embedding clear and enforceable disclosure obligations in representative agreements.

ASIC [Regulatory Guide RG 181](#) provides useful [guidance](#) on the legal obligations for having adequate arrangements to manage conflicts of interest, including identifying conflicts, adequate arrangements, and effective conflicts management.

CASE STUDY

MANAGING A CONFLICT OF INTEREST IN A STRATA INSURANCE ARRANGEMENT

A strata manager recommends that an owners corporation purchases insurance through a broker.

- › The broker is wholly owned by the strata manager
- › The strata manager acts as the broker's authorised representative
- › The strata manager receives a share of the broker's profits.

This creates a significant conflict of interest. Because the strata manager has a financial interest in the owners corporation using that broker, the recommendation could be influenced by the strata manager's commercial interests, rather than the interests of the owners corporation. In arrangements of this nature, demonstrating effective management can be difficult.

In this situation, the broker must do more than just disclose that the businesses are related. The broker must clearly explain the conflict, how the conflict may affect the recommendation, and how the broker will manage the conflict in the interests of the owners corporation.

To manage the conflict of interest and ensure full meaningful disclosure, the broker must:

1. Explain the relationship between the broker and the strata manager.

This should cover the ownership, authorised representative arrangement, commissions, fees, profit-sharing arrangements and any other financial benefits.

2. Identify the risk created by the arrangement.

This should include the financial interest the strata manager and broker have in the owners corporation using the broker's services.

3. Show how the conflict will be managed.

This should include any separation of decision-making, oversight or review of recommendations, and records showing that the recommendation was based on objective criteria such as price, coverage and exclusions.

4. Set out the insurance options considered.

This should include the insurers approached, the policy options assessed, why the recommended policy was selected, and the key differences between available options.

5. Support the owners corporation to make an informed decision.

This should include giving the owners corporation clear information, sufficient time to consider the recommendation, and an opportunity to ask questions.

6. Obtain informed consent from the owners corporation.

This should include confirming that the owners corporation understands the conflict, the risks it creates, how the broker will manage it, and the options available. The consent should be documented.

Disclosure alone is not enough. The broker must be able to demonstrate that the conflict can be effectively managed in practice.

If the broker cannot show that the owners corporation's interests remain the primary consideration, or that the risks created by the conflict can be adequately addressed, the broker should not proceed with the arrangement.

What is next

Brokers should use this report to help them assess whether their governance, agreements, guidance and oversight meet the commitments they made in the Code of Practice.

We expect brokers to proactively review and strengthen their practices based on our review and the findings.

If future reviews identify similar issues, we will consider the extent to which a broker has used this report and taken reasonable steps to address risks as an important factor in our assessments and responses.

Appendix

Relevant provisions in the Code

5.3 Who we act for

(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.

6.1 Disclosing remuneration

(a) 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.

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.

8.2 Promoting the Code

(a) We will do the following to promote compliance with the Code: [...]

(iv) include obligations in our agreements with agents and representatives:

- (A) to comply with the Code Principles and other provisions of the Code relevant to the services they are providing;
- (B) to report on breaches or potential breaches of the Code within five (5) days of discovery;
- and
- (C) to report to us immediately upon receiving a complaint about a breach of the Code.

