

2 April 2025

2025 Independent Review

NIBA Insurance Brokers Code of Practice

Via email: niba_code_review@crkhoury.com

Dear Sir/Madam

REVIEW OF THE NIBA INSURANCE BROKERS CODE OF PRACTICE

Thank you for the opportunity to contribute to the Review of the NIBA Insurance Brokers Code of Practice.

The Owners Corporation Network of Australia Limited (OCN) was established in 2002 and is the independent peak consumer body representing the rights and interests of residential strata and community title owners and residents.

OCN is a full member of the Consumers' Federation of Australia and will also contribute to their submission to the Review on broader financial services policy matters.

This submission deals specifically with aspects of the \$2 billion strata insurance market that have raised significant ethical questions for the insurance broking industry and the role and performance of the Code.

1. Scope of review

In 2024 the ABC's 7.30 Report on the NetStrata business and a subsequent Four Corners program raised broad systemic concerns about the sector generally, and the strata insurance market in particular. These concerns directly relate to the Review's agenda as outlined in the Consultation Paper, specifically:

- Disclosure of remuneration
- Remuneration models
- Transparency of business structures
- Authorised representative models

These elements broadly summarise our ongoing concerns with the current strata insurance market. Brokers play a key role and a strengthened Code will assist in improving consumer confidence and trust in all service providers, including brokers.

2. Conflicts of Interest

A key issue highlighted by the ABC was the perceived conflict of interest inherent in the common ownership by the Steadfast Group of both underwriting agencies, who represent insurers, and brokers who act for consumers. OCN previously raised similar concerns, noting that there did not appear to be any publicly available information on how that conflict was managed within the Group.

Steadfast has since advised shareholders that an internal review had found no evidence of actual conflicts of interest in terms of incentives between their business units, or non-compliance with legislative or regulatory compliance.

Nonetheless, the Group reported the introduction of a new Operating Expectations Statement for strata subsidiaries that will “enhance disclosures to meet reasonable consumer expectations by simplifying fee and commission disclosures.” It has also revised its Conflicts of Interests and Policy Framework and created a new Internal Audit function.

While welcome, these steps appear to be an acknowledgement that more could have been done before the ABC reporting to ensure transparency and demonstrate integrity within its strata insurance distribution network.

Steadfast is the largest operator in the market but not the only public company that owns both underwriting agencies and brokers as well as, in one significant case, a large strata management business.

The code in its current form does not articulate what represents a conflict of interest and leaves it to adherents to self-identify where a conflict exists and whether it can be ‘managed’ or not. This is clearly inadequate and out of step with community expectations, as the reaction to the ABC’s reporting attests.

Recommendation: The Code to include explicit guidance that common ownership of underwriter and broker is an example of a conflict of interest that must be fully disclosed and that any incentives or preferential policies are in breach.

3. Remuneration

OCN’s long-held position is that receipt of insurance commissions is fundamentally incompatible with the fiduciary duties of strata managing agents. It is a clear conflict of interest that cannot be ‘managed’ by disclosure and we have advocated for their removal since 2012.

Brokers should not rely on a position that informed consent of the end client is not required as they are only providing general advice, not personal advice, under the terms of the Financial Services Reform Act. Strata managers are not regulated under this regime, so delegation through a commercial arrangement with them is not sufficient.

Since the ABC’s reporting, the NSW Government has further strengthened disclosure requirements for strata managing agents and acknowledged the need to go further. We are advised that it is currently considering options to eliminate the payment of commissions and all third-party payments to licensed strata agencies entirely. Other jurisdictions should follow this lead in due course.

As the review’s Consultation Issues Paper acknowledges, elimination of commissions will mean higher strata management fees. This will serve as a much clearer price signal to owners corporations about the true value of services provided by strata agencies. It will also mean a level playing field for those businesses that currently choose not to accept commissions on ethical and transparency grounds.

There is an expectation that increased strata management fees will be substantially offset by reduced insurance intermediation costs (fees and commissions) as the cost of the strata managing agent’s insurance-related services are met directly by owners rather than through broker relationships.

We expect more competition on intermediation costs as brokers will have to compete more openly and directly for the business of owners corporations. The level of competition and intermediation costs should be actively monitored by regulators during the transition to a more transparent market.

Recommendation: The Code should explicitly identify the insured person or entity as the client where brokers have a fiduciary duty and an obligation to ensure full disclosure, regardless of the role of any other parties to the transaction.

a. Role of brokers

To be clear, we recognise that brokers provide important services to owners corporations and accept that commissions from insurance providers are an established part of their remuneration.

However the Review also needs to consider the role of brokers in creating conflicts of interest by promoting commissions and other types of benefits to strata agencies.

More seriously, brokers have led the way in creating business models that result in entrenched co-dependencies and cross-subsidisation of strata management services.

As the Chairman of Steadfast, Frank O'Halloran, said at the group's 2024 annual general meeting:

"There is a misunderstanding that the strata managing agent is the customer."

The dependency of many strata agencies on commissions can be traced back decades to when the first specialist strata underwriting agency found this to be the most efficient distribution channel and offered a commission - typically 10 per cent - for placing business.

As the market matured and the average size of strata schemes grew, brokers began to play a role in finding alternative covers for more complex risks. Over the past decade, the market has transitioned to one dominated by brokers for most kinds of risks.

This has been accompanied by a steady increase in intermediation costs to a point where effective commission rates are at least 20 per cent and up to 40 per cent in some cases where the income is shared between brokers and strata agencies.

We have also seen a proliferation of different business structures and commercial relationships that have the effect, if not the intent, of obscuring and disguising insurance earnings for strata agencies.

Recommendation: The Code should explicitly proscribe the use of complex legal structures that may be inconsistent with the obligation to "take reasonable steps to ensure that we provide clear information so that a prospective client or client understands the services they will receive."

b. NetStrata case study

One example of a complex, opaque business structure was documented in the recently-released summary report by McGrathNicol of its investigations into NetStrata. It found that the company's wholly-owned broking subsidiary Strata Insurance Services (SIS) did not receive commissions within the meaning of the relevant NSW legislation that required disclosure, but:

- had the highest Average Brokerage Fee at 21.9% (average across all brokers was 17.5% and excluding SIS the average was 9.37%); and
- received 66.8% of the value and 48.1% of all invoices issued for insurance services to NetStrata clients.

NetStrata clients were free to choose their own broker, but the agency agreement provided for a 25% uplift in management fees if SIS was not appointed. SIS paid NetStrata \$7.45m in business services fees, management fees and facilities fees during the period under review (1 Jan 2022 to 27 March 2024).

c. Other models

SIS is one of many commercial arrangements between strata management and broking businesses. Others involve joint venture vehicles as authorised representatives utilising the broker's financial services licence.

Schemes and structures have been actively promoted by major strata brokers to strata agencies as delivering superior financial outcomes, compared to the standard arrangement where brokers and agents split commission on a policy-by-policy basis.

Anecdotally, some also involve financing that is effectively an advance on future commission income. Invitations to all-expenses-paid training events at holiday locations and similar offerings are another questionable practice.

As with NetStrata and SIS, owners are free to choose their own broker or arrange their own insurance. However, standard agency agreements provide for the strata managing agent to be compensated where commissions would have been payable, or higher management fees where commissions were not included in the agreement.

It is important to stress that not all brokers or strata management businesses operate in this way. Some brokers offer fee-based rather than commission-based services and some strata management businesses offer no-commission fee structures as an option or as standard.

Recommendation: The definition of remuneration for disclosure purposes to be broadened to comprehensively capture all types of financial and non-financial benefits including profit shares, loans, travel, hospitality, volume incentives and changes in equity or beneficial ownership.

d. Consumer impact

Many owners corporations are capable of informed decisions about insurance intermediation. Larger and more complex strata schemes are a specialist market segment with specialist brokers and different commission and fee structures.

However the average strata scheme is less than 10 lots. Strata insurance is compulsory and a grudge rather than discretionary purchase.

Most strata insurance transactions are relatively low value and high volume with minimal end-client interaction.

Owners corporations are retail clients for the purposes of the Corporations Law and many strata committees do not have the financial sophistication to interpret and make informed decisions about such complex arrangements. Others rarely meet or discuss these matters at all.

While underwriting agencies compete through the quotation process, most competition between brokerages is around service levels and revenue for strata agencies. The focus is on the business relationship rather than the end client.

4. Complaints

It is an open question as to whether the arrangements described above are consistent with the spirit, if not the letter, of the Code as it stands today. Certainly, any form of disclosure that is inherently difficult for retail-level clients to understand must raise concerns.

OCN is not in a position to cast any light on whether the current low level of complaints about the Code indicates any specific weakness in its operation in general terms. We would just note two things. First, the Insurance Brokers Code Compliance Committee relies on self-reported breaches because it is not funded to be proactive; is it just window dressing? Second, owners with sufficient financial literacy, engagement and agency can and do make their own arrangements if not satisfied with their strata managing agent or broker. They need not lodge a complaint to get a better outcome.

This, unfortunately, is a minority of the market. Most owners corporations are more passive and rely almost entirely on the strata agent and their broker.

It is an environment where a strengthened Code, with greater clarity and specificity about the obligations of brokers, and a properly resourced Committee can play an important role alongside better targeted regulation to build trust and confidence in the strata insurance value chain.

5. Conclusion

This aphorism, though at least a century old, remains appropriate for the strata insurance market:

“Ethical behaviour is doing the right thing when no one else is watching.”

OCN welcomes the opportunity provided by the Review to strengthen ethical guidance and guardrails for strata brokers. We would be happy to provide any further assistance that may be of value to the reviewers.

Yours sincerely

A handwritten signature in dark ink, reading 'K Stiles'. The 'K' is stylized with a long vertical stroke and a short horizontal stroke.

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