

# Finance Brokers Association of Australia Limited (FBAA)

## CODE OF PRACTICE & DISPUTE RESOLUTION SERVICE

### CONTENTS

1. **Introduction**
    - Purpose of the FBAA
    - Outline of the Code
    - Objectives of the Code
    - Principles of the Code
    - Monitoring and Review of the Code
    - Adoption of the Code by FBAA Members
    - Date of Commencement of the Code
  2. **Scope and application**
  3. **Defined words**
  4. **Responsibilities of Finance Broker to the Client**
    - General
    - Credit Applications and Contracts
  5. **Responsibilities of Finance Broker to the Credit Provider**
    - General
    - Credit Application and Contracts
  6. **General obligations of Finance Broker**
    - Provision of information
    - Employees and Subcontractors
    - Professional Indemnity Insurance
    - Membership of FBAA and availability of Dispute Resolution Service
    - Moneys held on trust
    - Pecuniary Interest in A Credit Facility of related sale of property or goods
    - Instructing Licensed Valuers
    - Conjunctional Arrangements
    - Circumventing State or Territory Law by cross boarder dealings
  7. **Internal dispute resolution process**
  8. **Procedure for reporting alleged breach of the Code**
    - Conduct covered by the Code
    - Reporting of alleged breaches of the Code
- STEP 1 - RESOLVING AN ALLEGED BREACH OF THE CODE - MO**  
Conciliation of an alleged breach of the Code by MO  
Discretion of MO to refuse to consider or continue considering an alleged breach of the Code which is inappropriate for the procedure  
Right of appeal against exercise of discretion by MO  
Request for information by MO  
Time for conciliation of an alleged breach of the Code  
Failure of MO to resolve alleged breach of the Code - Automatic referral to Referee by MO
- STEP 2 - RESOLVING AN ALLEGED BREACH OF THE CODE - REFEREE**  
Determination of an alleged breach of the Code by the Referee

Discretion of Referee to refuse to consider or continue considering an alleged breach of the Code which is inappropriate for the procedure  
Request for information by Referee  
Form of proceedings for determination of an alleged breach of the Code by the Referee  
Time for determination, orders, sanctions  
Powers of the Referee - orders/sanctions  
Finance Brokers bound by Referee's determination, orders and sanctions  
Failure to comply with orders or sanctions imposed by Referee  
Acceptance of Referee's determination, orders and sanctions by complainant  
No right of appeal  
Review by Referee of MO's decision to refuse to consider or continue considering an alleged breach of the Code which the MO believes is inappropriate for this procedure

**9. Disciplinary Action by the FBAA**

**10. Liability of MO, Referee and FBAA Disputes Resolution Service**

**1. INTRODUCTION**

Background of the Finance Brokers Association of Australia Limited (FBAA)

The activities of the FBAA originally commenced in 1992 as the Finance Brokers Association of Queensland Inc. The FBAA became a company limited by guarantee in 1999 and in 2000 changed its name to the Finance Brokers Association of Australia Limited ACN 094 784 040. In 2001 it merged with the Finance Brokers & Mortgage Originators Association WA Inc. The Head Office is located at Suite 4, 31 Thompson Street Bowen Hills Queensland.

The objects of the FBAA are: -

- a. to support protect and advance the character status and interests of the Finance Broking profession generally and particularly of Finance Brokers being members of the FBAA.
- b. to promote honourable practice, to repress malpractice, to settle disputed points of practice and to decide all questions of professional usage, etiquette or courtesy and all disputes between or amongst Finance Brokers.
- c. to consider all questions affecting the interests of the finance broking profession and to initiate, promote, watch over and consider and if necessary to petition Parliament and organise deputations in relation to measures for the protection and the advancement of the finance broking profession and of Finance Brokers and general measures whether legislative or otherwise affecting the profession of Finance Broking and to procure improvements and promote uniformity in the principles, methods and practices of finance broking.
- d. to prescribe and adopt standards and classification of attainments and qualifications of Finance Brokers for such purposes to conduct examinations and other tests in the theory and practices of the finance industry and other subjects and to prescribe and receives fees for such examinations and tests and to grant diplomas and confer qualifications to designate the standard and status of Finance Brokers and in particular of members of the Association.
- e. to provide, maintain, extend and improve a library or libraries containing technical literature and such other literature as may be of interest to Finance Brokers and to acquire, preserve and disseminate information and statistics concerning or relating to the principles and practices of the finance industry and other matters of interest to Finance Brokers.

- f. to encourage the study of the finance industry and for that purpose to donate and to encourage the donation on such terms and conditions as may from time to time be determined or prescribed of a prize or prizes or other rewards or distinctions.
- g. to promote information on the finance industry and other subjects of interest or value to Finance Brokers by lectures, discussions, books, correspondence with public and other bodies and individuals or otherwise.
- h. to act as an intermediary for dispute resolution between Finance Brokers and their Clients.
- i. To bring unlawful conduct of Finance Brokers to the attention of the Government, as is considered necessary by a meeting of the National Council.
- j. To assist members with operating their business where possible, including provision of standard forms and procedures.

Categories of Membership of the FBAA are as follows: -

**Accredited Member** : Available to an approved individual, company or partnership carrying on the business of Finance Broking and includes independently owned businesses operated under a franchise agreement or subcontract arrangement with an Aggregator. This category has full voting rights.

**Accredited Member - Branch Office** : Available to branches of Accredited Members. This category offers Accredited Members one vote per State in States where a Branch Office is located at State Council meetings. No vote is available at National Council meetings for a Branch Office member.

**Associate Member**: Associate Membership is available to approved employees and subcontractors operating under the name of an Accredited Member and includes retired members wishing to remain involved in and informed of the activities of the FBAA. This category has no voting rights.

**Corporate Member**: Available to approved non-broking entities associated with the finance industry and includes credit providers, mortgage insurers, mortgage managers, fund managers, trustee companies etc. This category has full voting rights.

**Affiliate Member**: Available to approved persons and entities not covered by other membership categories and includes Government agencies, valuers, accountants, solicitors, suppliers, other associations and any person wanting to remain informed of the activities of the FBAA. This category has no voting rights.

**Life Member**: This membership category is granted to a person who has given distinguished service to the FBAA as an Accredited Member or representative thereof and has served on the National or State Council as an Office Bearer or Council Member for a minimum period of 5 years and is granted at the sole discretion of the National Council and awarded at an Annual General Meeting of the FBAA.

**Fellow** : This membership category is granted to a person who has given meritorious service to the FBAA as an Accredited Member or representative thereof and has served on the National or State Council as an Office Bearer or Council Member for a minimum period of 5 years and is granted at the sole discretion of the National Council and awarded at an Annual General Meeting of the FBAA.

### **Outline of the Code of Practice**

The Finance Brokers Association of Australia Limited (FBAA) Code of Practice (Code) is intended to promote good relations between Finance Brokers that are Accredited or Associate Members of the FBAA and Clients, Credit Providers and others involved in the finance industry.

It will also promote efficiency in transactions by describing standards of good practice and the level of service to be expected from Finance Brokers.

The Code has been prepared with an understanding that personal integrity is a quality which cannot be created or preserved by written rules alone. Codes of Practice, like laws, cannot substitute for a sense of honesty, fairness and decency. Ultimately, the ethical conduct of the business of a finance broker depends upon the understanding and judgment of the principals, employees and subcontractors. The FBAA expects that the actions of all its Accredited and Associate Members will reflect ethical standards that will bring credit to them, the FBAA and the industry.

The Code is part of a voluntary self regulatory scheme and acknowledges that various State or Federal laws exist to regulate the conduct of Finance Brokers, in addition to the Codes of other professional associations that Members may be bound by.

The Code sets standards of behaviour, accountability and record keeping that will minimise disputes with Clients and Credit Providers and thereby engender confidence in FBAA Accredited and Associate Members by Professional Indemnity Insurers and thereby minimise the risk profile and consequent cost of Professional Indemnity Insurance.

The Code also includes the Finance Brokers Association of Australia Dispute Resolution Service (DRS). All Finance Brokers subject to the Code will be bound by the terms of both the Code and the DRS. The Code sets out the responsibilities of participating Finance Brokers and also requires them to establish an internal process for resolving disputes with Clients, Credit Providers and others. The Code does not create legal rights. Any breach of the Code by a Finance Broker may give rise to binding orders or sanctions being imposed on the Finance Broker and may result in suspension or termination as an Accredited or Associate Member of the FBAA, however, no monetary penalties may be imposed.

The Code recognises that the primary responsibility of a Finance Broker is to the Client. However, in regard to some types of Credit Facilities, the Finance Broker may also act as a limited agent of the Credit Provider and therefore may act for both parties and have a responsibility and duty of care to both parties. In determining if the Finance Broker is an agent of the Credit Provider the FBAA and DRS is guided by Bulletin No. 36 of the Banking and Financial Industry Ombudsman dated December 2002 (formerly Australian Banking Industry Ombudsman), Section 11B(5) of the Privacy Act 1988, and by applicable common law.

### **Objectives of the Code**

The Code is intended to:

- a. describe standards of good conduct and service to be expected of Finance Brokers
- b. promote informed and effective relationships between Clients, Credit Providers and Finance Brokers
- c. promote efficiency in transactions in which Finance Brokers are involved and the appropriateness and effectiveness of the Brokers' services to Clients and Credit Providers
- d. provide for consultation with Consumer Representatives in dispute resolution and reviews of the Code
- e. promote the effective resolution of disputes between Finance Brokers, Clients and Credit Providers.

The Code provides for enforcement of its provisions, the making of orders and imposition of sanctions. A breach of the Code does not give rise to any legal right or liability.

### **Principles of the Code**

The objectives of the Code will be achieved and the provisions of the Code will be applied having regard to:

- a. the requirement of Finance Brokers to meet the standards established at common law and applicable Australian State, Territory or Federal statutory requirements
- b. the need for Clients and Credit Providers to be made aware of the relevant provisions of state legislation including the Uniform Consumer Credit Code and Fair Trading Acts
- c. the need to promote effective competition in the finance broking industry and be well informed of the products and services available from the Credit Providers.
- d. circumstances or requirements imposed upon the Finance Broker by a Client or Credit Provider
- e. The need to conduct investigations under the DRS by the Mediation Officer and hearings of the Referee in private and closed to the public

### **Monitoring and Review of the Code**

The Code will be monitored by the FBAA Compliance Subcommittee. It will comprise a consumer representative, a Credit Provider, a practicing finance broker, a qualified lawyer and a person nominated by the FBAA. The Code is a "living" document and will be formally reviewed by the Compliance Subcommittee every year. The Compliance Subcommittee may issue guidelines as to the implementation and interpretation of the Code.

However, the Code can be adapted in the meantime to deal with any problems which may arise that require urgent attention and implementation of additions or amendments to the Code or Dispute Resolution Service. All participating Finance Brokers are required to make information concerning the Code available to Clients and Credit Providers in a manner recommended by the FBAA or as otherwise approved by the FBAA.

### **Adoption of the Code by Accredited and Associate Members of the FBAA.**

The Code was adopted by the Directors of the FBAA on September 1st 2003 in accordance with the powers contained in the Constitution of the FBAA. Accredited and Associate Members are required to comply with the provisions of the Code by October 1st 2003.

### **Date of Commencement of the Code.**

The date of Commencement of the Code is October 1st 2003.

## **2. SCOPE AND APPLICATION**

The Code will apply to the acts and omissions of all Accredited and Associate Members of the FBAA from the date of commencement of the Code. As it is a requirement of the Code that Finance Brokers observe any applicable Australian State, Territory or Federal Laws, those laws will be taken into consideration where appropriate in regard to any determination made under the Code.

### 3. DEFINED WORDS

**Finance Broker** : For the purposes of this Code a Finance Broker is defined as being a person, corporation or partnership, that, as an agent, in the course of business negotiates or arranges loans of money or other credit facilities on behalf of Clients and is paid for that service either by the Client or a Credit Provider or both, including the act of originating and/or managing such loans or Credit Facilities on behalf of Credit Providers.

**Finance Broking** : For the purposes of this Code Finance Broking includes negotiating or arranging the following types of loans or credit facilities: -

- Residential mortgages
- Secured and unsecured consumer finance including credit cards
- Commercial mortgages
- Secured and unsecured business finance
- Lease finance, Commercial Hire Purchase and Chattel Mortgages
- Mortgage origination and/or management on behalf of Credit Providers
- Debtor Factoring and Cash Flow Finance
- Debt reduction plans

Finance Broking does not include other services relating to provision of contracts for insurance or advice relating thereto, or any financial or other advice or services relating to superannuation or other forms of investment or estate planning, remuneration or salary packaging, financial planning or taxation matters.

**Credit Facility** : Includes the types of facilities described under Finance Broking above.

**Client** : Means a person or other legal entity that engages the services of a Finance Broker for the purpose of obtaining a loan or Credit Facility and includes any prospective borrower, lessee, hirer or guarantor that is a party to a transaction or the direct or indirect beneficiary of any information, advice or service provided by the Finance Broker, for financial or other reward. It is deemed that a Client will have a Principal and Agency arrangement with the Finance Broker appropriate to the circumstances of each appointment.

**Credit Provider** : For the purposes of this Code a Credit Provider includes: -

- Bank licensed under the Banking Act 1959
- Credit Union
- Building Society
- Finance Company
- Mortgage Manager
- Merchant Bank
- Foreign Bank
- Trustee Company
- Pastoral Company
- Contributory Mortgage Scheme
- Private lender
- Superannuation Fund

**Aggregator** : A finance broker that channels loan applications to Credit Providers with whom they have limited agency arrangements on behalf of other finance brokers that do not have such arrangements, where the Aggregator will receive any upfront and/or trailing commission from the Credit Provider and disburse it to the other broker in accordance with a prior written arrangement.

**Mediation Officer (MO)** : Means a person appointed by the DRS to investigate complaints, gather information and make written reports and recommendations to the DRS and Referee.

**Referee** : Means an independent person appointed by the FBAA Dispute Resolution Service to receive reports from the Mediation Officer, conduct hearings and make determinations on complaints.

**Alternative Dispute Resolution Scheme** : Means an ASIC Registered Scheme for investigating and hearing complaints regarding the activities of Finance Brokers, where the Finance Broker is either a member of such a Scheme or an agent of a member of such a Scheme and may include the Banking and Financial Services Ombudsman (BFSO), the Financial Industry Complaints Service (FICS) or any other ASIC Registered Scheme capable of hearing disputes involving Credit Facilities or Finance Brokers.

#### **4. RESPONSIBILITIES OF FINANCE BROKER TO THE CLIENT**

A Finance Broker, when acting on behalf of a Client in relation to a Finance Broking transaction will:

##### **4.1 General**

- a. discharge its responsibilities and duties competently and with integrity and honesty
- b. act in the best interest of the Client but not to the detriment of a Credit Provider
- c. exercise reasonable care and skills
- d. comply with its fiduciary obligations to the Client, including:
  - I. avoiding conflicts of interest
  - II. if a conflict of interest occurs, disclosing that conflict as soon as is reasonably practicable and disclose the existence of any agency arrangements or other commercial relationship with any recommended Credit Provider, valuer, mortgage insurer, lawyer, financial planner, financial advisor, insurer or insurance broker that may be involved in a transaction where the Finance Broker is to receive a pecuniary benefit
  - III. disclose in writing prior to the Client accepting any Credit Facility the source of any fees, trailing commission, other remuneration or benefit to be received by the Finance Broker and in such detail as may be required by law in the lawful jurisdiction of both the Finance Broker and Client.
  - IV. disclose in writing prior to the Client accepting any Credit Facility, the payment of any fees, trailing commission, other remuneration or benefit to any referrer, subcontractor or third party where such third party gives advice relating to the proposed transaction or otherwise assists or induces the Client to enter into the transaction and in such detail as may be required by law in the lawful jurisdiction of both the Finance Broker and Client.
- e. advise the Client of their eligibility for any Government subsidies or other assistance that the Finance Broker can reasonably be expected to be aware of relating to obtaining a Credit Facility or dealing with personal or financial hardship during the term of a Credit Facility
- f. maintain the confidentiality of Client details and other information in accordance with the Privacy Act 1988 and its amendments during the term of the Finance Broker's appointment and after the conclusion of the appointment
- g. comply with the provisions of the Trade Practices Act 1974, Corporations Act 2001, Australian Securities and Investments Commission Act 2001 and all State and Territory Fair Trading Acts or Finance Broker specific legislation and any amendments thereto

- h. maintain all records required by law and comply with all requirements for production of, access to, or copying of, such records as may be required by statute.
- i. provide such information as may be lawfully required by any regulatory or other authority.
- j. be familiar with the Code of Practice and Rules of any Alternative Disputes Resolution Scheme that the Finance Broker may be a member of and thereby be able to assist Clients in understanding and enforcing their rights under such Codes and/or Rules.
- k. promptly return to a Client any original documents provided for copying, or on demand by the Client.
- l. not charge any non-refundable advance against commission payable by the Client in contravention of any State, Territory or Federal law or in circumstances where obtaining a Credit Facility on behalf of the Client is improbable or unlikely.
- m. advise the Client of the need to arrange the discharge of any existing mortgage, other charge or encumbrance over the proposed security for a Credit Facility that is necessary to effect settlement and at such time as is reasonably required to avoid any delay in settlement of the proposed transaction.
- n. advise the Client and Credit Provider of any benefit the Finance Broker may receive as a result of the Client entering into any credit related general or life insurance contract as part of any service or referral provided by the Finance Broker in regard to any Credit Facility arranged by the Finance Broker.
- o. advise the Client of the need to provide the Credit Provider, their Solicitor or Valuer of any documentation or information that may be required to obtain approval of a Credit Facility, or to facilitate preparation of any loan documentation, including production of certificates of title or ownership, evidence of insurance in a form required by the Credit Provider and to do so in an expedient manner.
- p. advise the Client of the process of arranging any registered second mortgage or company charge and the need for the Client to first obtain the consent of the prior mortgagee or chargee in a timely manner to avoid delays in settlement of any proposed transaction.

#### **4.2 Credit Applications and Contracts**

- a. assist the Client in understanding its contractual benefits and obligations with the Finance Broker and Credit Provider
- b. maintain written reasons for recommendations given to Clients and any variation subsequently sought by the Client or imposed by the Credit Provider
- c. make all reasonable enquiries of the Client as to their income, assets, actual and contingent liabilities, repayment history with other creditors or Credit Providers, details of any adverse credit or financial events and promptly convey such information, together with a fully completed credit application, to the Credit Provider and in a form required by the Credit Provider.
- d. promptly advise the Client if a credit application is declined or consideration thereof by the Credit Provider is delayed or deferred pending the supply of further information required from the Finance Broker, Client or other party.
- e. promptly make available to the Client copies of any finance approval correspondence, indicative offers of finance, loan contracts or security documentation as may be required by the Credit Provider
- f. take reasonable steps to obtain from the Credit Provider and promptly convey to the Client, relevant information and document supplied by the Credit Provider
- g. advise the Client in writing of the Credit Provider's fees and other charges, showing any fees charged by the Finance Broker separately, prior to the Client accepting an offer of finance from a Credit Provider.
- h. promptly deal with any variation in the Client's requirements and record such instructions, with reasons given, in writing
- i. promptly advise the Client of any variation in the terms and conditions available from the selected Credit Provider that differ from those originally advised and retain a written record of such variations, with reason given by the Credit Provider and the Client's reaction and subsequent instruction

- j. where possible check the accuracy of documentation relating to a proposed Credit Facility supplied by the Credit Provider to the Client and ensure it is in accordance with the Clients recorded requirements
- k. co-operating by promptly providing any information or assistance reasonably required by a valuer, lawyer, mortgage insurer or other party necessarily involved in the discharge of the Finance Brokers duties to the Client and/or Credit Provider
- l. when requested by, or previously arranged with, the Client or Credit Provider, providing reasonable assistance with any post settlement liaison between the Client and Credit Provider including communicating any permissible variations in the credit contract, renewal of the term or discharge of security
- m. not knowingly be a party to or participate in any deliberate non-disclosure or misrepresentation of any facts pertaining to the Client, Credit Provider, the Credit Facility being arranged, and the circumstances of the transaction or the security being taken
- n. assess the Client's ability to meet their obligations under a proposed Credit Facility in accordance with any Credit Facility affordability calculators supplied by a Credit Provider and advise the Credit Provider of any extenuating circumstances affecting the Client's ability to meet their proposed obligations to a Credit Provider.

## 5. RESPONSIBILITIES OF FINANCE BROKER TO THE CREDIT PROVIDER

A Finance Broker, when negotiating a loan application with a Credit Provider, to the extent required by the terms of any accreditation, agency or other agreement and any applicable common or statute law will:

### 5.1 General

- a. disclose to the Credit Provider that it also acts for the Client and that it may receive a fee from the Client, such disclosure may be made in a pre-contractual statement or advised in writing when applicable
- b. discharge its responsibilities and duties competently, with integrity and honesty and in accordance with any accreditation, agency or other agreement
- c. act in the best interest of its Client but not to the detriment of the Credit Provider
- d. exercise reasonable care and skills
- e. comply with its fiduciary obligations to the Credit Provider, including: -
  - I. avoiding conflicts of interest
  - II. if a conflict of interest occurs, disclosing that conflict as soon as is reasonably practicable to the parties and advise them to seek independent legal or other advice if required
  - III. maintaining the confidentiality of the Credit Provider's confidential internal information and procedures that is not related to product disclosure or other services available to the Client
- f. maintain records required by law and comply with lawful requirements for production of, access to and copying of such records
- g. provide such information as may be legally required by any regulatory or other authority
- h. comply with the policies and procedures of the Credit Provider and attend all necessary product training sessions reasonably required by the Credit Provider to satisfy accreditation standards
- i. co-operating by promptly providing any information or assistance reasonable required by a valuer, lawyer, mortgage insurer or other party necessarily involved in the discharge of the Finance Brokers duties to the Client and/or Credit Provider
- j. when requested by, or previously arranged with, the Client or Credit Provider, providing reasonable assistance with any post settlement liaison between the Client

- and Credit Provider including communicating any permissible variations in the credit contract, renewal of the term or discharge of security
- k. assess the Client's ability to meet their obligations under a proposed Credit Facility in accordance with any Credit Facility affordability calculators supplied by a Credit Provider and advise the Credit Provider of any extenuating circumstances affecting the Client's ability to meet their proposed obligations to a Credit Provider.
  - l. Where possible interview any guarantor or third party to a proposed Credit Facility and advise them of their general obligations and extent of their liability and record the giving of such advice on the Client's file.

## **5.2 Credit Applications and Contracts**

1. ensure Credit Providers are provided with all information required by them, or otherwise reasonably expected by them to determine the identity, personal or business circumstances, financial position, credit history and credit worthiness of the Client
2. ensure Credit Providers are provided with all available information relating to the proposed security for a loan or Credit Facility to assist in correctly identifying the property or goods
3. maintain written reasons for recommendations given to Clients and any variation subsequently sought by the Client or imposed by the Credit Provider
4. promptly provide the Client's credit application and supporting information to the Credit Provider following completion and signing by the Client where required, including any Privacy Act and Disclosure documents required by the Credit Provider.
5. make all reasonable additional enquiries regarding the Client's identity, personal circumstances, business, credit history or financial position that may assist the Credit Provider in making an informed decision
6. promptly advise the Credit Provider if a credit application is withdrawn by a Client or if there is a delay in providing any further information required from the Finance Broker, Client or other party.
7. take reasonable steps to promptly make available to the Client copies of any finance approval correspondence, indicative offers of finance, loan contracts or security documentation as may be required by the Credit Provider
8. take reasonable steps to obtain from the Client and promptly convey to the Credit Provider, additional information and documents reasonably required by the Credit Provider
9. advise the Client in writing of the Credit Provider's fees and other charges, showing any fees charged to the Client by the Finance Broker separately, prior to the Client accepting an offer of finance from a Credit Provider.
10. promptly deal with any variation in the Client's requirements and pass on such requests to the Credit Provider
11. promptly advise the Client of any variation in the terms and conditions available from the selected Credit Provider that differ from those originally advised and retain a written record of such variations, with reason given by the Credit Provider and the Client's reaction and subsequent instruction
12. check the accuracy of Credit Provider's Credit Facility contract and relevant security documentation by comparison with the Client's requirements, except in instances where the Credit Provider and Client are in direct contact or communication and the relevant documents are not provided to the Finance Broker
13. promptly provide any information or assistance reasonably required by a valuer, lawyer, mortgage insurer or other party acting under instructions from a Client and/or Credit Provider
14. when requested by, or previously arranged with, the Client or Credit Provider, provide reasonable assistance with any post settlement communication between the Client and Credit Provider including advising any permissible variations in the

- credit contract, renewal of the term, discharge of security or default under the Credit Facility
15. not knowingly be a party to or participate in any deliberate nondisclosure or misrepresentation of any facts pertaining to the Client, Credit Provider, the credit facility being arranged, the circumstances of the transaction or the security being taken

## **6. GENERAL OBLIGATIONS OF FINANCE BROKER**

A Finance Broker will:

### **Provision of Information**

- a. advise Clients and Credit Providers in writing that the Finance Broker is subject to the Code and FBAA Dispute Resolution Service, which is available in the public section of the FBAA web site, [www.financebrokers.com.au](http://www.financebrokers.com.au)
- b. make copies of the Code and DRS available if requested by a Client or Credit Provider or upon receipt of a complaint

### **Employees and Subcontractors**

- c. provide suitable ongoing training for its employees and subcontractors having regard to the employees or subcontractor's role and responsibilities
- d. take reasonable steps to ensure that its employees and subcontractors comply with the obligations set out above.

### **Professional Indemnity Insurance**

- e. maintain a current policy of Professional Indemnity Insurance with an insurer, and for an amount, that is acceptable to the Credit Provider or as otherwise as may be approved from time to time by the FBAA
- f. when requested to do so by a Client, Credit Provider, FBAA or DRS, provide evidence of a current policy of Professional Indemnity Insurance

### **Membership of FBAA and Availability of Dispute Resolution Service**

- g. display in their place of business evidence of their current Accredited or Associate Membership of the FBAA, and to make available to Clients and Credit Providers a copy of the Code and FBAA Dispute Resolution Service document and to advise Clients and Credit Providers of the Finance Brokers membership of any other Alternative Dispute Resolution Scheme

### **Moneys Held on Trust**

- h. deposit (unless as otherwise required by law) by the next business day (or in any case promptly) any money received or held by the Finance Broker on trust for a Client into a trust account maintained by the Finance Broker with a Government approved deposit-taking institution, which account must not contain any moneys other than moneys received or held on trust by the Finance Broker for Clients
- i. at the earliest practical opportunity, deliver money received or held by the Finance Broker on trust, to the party intended by the Client and not to any other party unless directed otherwise in writing by the Client

- j. if required by the National Council of the FBAA, cause the trust account and supporting records to be Audited by a Registered Company Auditor and an Auditor's Report to be delivered to the National Council of the FBAA.
- k. ensure that the Finance Broker's employees and subcontractors observe the above requirements for handling money received on trust from a client and must not request, require or induce a Client to pay or deliver money to the employee or subcontractor except as may be authorised by the Finance Broker in writing.

#### **Pecuniary Interest in a Credit Facility or Related Sale of Property or Goods.**

- l. disclose to the Client and Credit Provider any interest the Finance Broker, its employees or subcontractors or their family may have, or intends to have, in any loan transaction or related sale or purchase of property or goods and shall only act for either or both parties if they are fully informed of the Finance Broker, its employees or subcontractor's or their family's interest and agree in writing to the Finance Broker, its employee or subcontractor continuing to act for them.

#### **Instructing Licensed Valuers**

- m. in the event a Client or Credit Provider instructs a Finance Broker to obtain a valuation of a property or goods the Finance Broker shall instruct a Valuer nominated by the Client or Credit Provider or shall otherwise select an independent licensed valuer and take reasonable steps to ensure that the valuer has no interest whatsoever, financial or otherwise, in the property or goods to be valued or the Credit Facility for which the property or goods is required as security.
- n. if the valuer is instructed by the Finance Broker the Finance Broker must ensure the valuer is provided with all necessary information regarding the property or goods to be valued as reasonably required by the valuer and ensure the valuation is carried out for secured lending purposes and that liability for the report is extended to the Client or Credit Provider as required.
- o. ensure that the Finance Broker does not have a business relationship with a Valuer involved in a credit transaction, or receive any financial or other benefit as a result of instructing a Valuer, and must be reasonably satisfied that the Valuer is not subject to any coercion or inducement that might be intended to unreasonably influence the Valuer's recommendations or judgment.

#### **Conjunctional Arrangements**

- p. when acting in conjunction with another Finance Broker to negotiate or arrange a Credit Facility, and making an agreement with the other Finance Broker in relation to sharing remuneration, the total remuneration must not exceed the maximum remuneration as determined by any applicable State, Territory or Federal law in the lawful jurisdiction of the Finance Brokers and the Client.

#### **Circumventing State or Territory Law by Cross Boarder Dealings**

- q. abide by the law applicable to the conduct of a Finance Broker's business which applies in the State or Territory of the Finance Broker's business address and Client's residential address, until such time as any overriding State, Territory or Federal law regulates the conduct of Finance Brokers on a national uniform basis.

## **7. INTERNAL DISPUTE RESOLUTION PROCESS**

A Finance Broker will:

- a. have a documented internal process for handling disputes with a Client or Credit Provider in accordance with Australian Standard AS4269-1995 "Complaints handling" and AS 4608-1999 "Guide to the prevention, handling and resolution of disputes" A copy of these Australian Standards is available from [www.standards.com.au](http://www.standards.com.au) or by contacting "Standards Australia" Telephone 1300 65 46 46. This process shall provide a fair and timely method of handling disputes.
- b. provide a Client or Credit Provider with free access to this process
- c. in the event of receiving a complaint or becoming aware of a dispute, make documentation available to a Client and Credit Provider which:
  - I. describes the procedure for handling a dispute
  - II. states the usual time within which a dispute will be determined. In most instances, it should be reasonable for a dispute to be determined within 20 working days from the Finance Broker having received all relevant information from the Client or Credit Provider
  - III. confirms that the dispute will be handled by an officer or employee of the Finance Broker with appropriate powers to deal with the dispute
- d. promptly reply in writing to any request from a Client and Credit Provider for the resolution of a dispute
- e. if the dispute is not resolved in a manner acceptable to a Client or Credit Provider:
  - I. provide to the Client or Credit Provider where appropriate, the general reasons for that outcome.
  - II. inform the Client or Credit Provider whether the Finance Broker believes the dispute is one to which the DRS will apply and information as to the availability of, and how to refer a dispute to, the DRS.
  - III. inform the Client or Credit Provider of any Alternative Dispute Resolution Scheme that the Finance Broker is a member of and may be available to investigate the complaint or dispute if the DRS is unable to achieve a satisfactory conclusion.

**A dispute need not be dealt with by a Finance Broker where:**

- f. insufficient information has been provided by the Client or Credit Provider to allow the Finance Broker to properly consider the dispute after the Finance Broker has made a written request for such further information from the Client or Credit Provider.
- g. the substance of the dispute is, or has already been, the subject of consideration by the Finance Broker's internal dispute resolution process, statutory body, or other complaint or dispute resolution process, or adjudication by a court, tribunal or other legal process.

## **8. PROCEDURE FOR REPORTING ALLEGED BREACH OF THE CODE**

### **Conduct covered by the Code**

The conduct complained of must fall within the Scope and Application of the Code (see Section 2 of the Code), which includes alleged breaches of applicable State, Territory or Federal laws.

Reporting of alleged breaches of the Code

An alleged breach of the Code or law must first be reported to the Mediation Officer (MO) by the complainant in writing. Anyone may make a complaint concerning an alleged breach of the Code. Enquiries concerning an alleged breach of the Code may be made to the MO by

telephone, facsimile, mail or in person by appointment. Finance Brokers are required to make the Code available to complainants.

## **STEP 1 - RESOLVING AN ALLEGED BREACH OF THE CODE - MO**

### **Conciliation of alleged breach of the Code by MO**

The MO will endeavour to resolve alleged breaches of the Code by conciliation. In conciliating an alleged breach of the Code, the MO is to give fair and just advice and assistance to the parties having regard to what is fair and reasonable in all the circumstances, the principles of any broker specific law and practice and the principles and objectives of the Code.

Discretion of MO to refuse to consider or continue considering an alleged breach of the Code which is inappropriate for the procedure.

The MO will have discretion to refuse to consider or continue considering an alleged breach of the Code which the MO believes in all the circumstances to be inappropriate for this procedure. For example where:

- a. the MO does not believe that the conduct complained of is covered by the Code
- b. the alleged breach is also, or could be, the subject of a dispute already covered by the DRS or an ADRS
- c. the substance of the alleged breach is, or has already been, the subject of consideration by the MO, Referee, a statutory body, or other complaint or dispute resolution process, or adjudication by a court, tribunal or other legal process
- d. insufficient information has been provided by the complainant to allow the MO to properly consider the alleged breach
- e. the complaint concerning the alleged breach is deemed by the MO to be frivolous or vexatious
- f. the Finance Broker's right to indemnity under a professional indemnity insurance policy may be seriously prejudiced if the matter was to proceed in the absence of consent by the relevant professional indemnity insurer and that insurer has refused or failed to provide an appropriate consent. Where the MO exercises the discretion referred to above, the MO is required to provide written reasons for his/her decision to the complainant and where appropriate, any steps which the complainant must take before the MO will consider or continue to consider the alleged breach of the Code.

### **Right of appeal to Referee against decision by MO**

If the complainant informs the MO that it does not agree with the MO's decision, the MO must provide to the Referee:

- a. written reasons for the decision
- b. such information and documents which the MO considers will be relevant in assisting the Referee to decide whether the decision was appropriate or not
- c. such other information and documents which the Referee shall require. If the Referee decides that the decision was not appropriate, the MO must continue to consider the alleged breach of the Code subject to the complainant complying with any steps which the Referee may require the complainant to take.

## **Request for information by MO**

For the purpose of determining whether to consider, or continue considering any alleged breach of the Code, the MO may request from the Finance Broker, the complainant, or any third party, including another Finance Broker or a Credit Provider, documents or other information relevant to the alleged breach of the Code. Any Finance Broker and complainant must provide all such documents or information promptly.

Provision of any confidential documents or information of the Finance Broker's Client relevant to an alleged breach of the Code is subject to the Finance Broker receiving the consent of its Client to providing such documents or information. Any documents identified as privileged or confidential will retain their privileged or confidential status and will not be provided to any person without prior written consent or except as required by law. A document identified as subject to a claim for privilege will not be copied or reproduced in whole or in part by the MO.

Nothing revealed, offered or provided in relation to a matter before the MO by the Finance Broker or the complainant may be used by the other party in subsequent proceedings or adjudication by a court, tribunal or other legal or complaint or dispute resolution process without the consent of the relevant party.

The MO will notify the Finance Broker and the complainant as soon as is reasonably possible if any document supplied by them to the MO is subpoenaed by any person or entity, or is otherwise required to be produced to any person or entity.

### Time for conciliation of an alleged breach of the Code

Conciliation of an alleged breach of the Code must be completed by the MO within 20 working days of the date on which the MO was notified in writing of the alleged breach of the Code, or such other time as the MO decides is reasonable in the circumstances.

### Failure of MO to resolve alleged breach of the Code - automatic referral to Referee by MO

If an alleged breach of the Code is not resolved to the satisfaction of the complainant, the MO or the Finance Broker, the MO will refer the alleged breach of the Code to the Referee within 20 working days of the day on which the MO requested the broker to comment on the complaint in writing. The MO does not have the power to make any decisions which bind the Finance Broker or the complainant. In referring an alleged breach of the Code to the Referee the MO will provide the Referee with:

- a. such information and documents which the MO considers will assist the Referee in making a determination
- b. such other information and documents which the Referee shall require.

## **STEP 2 - RESOLVING AN ALLEGED BREACH OF THE CODE - REFEREE**

### **Determination of an alleged breach of the Code by the Referee**

The Referee will determine any alleged breach of the Code referred to it by the MO in accordance with the above section. In determining the alleged breach of the Code, the Referee will have regard to what is fair and reasonable in all circumstances as well as the principles of finance broking law and practice and the principles and objectives of the Code. Both the Finance Broker and complainant will have a right to present their case to the Referee. The form in which it is to be presented is at the discretion of the Referee. The Finance Broker is to be informed by the Referee of the case made against them by the complainant.

Discretion of Referee to refuse to consider or continue considering an alleged breach of the Code which is inappropriate for the procedure:

The Referee will have discretion to refuse to consider or continue considering an alleged breach of the Code which the Referee believes in all the circumstances to be inappropriate for this procedure. For example where:

- a. the Referee does not believe that the conduct complained of is covered by the Code
- b. the alleged breach is also, or could be, the subject of a dispute covered by an alternate ASIC approved resolution scheme
- c. the substance of the alleged breach is, or has already been, the subject of consideration by the MO, Referee, a statutory body, or other complaint or dispute resolution process, or adjudication by a court, tribunal or other legal process
- d. insufficient information has been provided by the complainant to allow the Referee to properly consider the alleged breach
- e. the complaint concerning the alleged breach is deemed to be frivolous or vexatious
- f. the Finance Broker's right to indemnity under a professional indemnity insurance policy may be seriously prejudiced if the matter was to proceed in the absence of consent by the relevant professional indemnity insurer and that insurer has refused or failed to provide an appropriate consent. Where the Referee refuses to consider or continue considering an alleged breach of the Code, the Referee will inform the complainant in writing of the reason(s) for the Referee's decision and where appropriate, any steps which the complainant must take before the Referee will consider or continue to consider the alleged breach. The complainant has no right to appeal the Referee's decision.

### **Request for information by Referee**

For the purpose of determining whether to consider, or continue considering any alleged breach of the Code, the Referee may request from the Finance Broker, the complainant, or any third party, including another Finance Broker or an insurer, documents or other information relevant to the alleged breach of the Code. Any Finance Broker and complainant must provide all such documents or information promptly.

Provision of any confidential documents or information of the Finance Brokers' Client relevant to an alleged breach of the Code is subject to the Finance Broker receiving the consent of its Client to providing such documents or information. Any documents identified as privileged or confidential will retain their privileged or confidential status and will not be provided to any person without prior written consent or except as required by law. A document identified as subject to a claim for privilege will not be copied or reproduced in whole or in part by the Referee.

Nothing revealed, offered or provided in relation to a matter before the Referee by the Finance Broker or the complainant may be used by the other party in subsequent proceedings or adjudication by a court, tribunal or other legal or complaint or dispute resolution process without the consent of the relevant party. The Referee will notify the Finance Broker and the complainant as soon as is reasonably possible if any document supplied by them to the Referee is subpoenaed by any person or entity, or is otherwise required to be produced to any person or entity.

Form of proceedings for determination of an alleged breach of the Code by Referee

Any proceedings will be at the absolute discretion of the Referee, it being intended that the Referee will function informally with a minimum of legal form and technicality. In particular, the Referee will have absolute discretion in determining:

- a. the time and place of meetings between the relevant parties involved
- b. all evidentiary issues including any enquiries or investigations which the Referee may wish to undertake or expert advice or assistance which he/she may require. If expert advice is required, the expert's fees must be approved as being reasonable by the DRS having regard to the nature of the alleged breach of the Code
- c. whether the proceedings should be terminated prematurely for any reason.

The use of lawyers to represent parties will be discouraged but complainants or other persons with language or other difficulties may be assisted by a third party. Personal hearings will be held only if the Referee believes it is important to fair and timely resolution of the alleged breach of the Code.

Time for determination, orders, sanctions

The Referee will determine an alleged breach of the Code and make such orders and impose such sanctions as are appropriate, within a reasonable period of time. In most instances, it should be reasonable for a determination and orders to be made, and sanctions imposed, within 20 working days of the Referee having received all relevant information. Determinations and orders made, and sanctions imposed, by the Referee will be given in writing along with reasons for the determination.

The Referee will as soon as possible inform the complainant and Finance Broker of any determination and orders made and sanctions imposed. Any determination which the Referee believes to be of importance, having regard to the principles of the Code, will be made available and appropriately publicised to members of the Code. Copies of such determinations may also be provided to the ASIC, any State, Territory or Federal finance broker regulatory bodies, other related industry Associations or Alternative Dispute Resolution Schemes, Credit Provider and such other bodies as approved from time to time by the FBAA Compliance Council.

### **Powers of the Referee - orders/sanctions**

The Referee has the power in respect of a breach of the Code to:

- a. order rectification procedures
- b. order the Finance Broker to comply with the provisions of the Code or a specified provision of the Code
- c. order the Finance Broker to undertake through an independent and appropriately qualified person an audit of its compliance procedures
- d. order the Finance Broker to undertake, or require its employees or agents to undertake, professional education of a specific type
- e. impose a timetable for compliance with the above orders by the Finance Broker
- f. name the Finance Broker in the annual report of the Referee
- g. provide to any State, Territory or Federal Government finance broker licensing or registration authority information and reports regarding breaches of the Code by a Finance Broker and any orders it makes and sanctions it imposes and the reasons for such orders or sanctions
- h. recommend to any State, Territory or Federal Government licensing authority that a Finance Broker's license or registration be cancelled or suspended for serious or continuous breaches of the Code.

### **Finance Broker bound by Referee's determination, orders and sanctions**

A Finance Broker is bound to accept any determinations of and comply with any orders made and sanctions imposed by the Referee.

#### **Failure to comply with orders or sanctions imposed by Referee**

Where a Finance Broker fails to accept a determination of, or comply with, orders made or sanctions imposed by the Referee, the Referee may make such other orders or impose further sanctions, as specified above as are appropriate. Before making or imposing such further orders or sanctions, the Referee will notify the Finance Broker in writing of its intention to do so. The Finance Broker will have the opportunity to make written representations to the Referee in respect of its non-compliance with the orders and sanctions and the Referee will not proceed to make or impose any further orders or sanctions before the expiry of 20 working days from the date the above notice being sent to the Finance Broker.

#### **Acceptance of Referee's determination, orders and sanctions by complainant**

Whilst it is expected that a complainant will accept the determination of and abide by any orders made and sanctions imposed by the Referee in relation to an alleged breach of the Code, non-acceptance will not prejudice the complainant's right to legal action. A complainant has 20 working days as from the date the determination was issued in which to accept the Referee's determination, orders made, and sanctions imposed, in relation to an alleged breach of the Code. Acceptance will be in a form satisfactory to the Referee.

#### **No Right of Appeal**

There is no right of appeal under the Code in respect of a determination, orders made, or sanctions imposed, by the Referee.

Review by Referee of MO's decision to refuse to consider or continue considering an alleged breach of the Code which the MO believes is inappropriate for this procedure

Where the MO has decided to refuse to consider or continue considering an alleged breach of the Code which the MO believes is inappropriate for this procedure, the Referee will decide, based on information provided by the MO, whether the decision was appropriate or not. If the Referee decides that the decision was not appropriate, the Referee will refer the alleged breach of the Code back to the MO for conciliation along with written reasons for the Referee's decision and where appropriate, listing any steps which the Referee may require the complainant to take. If the Referee decides that the decision was appropriate, the Referee will inform the complainant in writing of the reason(s) for the Referee's decision. The complainant has no right of appeal in respect of the Referee's decision.

### **9. DISCIPLINARY ACTION BY THE FBAA**

In accordance with Section 7 of the Constitution the Directors of the FBAA may terminate the membership of a Member whose conduct in their opinion renders it undesirable that the Member continue to be a Member. The Directors may also exercise their discretion and caution or reprimand a Member and require the Member to undertake professional education of a specified type.

A Member is to be given at least 21 days notice of a resolution to terminate membership and will be given the opportunity to be heard at the meeting at which the resolution is proposed.

## **10. LIABILITY OF MEDIATION OFFICER, REFEREE AND FBAA DISPUTES RESOLUTION SERVICE.**

The Mediation Officer, Referee and the FBAA Disputes Resolution Service will not be liable to a complainant or Finance Broker or any other person or entity for any loss or damage (including legal costs) arising directly or indirectly from performing their duties.

For further information or assistance please contact the Mediation Officer,

*FBAA Disputes Resolution Service*  
*Suite 4*  
*31 Thompson Street*  
*Bowen Hills Queensland 4006*  
*Tel.: 1300 130 514 or (07) 3252 0120*  
*Fax: (07) 3252 0140*  
*E-mail: [admin@financebrokers.com.au](mailto:admin@financebrokers.com.au)*