

# **Code of Conduct of the Finance Brokers Association of Australia Limited**

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**ACN 094 784 040**

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## Introduction and interpretation

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### 1. Introduction

#### 1.1 Background of the FBAA

The activities of the FBAA originally commenced in 1993 as the Finance Brokers Association of Queensland Inc. In 2000, the FBAA became a company limited by guarantee and 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.

#### 1.2 Outline of Code of Conduct

- 1.2.1. The Code is intended to promote good relations between Members 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 Members.
- 1.2.2. 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 conduct, like laws, cannot be a substitute for a sense of honesty, fairness and decency. Ultimately, the ethical conduct of the business of a Member depends upon the understanding and judgment of the Members and their Personnel. The FBAA expects that the actions of all its Members will reflect ethical standards that will bring credit to them, the FBAA and the industry.
- 1.2.3. The Code is part of a voluntary self-regulatory scheme and acknowledges that various state or federal laws exist to regulate the conduct of Members, in addition to this Code.

#### 1.3 Objectives of the Code

The Code is intended to:

- (a) describe standards of good conduct and service to be expected of all Members;
- (b) promote informed and effective relationships between Members, Clients and Credit Providers;

- (c) promote efficiency in transactions in which Members are involved and the appropriateness and effectiveness of the Member's services to Clients and Credit Providers; and
- (d) promote the effective resolution of disputes between Members, Clients and Credit Providers.

## **1.4 Scope and Application**

The Code will apply to all Members from the date of commencement of the Code.

## **1.5 Date and Commencement of the Code**

The date of commencement of this Code is immediately upon it being adopted by the members at a general meeting. This Code replaces an earlier code which continues to have residual effect regarding matters that occurred during the period of its currency.

## **1.6 Monitoring, review and amendment of the Code**

- 1.6.1. The Code will be monitored by the DRS Committee.
- 1.6.2. The Code is a "living" document and will be formally reviewed by the DRS Committee every year. The DRS Committee may issue guidelines as to the implementation and interpretation of the Code.
- 1.6.3. This Code may be amended in such manner as is provided in the Constitution.

## **2. Defined Words**

Words set out in Schedule 1 are defined as follows unless the context requires otherwise:

## **Obligations imposed on Members**

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### **3. General Obligations of the Member**

#### **3.1 Duty to act in the Client's best interest**

- 3.1.1. A Member must act in the best interest of its Client having regard to:
  - (a) the nature of any document prescribing the scope of the Member's appointment;
  - (b) the obligations set out in this Code;

- (c) the Relevant Laws;
- (d) any guidance or regulatory guides circulated by ASIC from time to time; and
- (e) any specific instructions, objectives or interests of the Client made known to the Member from time to time including any change thereof.

3.1.2. If a Member considers that it is improbable or unlikely that the Client's instructions, objectives or interests can be achieved, then the Member should inform the Client of this opinion as soon as reasonably practicable.

### **3.2 Duty to avoid conflicts of interest**

3.2.1. Subject to clause 3.2.4, a Member must take all necessary steps to avoid or mitigate Conflicts of Interest.

3.2.2. Where a Conflict of Interest occurs, a Member must disclose to its Client and any Credit Provider (either directly or through that Member's Aggregator) that the Member reasonably expects to approach for a Credit Facility on behalf of the Client, in writing:

- (a) the full nature of the Conflict of Interest, including any benefit which the Member may obtain and the relationships relevant to that Member; and
- (b) if applicable, in accordance with the Relevant Laws:
  - (i) the source of any fees, up front commission, trailing commission, other remuneration or benefit to be received by the Member; and
  - (ii) the payment of any fees, up front commission, 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
- (c) obtain the written consent of the Client to continue acting for that Client.

3.2.3. A disclosure pursuant to clause 3.2.2 must be in accordance with any timeframe prescribed by the Relevant Laws or, if no such timeframe is prescribed, as soon as reasonably practicable.

3.2.4. A Member will have complied with this clause 3.2 if:

- (a) the Conflict of Interest arises out of a Member's commission arrangement with an Aggregator or Credit Provider;
- (b) a Relevant Law requires the Member to disclose matters materially similar to those required by clause 3.2.2; and
- (c) the Member has complied with that Relevant Law.

3.2.5. If a resolution of a Conflict of Interest cannot be achieved having regard to clauses 3.1 and 3.2 or the Credit Provider objects to the Member continuing to act, then the Member may, as a last resort:

- (a) where the Client agrees, cease dealing with that Credit Provider on behalf of that Client; or
- (b) where the Client does not agree, cease acting for the Client.

### **3.3 Provision of information about membership, this Code and DRS**

- 3.3.1. A Member must inform Clients and Credit Providers in writing that the Member is subject to this Code and any EDRS.
- 3.3.2. A Member must make copies of this Code available and provide same if requested by a Client or Credit Provider or upon receipt of a Complaint.
- 3.3.3. A Member must display in their place of business evidence of their membership with the FBAA.

### **3.4 Professional Indemnity Insurance**

- 3.4.1. A Member must, for the period in which that Member acts on behalf of Clients and for a period of seven (7) years after the Member decides to cease acting on behalf of Clients, maintain a current policy of professional indemnity insurance from a reputable insurer that is acceptable to the Member to a level that is reasonable in the circumstances.
- 3.4.2. A Member must provide evidence of a current policy of professional indemnity insurance upon request from a Client, a Credit Provider or the FBAA.

### **3.5 Moneys Held on Trust**

3.5.1. If a Member receives money expressly or implicitly on trust, that Member must:

- (a) deposit (unless as otherwise required by law) by the next day (which is not a Saturday, Sunday or public holiday in the location of the Member), or in any case promptly money received or held by the Member on trust into a trust account maintained by the Member with a government approved deposit-taking institution, which account must not contain any moneys other than moneys received or held on trust by the Member;
- (b) deliver money received or held by the Member on trust at the earliest practical opportunity to recipient intended by the party that provided the money to the Member and not to any other party unless directed otherwise in writing by the party that provided the money; and
- (c) ensure that the Member's Personnel 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 authorized by the Member in writing.

### **3.6 Interest in a Credit Facility**

3.6.1. Where a Member (including any of that Member's Related Entities or Personnel) has an interest (other than an interest being a commission or fee payable upon the settlement of a Credit Facility obtained on behalf of a Client) in:

- (a) the settlement of a Credit Facility obtained on behalf of a Client; or
- (b) the sale or purchase of real property or goods to which the Credit Facility relates,

the Member must disclose, in writing, to the Client and any Credit Provider that the Member may approach on behalf of the Client, the nature of that interest.

3.6.2. Where clause 3.6 applies, a Member shall only act if:

- (a) the Member has made the disclosure as required by clause 3.6; and
- (b) the Client:
  - (i) has agreed in writing to the Member continuing to act; or



- (ii) has continued to instruct the Member such that an outward observer would reasonably conclude that the Client has agreed to Member continuing to act.

### **3.7 Instructing licensed valuers**

3.7.1. Where a Client or Credit Provider instructs a Member to obtain a valuation of real property or goods the Member shall:

- (a) instruct a valuer nominated by the Client or Credit Provider; or
- (b) shall otherwise select an independent licensed valuer.

3.7.2. Where a Member engages a valuer pursuant to clause 3.7.1(b), the Member must:

- (a) take reasonable steps to ensure that the valuer has no interest (other than an interest in receiving remuneration for services provided) in the property or goods to be valued or the Credit Facility to which the valuation relates;
- (b) ensure that the Member does not have an improper business relationship with the valuer to which the valuation relates unless such business relationship is disclosed to the Client or Credit Provider that instructed the Member to engage the valuer and the Client or Credit Provider (as appropriate) consents to such appointment in writing;
- (c) ensure that the Member does not receive any financial or other benefit from the valuer as a result of instructing a valuer;
- (d) 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.

3.7.3. Where a valuer is instructed by a Member, the Member must:

- (a) ensure the valuer is provided with all necessary information regarding the property or goods to be valued as reasonably required by the valuer;
- (b) ensure the valuation carried out conforms with the instructions given to the Member by the Client or Credit Provider; and
- (c) ensure that the Client or Credit Provider who requested the valuation can rely upon the valuation.

### **3.8 Conjunctional Arrangements**

When acting in conjunction with another Member to negotiate or arrange a Credit Facility, and making an agreement with the other Member in relation to sharing remuneration, the Members must:

- (a) ensure that each Member discloses their respective remuneration to the Client; and
- (b) where any Relevant Law imposes an obligation that the total remuneration must not exceed a particular amount, ensure that the sum of each Member's remuneration disclosed to a Client under paragraph (a) does not exceed this amount; and
- (c) keep records of such disclosures and agreements made between Members pursuant to this clause.

### **3.9 Comply with Relevant Laws and conditions of membership**

3.9.1. A Member must comply with all Relevant Laws.

3.9.2. A Member must comply with all conditions of its membership including the obligations imposed on Members as set out in:

- (a) the Constitution;
- (b) this Code; and
- (c) the Disciplinary Rules.

3.9.3. A Member must comply with any decision made by the tribunal established under the Disciplinary Rules subject to any judicial intervention taken by the Member.

### **3.10 Providing information to regulators**

A Member must provide such information as may be lawfully required by any regulatory or other authority within a reasonable time.

### **3.11 Responsibility for Personnel**

#### **3.11.1. A Member must ensure that it:**

- (a) provides ongoing training for its Personnel so as to reasonable ensure that each member of its Personnel are aware of the Member's responsibilities under this Code and the Relevant Laws; and
- (b) takes reasonable steps to ensure that its Personnel comply with the obligations set out in this Code.

#### **3.11.2. For the purposes of this Code, a Member is responsible for the acts of its Personnel unless that Member can demonstrate that the act of its Personnel was outside that Personnel's role, responsibility or authority. For the avoidance of doubt, if a Relevant Law imposes liability upon a Member for the acts of its Personnel regardless of whether such act is outside that Personnel's role, responsibility or authority then the Member will nevertheless be responsible.**

## **4. Specific Obligations owed by a Member to its Client**

### **4.1 Obligations in respect of dealings with the Client**

A Member must in respect of their engagement with a Client:

- (a) act competently and with integrity and honesty;
- (b) be clear and transparent in communications with the Client; and
- (c) exercise reasonable care and skill in the discharge of the Member's responsibilities and duties.
- (d) must always act in the best interests of the Client.

### **4.2 Duty to maintain confidentiality**

A Member must maintain the confidentiality of information relating to its Client and handle all personal information received in accordance with the *Privacy Act 1988* (Cth), both during the term of the Member's appointment and after the conclusion of the appointment.

### **4.3 Duties relating to the provision of information to the Client**

#### **4.3.1. A Member must inform its Client:**

- (a) of their eligibility for any government subsidies or other assistance that the Member can reasonably be expected to be aware of:
  - (i) in the course of obtaining a Credit Facility for the Client; or
  - (ii) arising out personal or financial hardship suffered by the Client during the term of a Credit Facility obtained by the Member for the Client if requested by the Client;
- (b) 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;
- (c) of the need to provide the Credit Provider, their solicitor or valuer with 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.
- (d) 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 charge in a timely manner to avoid.
- (e) of the types of Credit Facilities that the Member can obtain for the Client having regard to the scope of the Member's appointment and the Client's specific instructions, objectives or interests), explain the differences between these Credit Facilities and identify to the Client the Credit Providers with which the Member ordinarily deals with in respect of those Credit Facilities.
- (f) on the process of arranging credit generally including the likely time-frames and problems that could be encountered throughout the process.
- (g) about the existence of this Code and any EDRS (in particular the existence of the Australian Financial Complaints Authority (AFCA) or its successor)

and assist the Client in understanding and enforcing their rights under such Codes and/or rules.

- 4.3.2. A Member must return to its Client any original documents provided for copying, or on demand by the Client provided that the Client has paid any outstanding amounts owing to the Member.

#### **4.4 Maintenance and production of records**

- 4.4.1. A Member must during the course of the engagement for a Client and for a period of seven (7) years commencing on the date the engagement on behalf of a Client ceases, maintain written records:

- (a) required by law (including the Relevant Laws);
- (b) that record the nature of the Member's appointment by a Client;
- (c) that record any specific instructions, objectives or interests made known by the Client after the Member's appointment including any change thereof; and
- (d) of any advice, opinions or recommendations provided to a Client and the reasons for that advice, opinion or recommendation.

- 4.4.2. A Member must comply with all requirements for production of, access to, or copying of, such records as may be required by law (including the Relevant Laws).

#### **4.5 Obligations relating to fees**

- 4.5.1. For the purposes of this clause 4.5:

- (a) A "upfront fee" is a fee that is charged by a Member in exchange for the Member assisting a Client obtain a Credit Facility and paid by the Client prior to settlement of the Credit Facility;
- (b) A "fee for service" is a fee paid by a Credit Provider to the Member directly or through an Aggregator upon the settlement of a Credit Facility.

- 4.5.2. Unless contrary to any law (including the Relevant Laws), a Member must not:

- (a) charge an upfront fee unless the Member has complied with clause 4.5.3; or
- (b) charge a fee for service unless the Member has complied with clause 4.5.4.

4.5.3. A Member may only charge an upfront fee if:

- (a) the upfront fee is refunded to the Client in full (less the Member's reasonable costs and outlays) if the Member is not successful in securing credit for the Client;
- (b) The Member has disclosed to the Client in writing prior charging the upfront fee:
  - (i) the value of the upfront fee;
  - (ii) the circumstances in which the upfront fee will be charged;
  - (iii) the time at which the upfront fee will be charge;
  - (iv) the time at which the upfront fee will be due; and
  - (v) the matter set out in paragraph (a); and
- (c) The Client has:
  - (i) agreed to the upfront fee in writing;
  - (ii) has continued to instruct the Member such that an outward observer would reasonably conclude that the Client has agreed to the upfront fee by continuing to instruct the Member.

4.5.4. A Member may only charge a fee for service if prior to charging the fee for service, the Member first draws to the Client's attention in writing that the settlement of a Credit Facility will attract a fee. For the avoidance of doubt, if a Relevant Law requires the Member to make such a disclosure, then the compliance with that Relevant Law will be deemed to be compliance with this clause.

## **5. Specific Obligations owed by a Member to the Credit Provider**

### **5.1 Obligations in respect of dealings with a Credit Provider**

A Member must in respect of their proposed dealings with a Credit Provider on behalf of a Client:

- (a) disclose that it acts for the Client and may receive a fee from the Client;
- (b) exercise reasonable care and skill to discharge its responsibilities and duties competently, with integrity and honesty and in accordance with any

accreditation, agency or other agreement that the Member or that Member's Aggregator may have with the Credit Provider;

- (c) co-operate 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 Member duties to the Client and/or Credit Provider.

## **5.2 Compliance with policies**

A Member must 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.

## **6. Specific obligations relating to credit applications and contracts**

### **6.1 Obligations prior to identifying a proposed Credit Provider**

Prior to lodging a credit application with a proposed Credit Provider on behalf of a Client, a Member must:

- (a) make all reasonable enquiries regarding the Client's identity (including such enquiries and verifications as may be required by the Relevant Laws and specifically the *Anti-Money Laundering and Counter-Terrorism Act 2006* (Cth);
- (b) 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 in the form required;
- (c) present to the Client a range of applicable Credit Facilities that may satisfy the instructions, objectives or interests expressed by the Client; and
- (d) assist the Client to understand the contractual benefits and obligations of a Credit Facility to which the Client may apply.

### **6.2 Obligations prior to lodging an application with a proposed Credit Provider**

After a Client has selected a proposed Credit Provider but before lodging a credit application with a proposed Credit Provider on behalf of a Client, a Member must:

- (a) inform the Client in writing of the Credit Provider's fees and other charges, showing any fees charged by the Member separately (including any fees already disclosed pursuant to clause 4.5), prior to the Client accepting an offer of finance from a Credit Provider. For the avoidance of doubt, if a Relevant Law requires a Member to provide such disclosure, then the compliance with that Relevant Law will be deemed to be compliance with this clause;
- (b) assess the Client's ability to meet their obligations under a proposed Credit Facility in accordance with any 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; and
- (c) explain to Clients the possibility of notations being made on their credit record each time they apply for credit and take steps to avoid unnecessary notations on a Client's credit record;
- (d) where appropriate, interview any guarantor or third party to a proposed Credit Facility and inform them of their general obligations and extent of their liability and record the giving of such advice on the Client's file;
- (e) compile all information required that the Member reasonably expects a Credit Provider to require:
  - (i) to determine the identity, personal or business circumstances, financial position, credit history and credit worthiness of the Client;
  - (ii) relating to the proposed security for a loan or Credit Facility to assist in correctly identifying the property or goods;
- (f) at the time of lodgment with the proposed Credit provider, provide the Client's credit application and supporting information to the Credit Provider following completion and signing by the Client where required, including any consents or disclosure documents required by the Credit Provider or the Relevant Laws.

### **6.3 Obligations after lodgment of credit application**

After the Member has lodged a credit application with a proposed Credit Provider, a Member must:



- (a) where reasonably practicable, check the accuracy of the Credit Provider's Credit Facility contract and relevant security documentation by comparison with the Client's requirements except where the Credit Provider and Client are in direct contact or communication and the relevant documents are not provided to the Member;
- (b) take reasonable steps to obtain relevant information and documents supplied by the:
  - (i) Credit Provider and promptly convey such material to the Client;
  - (ii) Client and promptly convey such material to the Credit Provider.
- (c) promptly deal with any variation in the Client's instructions, objectives and interests;
- (d) promptly inform the Client of any variation in the terms and conditions available from the selected Credit Provider that differ from those originally conveyed and retain a written record of such variations, with reasons given by the Credit Provider and the Client's reaction and subsequent instruction;
- (e) Promptly inform:
  - (i) the Credit Provider where a credit application is withdrawn by a Client or if there is a delay in providing any further information required from the Member, Client or other party;
  - (ii) the Client where 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 Member, Credit Provider or other party.
- (f) 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.

#### **6.4 Obligations after settlement of the credit application**

After the Client's credit application has been settled, a Member may:

- (a) subject to compliance with the Relevant Laws and provided that the Client has paid any outstanding amounts owing to the Member, promptly provide

any information or assistance reasonably required by a valuer, lawyer, mortgage insurer or other party necessarily involved in the discharge of the Member's duties to the Client and/or Credit Provider.

- (b) when requested by, or previously arranged with, the Client or Credit Provider, provide 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.

## **6.5 Duty to avoid knowing misrepresentation or non-disclosure**

A Member must 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.

## **Dispute Resolution**

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### **7. Internal Dispute Resolutions Process**

#### **7.1 Obligation to have an IDRS**

- 7.1.1. A Member must have a documented IDRS process for handling Complaints from Clients or Credit Providers which prescribes, as a minimum:

- (a) the procedure for handling a Complaint;
- (b) the usual timeframe for each stage of the procedure to handle the Complaint provided that the Complaint will be determined or resolved within 20 working days from the date that the Member has received all relevant information from the Client or Credit Provider.
- (c) confirms that the Complaint will be handled by an officer or employee of the Member with appropriate powers to deal with the Complaint.

- 7.1.2. A Member must provide a Client or Credit Provider with free access to its IDRS.

- 7.1.3. Promptly reply in writing to any request from a Client and Credit Provider for the resolution of a dispute.

## **7.2 Escalation of the Complaint**

7.2.1. If the Complaint is not resolved in accordance with the Member's IDRS or the outcome is unacceptable to a Client or Credit Provider, the Member will:

- (a) provide to the Client or Credit Provider, where appropriate, the general reasons for that outcome;
- (b) inform the Client or Credit Provider whether the Member believes the Complaint is one to which an EDRS will apply and information as to the availability of, and how to refer a Complaint to, an EDRS;
- (c) inform the Client or Credit Provider of any EDRS that the Member is a member of that may be available to investigate the Complaint if the IDRS is unable to achieve a satisfactory conclusion.

## **7.3 When a Complaint need not be dealt with**

A Complaint need not be dealt with by a Member where:

- (a) insufficient information has been provided by the Client or Credit Provider to allow the Member to properly consider the Complaint after the Member has made a written request for such further information from the Client or Credit Provider;
- (b) the substance of the Complaint is, or has already been, the subject of consideration by another forum such as an EDRS, statutory body, a court, tribunal or other legal process; or
- (c) the Complaint is, in the reasonable opinion of the Member, frivolous, vexatious, or of improper purpose provided that the Member make a written record of this opinion and reason for that opinion.

## **8. FBAA Dispute Resolution Service**

### **8.1 Establishment of the FBAA's DRS**

8.1.1. The FBAA has in place a DRS to assist Members resolve Complaints.

8.1.2. Participation in the FBAA's DRS complaint handling process is purely voluntary for Members and those who have made a Complaint.

## 8.2 Who can access the FBAA's DRS

The following people can access the FBAA's DRS:

- (a) a Client of a Member;
- (b) a Credit Provider;
- (c) an Aggregator;
- (d) a Member who is not already described here
- (e) a person who holds a reasonable belief that a Member has dealt with them in a manner which is a breach of the this Code,

provided that:

- (f) the subject matter of the Complaint is such that the FBAA's DRS applies; and
- (g) either:
  - (i) where the person is a Credit Provider or Client, the Complaint has been raised with the Member's IDRS and a resolution has not been achieved; or
  - (ii) otherwise, the Complaint has been raised with the Member and not resolved within a period of 30 days.

## 8.3 When the FBAA's DRS not apply

8.3.1. The FBAA's DRS will not accommodate a Complaint which:

- (a) relates to a legally claimable broker fee/commission;
- (b) relates to a Credit Provider's (or mortgage insurer's) decision, terms or conditions;
- (c) is, or has already been, the subject of consideration by another forum such as an EDRS, statutory body, a court, tribunal or other legal process;
- (d) having regard to the relief sought by the complainant, it is unlikely that the FBAA's DRS will achieve a satisfactory result; or

- (e) relates to a matter which, in the reasonable opinion of the DRS Committee to be frivolous, vexatious, or of improper purpose.

8.3.2. The FBAA's DRS will not accommodate a Complaint if a party to the Complaint refuses to voluntarily participate in the FBAA's DRS.

#### **8.4 Step 1: Process**

8.4.1. Upon receipt, the Complaint will be referred to the DRS Committee, who will endeavour to attain sufficient information to decide whether the FBAA's DRS applies and if so, the path it would be prudent that the matter should take to obtain a resolution.

8.4.2. Where the FBAA's DRS may accommodate the Complaint, the DRS Committee may refer the matter to a Mediation Officer, or MO.

#### **8.5 Step 2: Resolving through Mediation Officer**

8.5.1. *Conciliation of alleged breach of the Code by MO:* The MO will identify for the parties of the Complaint:

- (a) the alleged breaches;
- (b) identify information which the parties should provide to facilitate a resolution; and
- (c) provide on information relating to the principles of any broker specific laws and practice, objectives of the Code and such other information as may facilitate a resolution; and
- (d) provide an indication as to what is fair and reasonable in all the circumstances.

8.5.2. *Request for information by MO:* For the purpose of determining whether to consider, or continue considering any Complaint, the MO may request a party to the Complaint or any third party which is involved in the Complaint, information which the MO reasonably considers is relevant to Complaint. Any Member and complainant are encouraged to provide all such documents or information promptly. Provision of any confidential documents or information of the Member's Client relevant to the Complaint is subject to the Member receiving the consent of its Client to providing such documents or information.

- 8.5.3. Any documents identified as confidential will retain to the fullest extent permitted by law, their 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.
- 8.5.4. The MO will notify the Member and the complainant as soon as is reasonably practicable 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.
- 8.5.5. *Discretion of MO to refuse to consider or continue considering a Complaint which is inappropriate for the procedure:* The MO may, in its absolute discretion refuse to consider or continue considering a Complaint which the MO reasonably believes that the FBAA's DRS is an inappropriate forum for the Complaint such as when:
- (a) insufficient information has been provided by the complainant to allow the MO to properly consider the Complaint;
  - (b) the Member'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; or
  - (c) Any circumstance set out in clause 8.3.
- 8.5.6. Where the MO exercises its discretion, referred to above, the MO is required to provide written reasons this decision and any steps which must be taken before the MO will consider or continue to consider the alleged breach of the Code.
- 8.5.7. *Right to review decision by MO to refuse to consider or continue considering a Complaint:* If the complainant informs the MO that they do not agree with the MO's decision to refuse to consider or to continue considering a Complaint, the matter will be referred to the Referee. The MO will be required to 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.

- 8.5.8. *Time frames for conciliation:* Conciliation of a Complaint must be completed by the MO within 21 working days of the date on which the MO was notified in writing of the Complaint, or such other time as the MO decides is reasonable in the circumstances.
- 8.5.9. *Failure of MO to resolve Complaint – automatic referral to Referee by MO:* The MO does not have the power to make any decisions which bind the Member or the complainant. If a Complaint is not resolved to the satisfaction of the complainant the Member will advise the complainant of the complainant's rights to refer the matter to an EDRS or lodge a complaint to the FBAA under the Disciplinary Rules.
- 8.5.10. *Terms of Reference – Complaints Handling:* The MO will be empowered with wide terms of reference to enable them to effectively and efficiently manage the Complaint process.

## **9. Disciplinary Action by the FBAA**

In accordance with the Constitution and the Disciplinary Rules, the directors of the FBAA may discipline a Member for any breach of this Code (including the possibility of termination of membership).

## **10. Liability of Mediation Officer, Referee and FBAA Disputes Resolution Service**

- 10.1.1. The Mediation Officer, Referee and the FBAA will not be liable to a complainant or Member or any other person or entity for any loss or damage (including legal costs) arising directly or indirectly from performing their duties. A confirmation of this may be a condition precedent to use of the DRS or like services and will be required from the Member and complainant prior to initiating any DRS process.
- 10.1.2. For further information or assistance please contact:

FBAA Disputes Resolution Service

Address: Level 1, 116 Ipswich Road, Woolloongabba Qld 4102

Tel: 1300 130 514 or (07) 3847 8119

Fax: (07) 3041 0350

Email: [disputes@fbaa.com.au](mailto:disputes@fbaa.com.au)

## Schedule 1: Dictionary

Unless the context indicates otherwise, terms used in this document have the meanings set out in the below table:

Term	Meaning
<b>Aggregator</b>	means a corporation or any other entity (either in its own capacity or as trustee for any trustee): (a) that channels a Client's application provided by Members to Credit Providers; and (b) receives any upfront and/or trailing commission from the Credit Provider and disburses it to a Member in accordance with a prior written arrangement with that Member.
<b>ASIC</b>	means the Australian Securities & Investments Commission.
<b>Client</b>	means a person, corporation or any other entity (either in its own capacity or as trustee for any trustee) that has engaged a Member for the purpose of obtaining a Credit Facility but excluding any 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, mortgage aggregation or taxation matters.  It is deemed that where a Member has been engaged by a Client, they will be in, for the purposes of this Code, a principal and agency arrangement unless the contrary can be shown.
<b>Code or Code of Conduct</b>	means this document as amended from time to time.
<b>Complaint</b>	means an allegation of wrongdoing, breach of some obligation or other expression of actionable dissatisfaction made by one party against another.
<b>Conflict of Interest</b>	means an actual or perceivable conflict between an entity's duty or obligation to another and either: (a) that entity's duty to another party; or (b) that entity's own interests.
<b>Constitution</b>	the constitution of the FBAA as in force from time to time.



<b>Term</b>	<b>Meaning</b>
<b>Credit Facility</b>	means a mortgage or any finance or lending products (whether secured or unsecured) including but not limited to: credit cards, secured and unsecured business finance such as lease finance, commercial hire purchase and chattel mortgages, mortgage origination and/or management on behalf of Credit Providers, debt factoring and cash flow finance and debt reduction plans.
<b>Credit Provider</b>	means: <ul style="list-style-type: none"> <li>(a) any person, corporation or partnership which is defined as such in the <i>National Consumer Credit Protection Act 2009</i> (Cth);</li> <li>(b) any Bank licensed under the <i>Banking Act 1959</i> (Cth), credit union, building society, finance company, mortgage manager, merchant bank, foreign bank, trustee company, pastoral company, contributory mortgage scheme, private lender or superannuation fund; or</li> <li>(c) any person, corporation or partnership that provides a Credit Facility,</li> </ul> who has or may receive an application from a Member (either directly or through an Aggregator) on behalf of a Client.
<b>Disciplinary Rules</b>	means the document titled as such which sets out the rules of the FBAA providing for disciplinary action to be taken in relation to the conduct of Members.
<b>DRS</b>	means a dispute resolution service and includes the IDRS and EDRS.
<b>DRS Committee</b>	means a committee appointed by the directors of the FBAA for the purpose of administering this Code and may be named as such and includes and subsequent committee by a different name that fulfills a material similar purpose.
<b>EDRS</b>	means the external DRS and includes: <ul style="list-style-type: none"> <li>(a) the Australian Financial Complaints Authority; or</li> <li>(b) a registered scheme for investigating and resolving complaints in the finance industry and to which the Member is either a member of such a scheme or an agent of a member of such a scheme.</li> </ul>

<b>Term</b>	<b>Meaning</b>
<b>FBA</b>	means the Finance Brokers Association of Australia Limited ACN 094 784 040 ABN 22 094 784 040.
<b>IDRS</b>	means an internal DRS established by a Member pursuant to clause 7.
<b>Mediation Officer or "MO"</b>	means a person appointed by the DRS Committee to investigate a Complaint, gather information and make written reports and recommendations to the DRS Committee in respect of that Complaint.
<b>Member</b>	means a person, corporation or any other entity (either in its own capacity or as trustee for any trust) that is a member of the FBA.
<b>Personnel</b>	means any person that is engaged by a Member as its employee, independent contractor, consultant, agent, business partner or may otherwise be engaged to perform services to which this Code relates on behalf of the Member.
<b>Referee</b>	means an independent person who is a member of the DRS Committee from time to time to receive reports from the MO, conducts hearings and make determinations on complaints as provided in the EDRS.
<b>Related Entities</b>	means: <ul style="list-style-type: none"> <li>(a) in respect of a Member that is a person, that person's immediate family members including their spouse, parents, children and grandchildren;</li> <li>(b) in respect of a Member that is a corporation, that corporation's Related Bodies Corporate (as that term is defined in the <i>Corporations Act 2001</i> (Cth)).</li> </ul>
<b>Relevant Laws</b>	means any law which: <ul style="list-style-type: none"> <li>(a) applies in the jurisdiction of the Member and/or the Client;</li> <li>(b) imposes an obligation on a Member in favour of a Credit Provider or a Client;</li> </ul> and includes but is not limited to: <ul style="list-style-type: none"> <li>(c) Anti-Money Laundering and Counter-Terrorism Act 2006 (Cth);</li> <li>(d) National Consumer Credit Protection Act 2009 (Cth);</li> <li>(e) Australia Securities and Investment Commission Act 2001 (Cth);</li> <li>(f) Competition and Consumer Act 2010 (Cth);</li> </ul>

Term	Meaning
	(g) Privacy Act 1988 (Cth); (h) Corporations Act 2001 (Cth).

## Schedule 2: Change History

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The version history of this document is set out below:

<b>Version Number</b>	<b>Description of changes</b>	<b>Date passed by the Members</b>	<b>Signature of Chair of the DRS Committee endorsing the document</b>
1.0			