



## CODE GOVERNANCE COMMITTEE CHARTER

### 1 Functions and responsibilities of the Code Governance Committee

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- 1.1 Consistent with the Code and the Constitution, the Code Governance Committee shall be responsible for the independent administration and enforcement of the Code and will have the following functions and responsibilities:
- (a) to establish and maintain an up-to-date register of Code Subscribers;
  - (b) to monitor and enforce Code compliance by Code Subscribers;
  - (c) to receive information and compliance reports from Code Subscribers as required to monitor and report on Code Subscribers' adherence to minimum reporting standards;
  - (d) to receive reports of possible Code breaches from FOS;
  - (e) to investigate at its discretion, reports of alleged Code breaches;
  - (f) to make determinations in relation to reports of alleged Code breaches which the CGC has investigated;
  - (g) to agree corrective measures where relevant with Code Subscribers to remedy Code breaches;
  - (h) to monitor the implementation of any agreed corrective measures for Code breaches;
  - (i) to impose, at its discretion, sanctions for a breach of the Code;
  - (j) to provide advice to the ICA Board on a quarterly basis on:
    - (i) training and other activities necessary to assist Code Subscribers to meet the requirements of the Code; and
    - (ii) amendments that, in the CGC's view, should be made to the Code to facilitate the objectives of the Code;
  - (k) to provide advice to the Association on:
    - (i) financial matters associated with the activities, or proposed activities, of the CGC;

- (ii) amendments that in the CGC's view, should be made to the Constitution or the Charter to facilitate the objectives of the Code; and
  - (iii) other matters as determined by the CGC from time to time.
- (l) within the CGC's jurisdiction, to provide guidance on compliance with the Code to Code Subscribers and other interested persons;
  - (m) to publish information and make presentations on the activities of the CGC, its membership and to promote its work;
  - (n) to publish an Annual Report on the activities of the CGC; and
  - (o) to undertake other functions and responsibilities as determined by the Association from time to time.

## 1.2 Responsibilities of CGC Members

Each CGC Member has a duty to:

- (a) comply with the Charter, Code and Constitution; and
- (b) act impartially and objectively in the discharge of their duty.

## 1.3 Delegation of CGC functions

- (a) Subject to clause 1.3(b), the CGC may delegate its functions under the Code and this Constitution to an Administrator.
- (b) The CGC must not delegate or outsource its power to impose a sanction in relation to Code non-compliance.
- (c) On the request of the CGC, the Management Committee will grant approval for the Association to enter into an outsourcing agreement with an Administrator.
- (d) For the avoidance of doubt, the CGC may delegate its secretariat function to the Administrator.
- (e) Any reports of the CGC must be approved by the CGC before being released including where the preparation of a report has been delegated.

## 1.4 Code Compliance Committee

The CGC Committee may act in the capacity and discharge the functions of the Code Compliance Committee in respect of the Former Code.

## 2 Meeting of CGC Members

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### 2.1 Meetings and proceedings of CGC

- (a) Subject to the Code, the CGC shall meet, discharge its responsibilities and convene, adjourn and otherwise regulate its meetings and proceedings in such manner as it may from time to time determine.

- (b) The CGC shall meet at least 4 times in each period of 12 months.
- (c) No person is entitled to attend a CGC meeting unless that person is:
  - (i) a member of the CGC, or the member's alternate;
  - (ii) the secretary of the CGC; or
  - (iii) a person invited to attend the meeting by the CGC Chair, including but not limited to the Administrator or a person providing advice to the CGC in accordance with clause 4.1(b).

## 2.2 Quorum

A quorum for a meeting shall be the 3 CGC Members who comprise the Code Governance Committee at the time of the meeting. A duly convened CGC meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the CGC.

## 2.3 CGC Chair to preside

The CGC Chair shall preside over each meeting of the Code Governance Committee.

## 2.4 Notice of meetings

- (a) Subject to this clause 2.4, a CGC meeting may be called by a member of the CGC or the Administrator giving to every other member:
  - (i) notice confirming the venue, time and date of the meeting no fewer than 10 business days prior to the meeting; and
  - (ii) an agenda of items to be discussed no fewer than five business days prior to the meeting.
- (b) A member of the CGC or the Administrator may call a CGC meeting in relation to an urgent matter by giving to every other member prior notice of no fewer than two business days confirming the venue, time and date together with an agenda of items to be discussed.
- (c) A notice or agenda may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the member or at any other address given to the secretary of the CGC by the member or by any technology agreed by all the members.
- (d) A breach of this clause 2.4 does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing if, at a meeting at which all members are present, the CGC resolves unanimously to excuse the breach.

## 2.5 Minutes

- (a) The secretary will minute the proceedings and resolutions of all CGC meetings, including the names of those present and in attendance.
- (b) Minutes of CGC meetings will be circulated to each member of the CGC and will be approved by the CGC.

## 2.6 Meetings by Technology

- (a) Each member consents to the use of each of the following technologies for holding a meeting of the CGC:
  - (i) video;
  - (ii) telephone;
  - (iii) electronic mail;
  - (iv) any other technology which permits each member of the CGC to communicate with every other member; or
  - (v) any combination of these technologies.
- (b) Where the members of the CGC are not all in attendance at one place and are holding a CGC meeting using technology and each member can communicate with the other members:
  - (i) the participating members are, for the purpose of the Code and this Charter concerning CGC meetings, taken to be assembled together at a CGC meeting and to be present at that CGC meeting; and
  - (ii) all proceedings of those members conducted in that manner are as valid and effective as if conducted at a CGC meeting at which all of them were physically present in the one location.

## 2.7 Voting

- (a) Each CGC Member has one vote.
- (b) Every question arising at a meeting shall be determined, on a show of hands or as determined by the CGC Chair, by a simple majority.

## 2.8 CGC Chair

The CGC Chair shall do all such things as are necessary to ensure the duties and responsibilities of the CGC as specified in the Charter are effectively discharged.

## 2.9 Delegation of authority by the CGC

The CGC may from time to time, by written resolution, assign to or vest in the CGC Chair powers and responsibilities of the CGC. A copy of the resolution of the CGC as to the authority of the CGC Chair in respect of any matter shall be accepted as conclusive.

# 3 Material Personal Interests and Conflicts

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## 3.1 Personal interest in a matter being considered at a CGC meeting

If a CGC Member has a material personal interest in relation to a matter that is being considered at a meeting of the CGC they must not:

- (a) be present while the matter is being considered at the meeting; or

- (b) vote on the matter, unless:
  - (i) the CGC Member has notified the other CGC Members and the Association Chair of their material personal interest;
  - (ii) the other CGC Members and the Association Chair are satisfied that the material personal interest should not disqualify the CGC Member from voting on the matter;
  - (iii) the nature of the personal material interest and the circumstances in which it was disclosed have been recorded in a minute; and
  - (iv) the minute, relevant determination or other reports on the matter are made available for the inspection on request by any Code Subscriber affected.

For the avoidance of doubt, a material personal interest for the purposes of this clause does not arise solely by reason of a CGC Member's previous employment with a Code Subscriber, or by reason of the insurance company of which a CGC Member is a customer.

### **3.2 General Law obligations**

The requirements in clause 3.1 have effect in addition to and not in derogation of any general law about conflicts of interest or conflicts of duties.

### **3.3 Alternate Representative**

A CGC Member may nominate an alternate to attend a meeting which the CGC Member is unable to attend due to illness, absence from Australia, the operation of clause 3.1 or 3.2 or other significant circumstances, provided that:

- (a) the CGC Member has asked the person they propose to nominate as an alternate if that person has any material personal interest in relation to a matter that is being considered at the relevant meeting of the CGC and the person has said they do not have such an interest; and
- (b) the CGC's Member's nomination of the alternate is approved, prior to the meeting which the alternative is to attend, by written instrument by:
  - (i) each of the other CGC Members; and
  - (ii) the Chair, or in his or her absence the Deputy Chair, of the Association.

A person appointed as an alternate may exercise all the powers of their appointer (other than the power to appoint an alternate), and is subject to all the requirements applying to the office of their appointer, at the meeting which they attend at which their appointer is not present.

## **4 CGC Compliance Monitoring Process**

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### **4.1 Methods**

The CGC may for the purposes of monitoring compliance with the Code:

- (a) make reasonable requests for a Code Subscriber and/or the Administrator to provide access to information, documents and systems, which the CGC considers necessary to discharge its functions;
- (b) seek independent professional legal, accounting or other advice;
- (c) request each Code Subscriber to lodge an annual return reporting on their compliance with the Code; and
- (d) enter into appropriate arrangements with FOS for the purpose of facilitating:
  - (i) information exchange relevant to the CGC's functions; and
  - (ii) referrals to the CGC of an allegation that a Code Subscriber has breached the Code.

## **5 CGC Compliance Investigation Process**

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### **5.1 Investigations undertaken by the CGC**

The CGC may commence an investigation of Code compliance in the following ways:

- (a) in response to an allegation that a Code Subscriber may have breached the Code; or
- (b) in response to a referral or report from FOS that a Code Subscriber may have breached the Code; or
- (c) as an outcome of the CGC's monitoring process if the CGC has reason to suspect that a Code Subscriber may have breached the Code.

### **5.2 Matters outside the scope of CGC's investigation powers**

The CGC:

- (a) has discretion to determine whether a matter falls outside the scope of its investigation powers; and
- (b) may develop a policy on how it will exercise its discretion to consider allegations of Code breaches pursuant to 5.1.

### **5.3 Process for considering alleged Code breaches**

- (a) Subject to clause 5.2, the CGC may, within a reasonable time of receiving a report of an alleged breach, consider that allegation in accordance with this Charter (including clause 11.1) and any operating procedures determined by the CGC in accordance with clause 10.
- (b) Where the CGC investigates an alleged Code breach, the CGC must provide the Code Subscriber with an opportunity to respond to the alleged breach.

#### 5.4 Notice of determination

- (a) Following an investigation in accordance with clause 5.3, the CGC may make a determination in respect of the alleged breach.
- (b) A determination made by the CGC must:
  - (i) be in writing;
  - (ii) include a brief description of the allegation;
  - (iii) include a statement that in the CGC's view the reported allegation was proven in whole or in part or was unfounded;
  - (iv) if applicable, state any finding by the CGC that the Code Subscriber is responsible for serious or systemic non-compliance with the Code;
  - (v) include brief reasons for the conclusions and findings of the CGC; and
  - (vi) be provided to the Code Subscriber so that the CGC and the Code Subscriber can agree on any corrective measures and the relevant timeframes for implementing these.

### 6 Sanctions against Code Subscribers

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#### 6.1 Right to impose a Sanction

- (a) The CGC has the right to impose a sanction on a Code Subscriber in accordance with the Code only after the Code Subscriber has failed to implement the corrective measures within the timeframe agreed in accordance with clause 5.4(b), or where the CGC fails to reach agreement with a Code Subscriber about the corrective action to be taken.
- (b) The CGC alone may impose a sanction on a Code Subscriber for breach of the Code. The right to impose a sanction may not be delegated.

#### 6.2 Sanctions the CGC may impose

The CGC may impose one or more of the following sanctions only in accordance with the Code:

- (a) require a Code Subscriber to undertake a rectification process or step within a specified timeframe;
- (b) require a Code Subscriber to undertake a compliance audit;
- (c) require a Code Subscriber to undertake corrective advertising; and
- (d) publicly name a Code Subscriber as non-compliant with the Code.

#### 6.3 Grounds for imposing a Sanction

- (a) When determining any sanctions to be imposed, CGC will consider:

- (i) the principles and objectives of the Code;
  - (ii) the appropriateness of the sanction; and
  - (iii) whether the breach of the Code is a significant breach.
- (b) The CGC is under no obligation to impose a sanction in any of the circumstances referred to in this clause. The decision to impose a sanction is wholly at the discretion of the CGC, subject to the Charter.

## **7 Complaints concerning CGC**

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### **7.1 Complaints**

- (a) The CGC Chair will consider and investigate any complaint that the CGC has not acted in accordance with the Code or the Charter received by the CGC or referred to it by the ICA or FOS.
- (b) The CGC Chair will make recommendations to the CGC in respect of what, if any, steps should be taken in respect of the complaint.
- (c) If the CGC Chair believes that a complaint raises issues which involve the Chair or a CGC Member in a conflict of interest, then the CGC Chair may appoint an Independent person to consider and investigate and make recommendations to the CGC in respect of the subject matter of the complaint.
- (d) The CGC will advise a complainant of its determination in relation to any complaint.
- (e) The CGC Chair may report complaints and their outcomes to the Association Chair.

## **8 Reporting by CGC**

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### **8.1 Collection of information for Annual Report**

The CGC must, for each period for which it must prepare an Annual Report, collect and record data for the purposes of analysis and reporting on Code compliance.

## **9 Publication of Annual Report**

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- (a) By 1 October each year, the CGC must prepare and give to the ICA Board and FOS Board an Annual Report for the period ending on 30 June in that year.
- (b) Each Annual Report must include a fair and adequate summary and analysis of the information specified in clause 9(c). It may include any other matters the CGC thinks fit that are consistent with the functions of the CGC under the Code and this Charter.
- (c) The Annual Report must include the following:

- (i) an outline of the activities of the CGC in the relevant period, including:
    - (A) information as to the reported allegations of breaches of the Code;
    - (B) information as to investigated alleged breaches and any corrective measures agreed with Code Subscribers;
    - (C) information as to any sanctions imposed by the CGC; and
    - (D) information as to the number of meetings of the CGC and the attendance of CGC Members;
  - (ii) any recommendations on Code improvements and education relevant to the operation of the Code arising out of its experiences of Code compliance in the relevant period; and
  - (iii) a statement that the CGC has complied with the terms of the Charter in the period of the Annual Report and, if there has been any non-compliance, the Annual Report must identify that non-compliance and the reasons for it including any action that may have been instituted by the CGC or the Association to ensure that such non-compliance does not occur in the future.
- (d) Each year, the CGC must prepare and give to the ICA Board and FOS Board aggregated industry data and consolidated analysis of Code compliance by the Code Subscribers for the relevant period. This information may be provided separate to the Annual Report.

## 9.2 Provision and lodgement of Annual Report

The CGC must provide a copy of the Annual Report to:

- (a) each Association Member;
- (b) each Code Subscriber;
- (c) ICA Board;
- (d) FOS Board; and
- (e) ASIC.

The CGC must make copies of the Annual Report available to the public. To the maximum extent permitted by law, Annual Reports of the CGC may be provided and made available in electronic form.

## 10 Policies, guidelines, reporting forms and operating procedures

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### 10.1 Development of reporting forms and operating procedures

The CGC may develop:

- (a) policies and guidelines on the administration of the Code; and

- (b) compliance reporting and other forms; and
- (c) operating procedures related to the activities of the CGC and/or the Administrator (if relevant);

that is consistent with this Charter and the Code.

In conjunction with ICA, the CGC will consult with Code Subscribers in developing these policies, guidelines, reporting forms and operating procedures. The CGC may also consult with other organisations and individuals with an interest in the Code, as the CGC sees fit.

## **11 General principles and procedures**

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### **11.1 General principles**

When considering an alleged breach, the CGC must:

- (a) ensure a Code Subscriber, or Code Subscribers, to whom an alleged breach or investigation relates is, or are, accorded procedural fairness throughout the course of the CGC's consideration of the alleged breach or conduct of the investigation;
- (b) ensure, as far as practicable, that:
  - (i) a Code Subscriber's business is not disrupted unduly; and
  - (ii) a Code Subscriber's customers are not inconvenienced unduly; and
- (c) act reasonably in all circumstances.

### **11.2 Confidentiality of information**

- (a) In this Charter, "confidential information" means all technical, commercial and other confidential information and materials of a Code Subscriber, consumer or small business and includes any information or material that discloses or relates to:
  - (i) a Code Subscriber's compliance or non-compliance with the Code;
  - (ii) an actual or alleged breach of the Code;
  - (iii) commercial, financial or legal affairs including but not limited to pricing policies, costing information, supplier lists and customer lists;
  - (iv) a matter to which an obligation of confidence applies under a privacy law; and
  - (v) any other information or material which is of a confidential or sensitive nature, is marked or denoted as being confidential or which a reasonable person to whom that information or material is disclosed, or to whose knowledge that information or material otherwise comes, would consider confidential.
- (b) Subject to paragraph (c), a person referred to in clause 2.1(c) must not disclose, or use for a purpose other than contemplated by this Charter or

the Code, any confidential information supplied to it in connection with the conduct of the business of the CGC.

- (c) A CGC Member may disclose any confidential information:
- (i) to another CGC member or to any person to whom disclosure is reasonably required for the purpose of the CGC exercising its functions under the Code;
  - (ii) to any person to whom disclosure of confidential information is required by law;
  - (iii) in response to a request for that confidential information from the ASIC;
  - (iv) under corresponding obligations of confidence as imposed by this clause 11, to:
    - (A) a person retained to provide advice in accordance with clause 4.1(b), or
    - (B) an operator of an EDR Scheme but only to the extent that it is relevant to a matter currently under investigation by that EDR Scheme;
  - (v) for the purpose of imposing a sanction on a Code Subscriber in accordance with the Code; or
  - (vi) with the prior written consent of the Code Subscriber.

### 11.3 External expertise

In discharging its functions the CGC may consult such external parties as the CGC thinks appropriate, provided that the CGC takes reasonable steps to ensure that any such external parties also comply with the requirements of this Constitution where applicable.

### 11.4 Authority to give oral or written public statements

The CGC, and each CGC Member, shall not make public statements on behalf of the Association, except:

- (a) as contained in the Annual Report; or
- (b) as required in the performance of its functions and responsibilities as set out in clause 1 of this Charter.