

5 September 2025

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Senior Manager
Regulatory Reform and Implementation
Australian Securities and Investments Commission
GPO Box 9827,
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By email: rri.consultation@asic.gov.au

Dear Ms Hadisutanto,

Consultation on ASIC Regulatory Guide 181 Licensing: Managing conflict of interest

The Insurance Council of Australia (Insurance Council) welcomes the opportunity to respond on behalf of our members to the Australian Securities & Investments Commission (ASIC) consultation on the proposed update to '*Regulatory Guide 181 Licensing: Managing conflicts of interest*' ⁽¹⁾.²

The Insurance Council is the representative body of the general insurance industry and represents approximately 85 per cent of private sector general insurers. As a foundational component of the Australian economy, the general insurance industry employs approximately 60,000 people and on average pays out \$147 million in claims each working day (\$36.5 billion per year).

We welcome ASIC's proposal to revise the guidance in RG 181 to enhance clarity with respect to the conflict management obligations of Australian Financial Service Licensees (AFSL) under Section 912A(1)(aa) of the *Corporations Act 2001* (Cth) (the Corps Act). This is a crucial component to enabling positive consumer outcomes and ensuring that general insurers perform their critical role in an effective and proportionate way.

General commentary

The Insurance Council notes that the proposed RG 181 sets out key obligations and ASIC's expectations in relation to conflict management.³ The inclusion of illustrative examples and a roadmap of legal obligations across a range of financial activities assists AFSLs in complying with these responsibilities.

Generally, we note that some proposed paragraphs contain references to conflicts of interest that would benefit from further clarification. We have outlined specific comments on the proposed RG 181 below, with the aim of seeking further clarification and encouraging ASIC's consideration to assist regulated entity compliance.

² ASIC (30 July 2025), Consultation Paper 385, [Proposed update to RG 181 Licensing: Managing conflicts of interest](#).

³ See [ATTACHMENT to CP 385 / DRAFT REGULATORY GUIDE 181: AFS licensing: Managing conflicts of interest](#), page 6.

Specific commentary

Proposed examples

The practical examples provided in the proposed RG 181 are comprehensive but non-exhaustive, with a focus on investment and advice-related conflicts, and fewer examples provided for insurance, distribution and remuneration structures.

The Insurance Council would welcome additional examples that are directly applicable to a general insurance context. This includes examples in relation to volume-based incentives, and white-labelled products distributed through intermediaries.

Distribution models

It would be beneficial for the proposed RG 181 to recognise structural differences between product distribution models in general insurance.

Insurance intermediaries could be agents acting on behalf of the insurer or brokers acting on behalf of the client. As there are fundamental differences in the relationship with clients under these different distribution models, conflicts management practices and models will vary. We note that, unlike agents, intermediaries like brokers operate independently from insurers. The proposed RG 181 should observe the nuances in board-level oversight, monitoring and documentation expectations for intermediaries.

Scope of obligation

The proposed RG 181.10 outlines that the *'conflict management obligation is broad and intended to apply widely to all conflicts of interest other than those wholly outside the financial services business of you and your representatives'*.

In comparison, proposed RG 181.48 outlines the proportionate and risk-based approach to the obligation that considers the materiality of the conflict. As we understand it, while ASIC's expectation is that AFSLs have in place processes to identify a broad range of potential conflicts of interest, a risk-based approach applies in assessing the appropriate course of action that should be taken in managing identified conflicts which reflects the materiality of the conflict.

We suggest ASIC consider if the wording should be updated in proposed paragraph RG 181.10 to recognise the proportionate approach taken to the broader obligation, in order to support effective and consistent compliance by entities.

Further, proposed RG 181.48(b) states *'the risks posed by a conflict of interest'* includes materiality or seriousness of a conflict, and any misconduct or harm that might impact market integrity. ASIC could consider adding an additional point to consider similar conflicts that have arisen in the past. This could help reinforce the importance of effective conflict management practices.

The proposed RG 181.28 outlines that a conflict can arise from competing financial, personal, business or party related interests or competing loyalties and obligations. It is helpful that the proposed RG 181 outlines examples of individual conflicts in Table 1 of RG 181.34. Given the undefined concept of 'personal interest', additional guidance on identifying how personal interests can create actual, apparent or perceived conflicts of a material nature would be welcomed.

The proposed RG 181.29 outlines conflicts where there is a real and sensible possibility that the conflict could adversely sway the judgements and actions of employees, directors or representatives of a financial service business. While it is useful that ASIC focuses on more material conflicts, we suggest a more explicit focus on potential poor outcomes impacting consumers.

RG 181.6 specifically references s912A(1)(aa) of AFS licensee obligations to have adequate arrangements in place for managing conflicts of interest. It may be helpful to align and reference s912A(1)(b) and RG 104 to meet the general obligations under a licence.

Clarification on 'minor ethical breach'

The proposed RG 181.33(b) refers to factors relevant to materiality or seriousness of a conflict of interest, including those that range from minor ethical breaches to causing significant harm to affected parties. We suggest further defining the term 'minor ethical breach' and providing clear examples of types of conflicts that capture this. ASIC may wish to reconsider the use of the term 'minor' to avoid any unintended interpretation that such conflicts are acceptable.

Types of conflicts

Table 1: *Illustrative Examples of Conflicts* provides illustrative examples of conflicts which are helpful in considering the range of scenarios which may give rise to a conflict of interest. We provide some observations and seek clarification on the following examples.⁴

- **Conflicts between clients or members.** This includes *'a fund charging excessive or unnecessary fees to members, not in their best financial interests'*. This example may require additional context to more clearly illustrate where the conflict arises, as it is unclear how the charging of excessive fees in itself is a conflict of interest.
- **Conflicts between clients, members or classes of persons.** This includes circumstances where a *'conglomerate firm uses information obtained from one client to benefit another client'*. This example could include further detail to help apply this in practice, with reference to insurance. For example, in relation to an insurance claim in response to a multi-vehicle accident, the insurer should be able to use the information obtained from one customer involved in the accident to benefit all impacted customers. Where the interests of clients are aligned, the obligation should not unnecessarily restrict the use of information as this example would suggest.
- **Conflicts between clients, members or classes of persons.** This includes circumstances where *'a corporate advisory advising and dealing in a "take-private" equity deal, providing certain classes of persons, (including directors and management) with confidential information and preferential treatment over other shareholders or potential bidders'*. We assume, in providing this example, ASIC does not intend to apply a restrictive approach more generally to programs (such as private banking programs) that are specifically designed to give benefits to certain classes of persons that are not available to the public. In the insurance context, benefits made available to certain groups including priority or specialist claims teams for customers experiencing vulnerability.
- **Structural conflicts.** The proposed RG 181 outlines a conflict scenario where *'A financial institution provides a mortgage to a consumer and encourages the consumer to obtain home insurance from a related entity at a premium price that is not in the consumer's interests.'* This example appears to imply a requirement to assess individual consumer circumstances and interests, which would likely constitute personal advice, something not feasible under a general advice model. It is important that license holders are able to engage in conversations that

⁴ [ATTACHMENT to CP 385 / DRAFT REGULATORY GUIDE 181: AFS licensing: Managing conflicts of interest](#), page 10.

comply with the law and operate within the relevant advice frameworks, particularly when encouraging consumers to consider insurance as a form of protection. We suggest ASIC clarify the threshold at which structural conflicts, such as those involving related entities become unacceptable, noting the interaction with existing consumer protections including anti-hawking obligations. Further clarification on the definition and scope of 'related entity' would also be helpful, along with a topical industry example to illustrate the intent.

- **Third-party conflicts.** An example provided is '*An expert's independence being compromised by material financial interests when providing an expert report on underlying assets commissioned by a corporate advisory for securities holders in a share buy-back.*' While this example refers specifically to a share buy-back scenario, we note that insurers often obtain expert reports in the context of a claim. The arrangements between experts and insurers are increasingly formalised, including recruiting experts on panels, to ensure insurers have the resources required to respond to a surge in demand such as in response to natural catastrophes. Further guidance on when such arrangements could give rise to any potential conflict would be useful.

Adequate arrangements

Given that proposed RG 181.46 provides non-mandatory guidance, ASIC could consider reordering the two paragraphs and placing proposed RG 181.47 above proposed RG 181.46.

Disclosing conflicts of interest

The proposed RG 181.71 outlines that conflict management requires more than mere disclosure, instead controlling or avoiding the conflict altogether. We note that disclosure is a practical method of conflict management and acknowledge that conflicts should be avoided altogether, where possible.

This is particularly the case under intermediated distribution models where control over third-party distributor conduct, like insurance brokers acting on behalf of the customer, is limited. We would welcome additional guidance and examples of effective disclosure practices including around timing, format and prominence.

The Insurance Council would welcome any further guidance related to timing of disclosure, as well as categories of 'affected parties' to whom conflicts should be disclosed to help conflict management, such as co-decision makers or risk and compliance teams.

Conclusion

We appreciate the opportunity to provide feedback and support ASIC's commitment to modernising conflict of interest practices in line with evolving consumer expectations and market integrity considerations. If you have any questions in relation to our submission, please contact Leisha Watson, Director Regulatory and Consumer Policy at lwatson@insurancecouncil.com.au.

Yours sincerely,



Alexandra Hordern

General Manager, Regulatory and Consumer Policy