



ASIC
Australian Securities &
Investments Commission

CONSULTATION PAPER 385

Proposed update to RG 181 Licensing: Managing conflicts of interest

July 2025

About this paper

This paper seeks feedback on ASIC's proposals to update Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181).

Note: For the proposed draft updated regulatory guide, see the attachment to this consultation paper, which is available on our website at www.asic.gov.au/cp under CP 385.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 30 July 2025 and is based on the legislation as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

Contents

The consultation process	4
A Background to the proposals	5
Managing conflicts of interest—Updating RG 181	5
ASIC’s proposed guidance	7
B Proposed guidance on conflicts of interest.....	8
The conflicts management obligation	8
Types of conflicts for licensees to consider	10
Ensuring adequate arrangements are in place.....	11
Effective management of conflicts	13
C Regulatory and financial impact	14
List of proposals and questions	15

The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on conflicts of interest. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous, we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 5 September 2025 to:

Maria Hadisutanto, Senior Manager
Regulatory Reform and Implementation
Australian Securities and Investments Commission
GPO Box 9827, Melbourne VIC 3001
email: rri.consultation@asic.gov.au

What will happen next?

Stage 1	30 July 2025	ASIC consultation paper released
Stage 2	5 September 2025	Comments due on the consultation paper
Stage 3	December 2025	Regulatory guide released

A Background to the proposals

Key points

Conflicts of interest represent a significant source of misconduct and consumer, investor and economic harm within the financial services sector. These conflicts can undermine trust in the financial markets, harm investors, and lead to unfair outcomes.

This consultation paper sets out ASIC's proposals for revising the guidance in Regulatory Guide 181 *Licensing: Managing conflicts of interest* ([RG 181](#)) in response to developments in the regulatory landscape, case law, and industry practices over the last 20 years.

Managing conflicts of interest—Updating RG 181

- 1 As part of ASIC's regulatory guidance update work, we are reviewing and updating RG 181.
- 2 An Australian financial services (AFS) licensee must comply with s912A(1)(aa) of the *Corporations Act 2001* (Corporations Act), which sets out the general obligation to have adequate arrangements in place to manage conflicts of interest in relation to the provision of financial services within their financial services business ('conflicts management obligation').
- 3 Conflicts of interest are a significant source of misconduct and consumer, investor and economic harm, such as poor advice from intermediaries or market misconduct.

Note: For commentary from February 2025 on conflicts and capital markets, see [Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets](#).

- 4 The conflicts management obligation aims to address information asymmetry and ensure that financial markets and services are fair, efficient, and transparent. It promotes both consumer protection and market integrity.
- 5 The conflicts management obligation is broad. It cuts across our regulated population and intersects with other legal obligations. It is intended by Parliament to be a principles-based provision that is supported by ASIC guidance.

Note: See the Explanatory Memorandum to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 ([Explanatory Memorandum](#)) at paragraph 5.598.

- 6 However, the financial services landscape and regulatory framework has significantly evolved since we published Regulatory Guide 181 *Licensing: Managing conflicts of interest* ([RG 181](#)) in 2004.
- 7 A range of relevant reforms (including new penalties for breaching AFS licensing obligations) and changes in financial products and services are not reflected in RG 181.
- 8 ASIC has also had the benefit of significant regulatory experience since publishing RG 181. Recent surveillance activities and case law have provided deeper insights into effective conflicts management across different sectors, including wholesale markets.

Note: See, for example, *Australian Securities and Investments Commission v Westpac Banking Corporation (Penalty Hearing)* [2024] FCA 52.

- 9 Reflecting our regulatory experience, conflicts of interest and the conflicts management obligation are also considered and discussed in numerous ASIC guidance and reports. For example, see Report 742 *Managing conflicts of interest in wholesale financial markets* ([REP 742](#)).
- 10 We intend to update RG 181 to ensure it is clear, up-to-date, and fit for purpose to assist AFS licensees comply with their legal obligations.

Public and private markets

- 11 Conflicts of interest are a key risk in private markets—for example, those arising from related party transactions and fee and distribution arrangements. They are a significant driver of potential misconduct and often have adverse outcomes for market efficiency and investor fairness.
- 12 For this reason, our update to RG 181 is a key deliverable of ASIC’s work on public and private markets and aligns with our strategic priority to improve transparency and consistency across products and markets.

Note: See ASIC’s [Corporate Plan 2024–25](#) (PDF, 12.2 MB) at p. 21. Our strategic priority is driving more focused workstreams on the dynamics of public and private capital markets.

- 13 Feedback gathered through our public and private markets work is being carefully considered as part of the process for finalising the RG 181 update. This includes insights from associated surveillance activities and feedback from recent submissions to ASIC’s discussion paper [Australia’s evolving capital markets: A discussion paper on the dynamics between public and private markets](#).
- 14 Specifically, in updating RG 181, we have considered conflict-related themes raised in those submissions to ASIC’s discussion paper, and we have

added new examples relating to public and private markets, such as private equity deals, fund governance, asset valuation and equity allocation.

Note: See Media Release ([25-094MR](#)) *The future of Australia's public and private markets—ASIC shares industry feedback and next steps* (4 June 2025).

- 15 The final version of updated RG 181 will be informed by findings from our surveillance work, as well as insights provided by experts we have engaged to examine private credit markets.

ASIC's proposed guidance

- 16 In response to developments in the regulatory landscape, case law, and industry practices, we have prepared a draft revised regulatory guide and draft information sheet: see draft Regulatory Guide 181 *Licensing: Managing conflicts of interest* (draft RG 181) attached to this consultation paper.

Note: See the 'Key terms' in draft RG 181 for a list of terms and definitions used in this paper. Draft RG 181 is available on our website at www.asic.gov.au/cp under CP 385.

- 17 Our draft RG 181 sets out general principles supporting the conflicts management obligation to apply across our regulated population, including:
- (a) setting out the intended scope and application of the law;
 - (b) identifying a range of conflicts AFS licensees may need to consider;
 - (c) establishing what 'adequate arrangements' to manage conflicts should involve;
 - (d) providing more holistic and nuanced guidance on effective conflicts management; and
 - (e) providing an inventory outlining key legal obligations and information related to the conflicts management obligation.
- 18 We intend to retain the substance of the existing policy, where appropriate.
- 19 The approach taken to update RG 181 reflects ASIC's commitment to reducing regulatory complexity while maintaining essential protections, enhancing clarity, and improving accessibility for all stakeholders.
- 20 We welcome your feedback on draft RG 181. This consultation paper sets out specific questions on parts of our guidance. We intend to release final guidance in late 2025.

B Proposed guidance on conflicts of interest

Key points

We propose to update our guidance on the conflicts management obligation by:

- outlining its intended scope and application;
- updating our guidance on identifying different types of conflicts;
- establishing what is involved in having ‘adequate arrangements’ to manage conflicts; and
- outlining what effective conflicts management should involve.

We are also proposing to include an inventory of relevant legal obligations and information related to the conflicts management obligation to support the updated guide.

The conflicts management obligation

Proposal

- B1** We propose to include guidance clarifying that the conflicts management obligation is broad and is intended to apply to *all* conflicts of interest other than those wholly outside the financial services business of a licensee or its representatives.

Your feedback

B1Q1 Is our guidance clear?

B1Q2 Do you suggest changes to our guidance? If so, please provide details.

Rationale

- 21 Our approach in draft RG 181 reframes our guidance to align it with parliamentary intent and the operation of the law—that the conflicts management obligation applies to *all* conflicts of interest, except those that occur entirely outside of a financial services business. It is not an expansion of the obligation.

Note: See the [Explanatory Memorandum](#) at paragraphs 5.596–5.597 and 5.599.

- 22 We also clarify its relevance to, and benefits for, both consumer protection and market integrity. This is not a focus of the current guidance in [RG 181](#).

Proposal

B2 We propose to include guidance clarifying how the conflicts management obligation operates in connection with other legal obligations of an AFS licensee (including other AFS licensing obligations). This guidance is supported by a non-exhaustive list of legal obligations and information (a ‘roadmap’) that may relate to the conflicts management obligation.

Your feedback

B2Q1 Is our guidance clear in draft RG 181?

B2Q2 Do you suggest changes to our guidance in draft RG 181? If so, please provide details.

Rationale

- 23 Since RG 181 was published, there have been significant developments in the law, including a range of new obligations that relate to conflicts of interest and the conflicts management obligation. For example:
- (a) the best-interest duty and related obligations for financial advisers, and prohibitions on certain conflicted remuneration;
 - (b) market integrity rules for securities and future market participants; and
 - (c) prudential requirements.
- 24 Draft RG 181 sets out that other relevant legal obligations inform the adequacy of the arrangements to manage conflicts. This includes obligations arising from common law, equity, and conduct prohibitions. The appendix in draft RG 181 provides a non-exhaustive list of legal obligations and ASIC guidance and reports (a ‘roadmap’) that may be relevant to an AFS licensee’s conflicts management obligation.
- 25 By contrast, while the current guidance in RG 181 acknowledges the interaction with other obligations, it does not set out what they are in any detail and does not reflect new obligations.
- 26 The appendix to draft RG 181 is a roadmap, not a checklist. It is intended to signpost key obligations and information to assist AFS licensees comply with the conflicts management obligation. It emphasises that conflicts can arise across a wide range of activities.
- 27 AFS licensees should seek their own professional advice to determine how the conflicts management obligation and other related obligations apply to them. It is an AFS licensee’s responsibility to determine their obligations.

Types of conflicts for licensees to consider

Proposal

- B3** We propose to update our guidance on types of conflicts of interest that an AFS licensee should consider.

Your feedback

- B3Q1 Is our guidance clear?
- B3Q2 Do you suggest changes to our guidance? If so, please provide details.

Rationale

- 28 We have updated our approach on identifying types of conflicts of interest to align our guidance with the scope of the conflicts management obligation—that is, its application to *all* types of conflicts.
- 29 Our revised approach aims to better support AFS licensees in identifying and addressing different types of conflicts by setting out a general description of situations where a conflict may arise and illustrating these with practical examples.
- 30 In addition, our revised approach acknowledges the scalability of conflicts, which can range from minor ethical breaches to serious misconduct or corruption. It carries over the existing guidance that conflicts of interest can be actual (real), perceived (apparent), or potential, and highlights the importance of assessing their materiality.
- 31 By focusing on the scope of conflicts, our revised approach demonstrates the need for AFS licensees to adopt appropriate risk management strategies, based on the potential impact of the conflict on consumer, investor, and economic harm, as well as market integrity.

Proposal

- B4** We propose to include illustrative examples of the types of conflicts of interest that an AFS licensee may need to consider.

Your feedback

- B4Q1 Is our guidance clear?
- B4Q2 Do you suggest changes to our guidance? If so, please provide details.

Rationale

- 32 To help AFS licensees identify conflicts of interest, we provide illustrative examples across our regulated population on a broad range of conflicts that they may encounter and situations where they may arise. For example,

conflicts can occur not only between an AFS licensee and a client, but also between groups or business units of a conglomerate firm or financial institution, or with third parties.

Note: See, for example, the [Explanatory Memorandum](#) at paragraph 5.592 for discussion about how conflicts can arise in the context of intra-group relationships.

- 33 The types of conflicts identified in draft RG 181 are not exhaustive, and we acknowledge the potential for other conflicts to arise. AFS licensees will need to consider what conflicts are relevant to them based on their specific circumstances.
- 34 We also highlight specific factors that may give rise to conflicts for AFS licensees to consider, such as confidentiality, conflicts of duties, and structural conflicts.
- 35 In line with the broad application of the conflicts management obligation, our inventory highlights more specific existing guidance on a wide range of conflicts across our regulated population. Examples include:
- (a) conflicts in research reports (including conflicts between business units in a conglomerate firm) in Regulatory Guide 79 *Research report providers: Improving the quality of investment research* ([RG 79](#));
 - (b) conflicts in managed investment schemes (including employee conflicts) in Regulatory Guide 259 *Risk management systems of fund operators* ([RG 259](#)); and
 - (c) conflicts relating to market participants (including conflicts relating to outsourced third-party commercial relationships) in Regulatory Guide 265 *Guidance on ASIC market integrity rules for participants of securities markets* ([RG 265](#)).

Ensuring adequate arrangements are in place

Proposal

- B5** We propose to include additional guidance on what 'adequate arrangements' involve. That is, adequate arrangements:
- (a) should *identify, assess* and *respond* to (i.e. effectively manage) conflicts of interest; and
 - (b) require an AFS licensee to *implement*, monitor, maintain, and review these arrangements.

Your feedback

B5Q1 Is our guidance clear?

B5Q2 Do you suggest changes to our guidance? If so, please provide details.

Rationale

- 36 AFS licensees should have and apply adequate arrangements to manage conflicts. These arrangements should be robust and effective.

Note: See the [Explanatory Memorandum](#) at paragraph 5.597.

- 37 Our approach is informed by, and consistent with, principles in case law.

Note: See Australian Securities and Investments Commission v Avestra Asset Management Limited (In Liquidation) [2017] FCA 497 (*ASIC v Avestra*), as affirmed by the Federal Court in Australian Securities and Investments Commission v Westpac Banking Corporation (No 2) (2018) 357 ALR 240 at paragraph 2475.

- 38 The Federal Court, in *ASIC v Avestra* (at paragraph 194), noted that to comply with the conflicts management obligation, an AFS licensee must first identify, and assess and evaluate a conflict of interest before deciding on, and implementing, an appropriate response. It was also acknowledged that arrangements must be monitored and applied for them to be adequate.

- 39 We also outline the importance of documentation and record keeping, such as the use of a conflicts register (or multiple registers), to demonstrate that arrangements are adequate. This is consistent with our existing guidance.

- 40 Our approach has also been informed by our broader regulatory experience in implementing the conflicts management obligation. For example, Report 742 *Managing conflicts of interest in wholesale financial markets* ([REP 742](#)) sets out the importance of embedding a proactive approach to identifying, assessing, and addressing (effectively managing) conflicts.

Proposal

- B6** We propose to include guidance on a proportionate and risk-based approach to having and applying adequate arrangements.

Your feedback

B6Q1 Is our guidance clear?

B6Q2 Do you suggest changes to our guidance? If so, please provide details.

Rationale

- 41 Our guidance in draft RG 181 recognises that any approach taken should be proportionate and scalable to an AFS licensee's obligations, the materiality and risk of any conflict, and the size and complexity of their financial services business.

- 42 For example, we acknowledge that adequate arrangements will vary significantly between small and large businesses. While this is recognised in the existing guidance, proportionality is made more explicit in draft RG 181, considering its broad application across our regulated population and the types and extent of conflicts that need to be considered.

Effective management of conflicts

Proposal

- B7** We propose to update our guidance to outline a more holistic and nuanced approach that AFS licensees can adopt to effectively manage their conflicts, consistent with existing legal principles and policy.

Your feedback

- B7Q1 Is our guidance clear?
- B7Q2 Do you suggest changes to our guidance? If so, please provide details.

Rationale

- 43 Effective conflicts management typically involves a combination of avoiding, controlling, and disclosing conflicts. It goes to the adequacy of an AFS licensee's arrangements, and the use of these tools is consistent with existing guidance in [RG 181](#) and the legal principles in *ASIC v Avestra*.
- 44 Our guidance in draft RG 181 incorporates the substance of the existing guidance with added nuances to reflect case law and our regulatory experience, particularly to:
- (a) support a proactive and strategic approach to conflicts management that goes beyond mere disclosure and recognises it should be tailored to the specific facts and circumstances;
 - (b) identify that avoiding conflicts includes both preventing conflicts and eliminating them;
 - (c) provide more illustrative examples of mechanisms to control conflicts; and
 - (d) reinforce that while disclosure can be an effective conflicts management tool, there can be limitations to its effectiveness.
- 45 A failure to effectively manage conflicts can lead to a breach of the conflicts management obligation.

C Regulatory and financial impact

- 46 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us, we think they will strike an appropriate balance between:
- (a) helping AFS licensees understand what is required to comply with their conflicts management obligation to minimise harm to consumers and investors, and prevent misconduct; and
 - (b) ensuring flexibility for AFS licensees to develop tailored processes for managing conflicts in a way that is proportionate to their business.
- 47 Before settling on a final policy, we will comply with the Australian Government's Policy Impact Analysis (PIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options that could meet our policy objectives;
 - (b) if regulatory options are under consideration, notifying the Office of Impact Analysis (OIA); and
 - (c) if our proposed option has more than a minor or machinery impact on business or on the not-for-profit sector, preparing an Impact Analysis (IA) or an IA equivalent (Independent Review).
- 48 All IAs are submitted to the OIA for approval before we make any final decision, or if an IA equivalent—to the OIA for agreement. Without an approved IA or agreed IA equivalent, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 49 To ensure that we are in a position to properly complete any required IA or IA equivalent, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits.

List of proposals and questions

Proposal	Your feedback
B1 We propose to include guidance clarifying that the conflicts management obligation is broad and is intended to apply to all conflicts of interest other than those wholly outside the financial services business of a licensee or its representatives.	<p>B1Q1 Is our guidance clear?</p> <p>B1Q2 Do you suggest changes to our guidance? If so, please provide details.</p>
B2 We propose to include guidance clarifying how the conflicts management obligation operates in connection with other legal obligations of an AFS licensee (including other AFS licensing obligations). This guidance is supported by a non-exhaustive list of legal obligations and information (a 'roadmap') that may relate to the conflicts management obligation.	<p>B2Q1 Is our guidance clear in draft RG 181?</p> <p>B2Q2 Do you suggest changes to our guidance in draft RG 181? If so, please provide details.</p>
B3 We propose to update our guidance on types of conflicts of interest that an AFS licensee should consider.	<p>B3Q1 Is our guidance clear?</p> <p>B3Q2 Do you suggest changes to our guidance? If so, please provide details.</p>
B4 We propose to include illustrative examples of the types of conflicts of interest that an AFS licensee may need to consider.	<p>B4Q1 Is our guidance clear?</p> <p>B4Q2 Do you suggest changes to our guidance? If so, please provide details.</p>
<p>B5 We propose to include additional guidance on what 'adequate arrangements' involve. That is, adequate arrangements:</p> <p>(a) should identify, assess and respond to (i.e. effectively manage) conflicts of interest; and</p> <p>(b) require an AFS licensee to implement, monitor, maintain, and review these arrangements.</p>	<p>B5Q1 Is our guidance clear?</p> <p>B5Q2 Do you suggest changes to our guidance? If so, please provide details.</p>
B6 We propose to include guidance on a proportionate and risk-based approach to having and applying adequate arrangements.	<p>B6Q1 Is our guidance clear?</p> <p>B6Q2 Do you suggest changes to our guidance? If so, please provide details.</p>
B7 We propose to update our guidance to outline a more holistic and nuanced approach that AFS licensees can adopt to effectively manage their conflicts, consistent with existing legal principles and policy.	<p>B7Q1 Is our guidance clear?</p> <p>B7Q2 Do you suggest changes to our guidance? If so, please provide details.</p>