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Submission to ASIC Consultation Paper 385: Updates to RG 181 – Managing Conflict of Interest

The Insurance Brokers Code Compliance Committee (IBCCC) welcomes the opportunity to respond to ASIC's Consultation Paper 385 (CP 385) on proposed updates to Regulatory Guide 181 (RG 181).

Effectively identifying and managing conflicts of interest is fundamental to the integrity of the financial services industry. For insurance brokers in particular, the issue is heightened by remuneration arrangements, potential related-party interests, and the dual roles brokers may play as both advisers and distributors.

Our independent monitoring of compliance with the Insurance Brokers Code of Practice has shown that transparent, comprehensive and effective conflict management is essential to protecting client interests, ensuring professional standards, and maintaining trust in the insurance sector.

Clients rightly expect brokers to act solely in a client's best interests. When a conflict of interest arises – whether actual, potential, or perceived – brokers must be able to identify it and either manage it appropriately or, where necessary, avoid it altogether.

We support ASIC's efforts to strengthen guidance in RG 181, particularly in clarifying expectations for scope, materiality, proportionality, remuneration, and disclosure.

The feedback we provide here is limited to the questions for which we had constructive suggestions for improvements.

Proposal B1: Scope and definition of conflicts

The current drafting risks creates unnecessary confusion by attempting to specify when conflicts are in scope or not, without first defining what a conflict of interest is.

This sequencing risks readers assuming that the guidance does not apply to them, particularly if they apply an incorrect and limited interpret to "actual conflicts".

The guidance should clearly state that it applies to all Australian Financial Services licensees and their representatives. It can then go on to explain what constitutes a conflict of interest and

whether it needs to be managed in accordance with RG 181. Trying to address both scope and definition in the same section may reduce clarity and increases the risk of misinterpretation.

Our suggested change would reinforce that the obligation applies across the industry, regardless of how an individual firm may internally categorise conflicts.

Proposal B2: Interaction with other legal obligations

We support including a clear “roadmap” that links conflict-of-interest obligations to other regulatory duties, but we believe this section could be strengthened significantly.

We recommend that ASIC include reference to industry codes of practice. While codes are not law, they reflect an important commitment from industry to higher standards of conduct.

Many codes, including the Insurance Brokers Code of Practice, require firms to identify, record, and report breaches to independent code monitors, which creates an additional layer of accountability. This means firms need to integrate code requirements with their broader obligations under the Corporations Act and associated regulations.

Codes also include important commitments that directly help avoid or reduce the risks of conflicts. For example, the Insurance Brokers Code requires brokers to:

- inform a client clearly and promptly if a conflict is identified
- engage with clients on how the conflict will be managed
- obtain client consent before continuing to act if a conflict arises
- not act on behalf of a client when a conflict of interest cannot be managed
- have policy and procedures in place to identify and manage conflicts
- review conflict policies periodically to ensure effectiveness
- disclose commissions and remuneration.

Importantly, AFCA will often consider industry codes when determining what constitutes good practice and what is fair in the context of external dispute resolution.

This reinforces why codes should be referenced in RG 181 and why firms (particularly code subscribers) should integrate them into compliance frameworks. Doing so ensures that they do not treat conflict management obligations in isolation, but rather as part of a consistent framework that reflects both regulatory and industry expectations.

By making these connections explicit in RG 181, ASIC can help ensure firms understand the need for integrated compliance arrangements that combine legal obligations, industry commitments, and dispute resolution expectations. This will better protect consumers and promote consistent standards across the sector.

Proposal B3: Types of conflicts to consider

We agree it is useful for RG 181 to outline the types of conflicts that licensees should consider. However, the current drafting introduces ambiguity and lacks sufficient explanation to be practical.

In our view, this section would be stronger if it used consistent terminology, explained each conflict type more fully, and adopted a clearer approach to assessing materiality.

Terminology

The use of the term “apparent” alongside “perceived” in RG 181.31 is confusing and should be removed. The dual meanings of the word “apparent” – “easy to see” and “seeming to be true” – do not add clarity. The established and widely understood term is “perceived conflict,” and this should be used consistently throughout the guidance.

Similarly, RG 181.30 directs firms to apply a “common-sense” approach to determining whether a conflict exists. “Common sense” is subjective and inconsistently applied, so it is not a reliable basis for compliance.

Instead, the guidance should set out clear criteria that firms can apply and document when assessing whether a conflict of interest exists. Please see our suggestions below regarding assessing the likelihood and impact of a conflict.

Explanation of conflict types

RG 181.31 introduces the types of conflicts but then moves too quickly to examples at RG 181.32 without providing sufficient explanation.

A more practical approach would be to include short explanatory notes for each type of conflict before moving to examples. The notes could draw on explanations used by organisations such as the Australian Institute of Company Directors. This approach would better help firms understand the drivers and features of different conflict types and apply the guidance to their own business models.

Perceived conflicts

We are concerned that RG 181.29 frames the obligation too narrowly. It states that conflicts are those where there is a “real and sensible possibility” that judgment or actions could be swayed in an adverse way.

This framing risks excluding perceived conflicts. Even if a firm is confident that it is objective, the perception of bias can cause just as much damage to consumer trust. Therefore, the guidance should explicitly confirm that perceived conflicts fall within scope and firms should not underestimate them.

Materiality

The discussion in RG 181.33 should recognise that conflicts often result in benefits to the conflicted party, not just focus on the harm to others. Second, references to “minor ethical breaches” should be removed. Ethics are at the heart of professional conduct and should not be minimised.

Importantly, materiality should be explained as a function of both the likelihood of a conflict occurring and the potential consequences if it does. For example, a conflict that is unlikely but

could have significant consequences may still be material, just as a conflict likely to influence decisions may be material even if the individual stakes seem low.

Proposal B4: Illustrative examples of conflicts

We welcome the inclusion of illustrative examples in RG 181. From our monitoring experience, we know that financial firms value these types of examples as they bring the guidance to life and help staff and managers recognise situations that may arise in practice.

We recommend that the illustrative table be enhanced to make it more educative. This could be achieved by:

- Categorising each example as an actual, potential or perceived conflict. This will help firms better understand the nature of the conflict they are dealing with and ensure they do not overlook perceived conflicts, which can be just as damaging to consumer trust as actual conflicts.
- Including a short note on how the conflict might be managed. The true value of examples lies in describing the scenario and suggesting practical ways a firm could respond. For instance, some examples will clearly call for avoidance, while others may be addressed through controls, enhanced disclosure or ongoing monitoring.

Providing this additional layer of guidance will ensure that examples are not interpreted in a superficial way, but instead support firms to identify, categorise and respond to conflicts effectively.

Proposal B6: Proportionate and risk-based approach

We agree with the intention behind RG 181.48 and 181.49, which require licensees to take a proportionate and risk-based approach to their conflicts management obligation.

The factors listed in RG 181.48: legal and compliance requirements, the risks posed by conflicts (including materiality, seriousness, misconduct, harm or market integrity impacts), and the nature, scale and complexity of the business, are appropriate and provide a sound framework.

However, it is important that proportionality is not interpreted as permitting smaller firms to do less, or to avoid responding comprehensively to their conflicts. Proportionality should relate to the design and formality of the arrangements, not to whether a firm addresses the conflicts or not.

All firms, regardless of size, must ensure they have adequate arrangements in place that effectively identify, assess and manage conflicts of interest. The difference should be that larger and more complex firms generally need more sophisticated and layered frameworks, while smaller firms can use simpler processes, provided they still achieve comprehensive coverage of all relevant conflicts.

We recommend that RG 181.48-49 include explicit language to this effect. This would help remove any doubt that proportionality does not excuse a smaller firm from meeting its

obligations, but rather allows them to calibrate how they meet those obligations in line with their scale and complexity

Conclusion

The IBCCC appreciates the opportunity to contribute to ASIC's consultation on RG 181.

Please feel free to contact [REDACTED]
[REDACTED] you would like to discuss any aspect of our submission.

Kind regards

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