



ASIC
Australian Securities &
Investments Commission

ASIC reference checking and information sharing protocol

This information sheet (INFO 000) is for Australian financial services (AFS) licensees and Australian credit licensees (collectively 'licensees') that employ or authorise representatives to act as financial advisers or mortgage brokers on their behalf.

From 1 October 2021, licensees must comply, as an obligation under their licence, with the *ASIC Reference checking and information sharing protocol* (ASIC protocol).

The ASIC protocol is made under section 912A of the *Corporations Act 2001* (Corporations Act) and section 47 of the *National Consumer Credit Protection Act 2009* (National Credit Act).

The ASIC protocol sets out obligations that apply to you as a licensee. It is intended to promote better information sharing about the performance history of prospective financial advisers and mortgage brokers.

This information sheet explains:

- [who the ASIC protocol applies to](#)
- [the obligation to take reasonable steps to obtain a reference](#)
- [the obligation to seek consent](#)
- [the obligation to request a reference](#)
- [the obligation to give a reference](#)
- [the obligation to update references](#)
- [the template reference request](#), and
- [related obligations](#).

Who the ASIC protocol applies to

The ASIC protocol applies to:

- a 'recruiting licensee' – that is, a licensee that is considering employing or authorising a prospective representative as a financial adviser or mortgage broker
- a 'referee licensee' – that is, a prospective representative's current and/or former licensee(s).

Note: A financial adviser is a person who provides personal advice to retail clients about relevant financial products. 'Relevant financial products' are financial products other than basic banking products, general insurance products, consumer credit insurance, or a combination of any of these products.

A 'prospective representative' includes:

- a current or former representative of a referee licensee who has engaged in financial advice or mortgage broking activity and is seeking to act in the same capacity for a recruiting licensee
- a current or former representative of a referee licensee who has engaged in other activities for the referee licensee (e.g. general customer service, para-planning, collections, bank-teller activities) and is seeking to become a financial adviser or mortgage broker
- a current or former financial adviser representative who is seeking to become a mortgage broker representative
- a current or former mortgage broker representative who is seeking to become a financial adviser representative, and
- a current licensee in their own right who is seeking to become a financial adviser or mortgage broker representative.

The ASIC protocol requires a recruiting licensee to request a reference about the prospective representative from the referee licensee.

The referee licensee must then share information with the recruiting licensee about the prospective representative by giving a reference.

Note: Where the prospective representative is currently a licensee in their own right, the recruiting licensee must ask for a reference from the prospective representative about themselves in their capacity as a licensee.

Reference checking

Reference checking is one part of the screening process that licensees should undertake when deciding whether to employ or authorise a prospective representative as a financial adviser or mortgage broker.

Licensees are subject to general conduct obligations which include taking steps to ensure that their representatives comply with financial services laws or credit legislation. ASIC expects that these steps will include undertaking appropriate background checks before authorising new representatives.

Note: Regulatory Guide 104 *Licensing: Meeting the general conduct obligations* (RG 104) and Regulatory Guide 205 *Credit licensing: Meeting the general conduct obligations* (RG 205) contain examples of appropriate background checks (e.g. referee reports, searches of ASIC's banned and disqualified register and police checks).

Recruiting licensee must take reasonable steps

Your obligations as a recruiting licensee are set out in section 6 of the ASIC protocol.

You must take reasonable steps to obtain a reference from a referee licensee before you employ or authorise a prospective representative.

What are 'reasonable steps'?

'Reasonable steps' include:

- [seeking written consent](#) from a prospective representative to request a reference, and
- if consent is given – [requesting a reference](#) from the referee licensee(s) in accordance with the ASIC protocol.

If consent or a reference is refused

If a prospective representative does not give you written consent to request a reference, you will not be able to request a reference from their referee licensee(s) under the ASIC protocol.

While the ASIC protocol does not prohibit you employing or authorising a prospective representative in these circumstances, you will need to consider, and be able to demonstrate, that you complied with your general conduct obligations as a licensee if you decide to employ or authorise the prospective representative.

The ASIC protocol also does not prohibit you employing or authorising a prospective representative if you have taken reasonable steps and a referee licensee fails to comply with their obligation to give you a reference, or if you receive a reference that contains adverse information about a prospective representative. In these circumstances, you will similarly need to consider, and be able to demonstrate, that you complied with your general conduct obligations if you decide to employ or authorise the prospective representative.

For example, you will need to ensure that the prospective representative is adequately trained, is competent and complies with relevant legislation. This means you may need to do additional background checks or assessments before employing or authorising them, as well as additional monitoring and supervision after they are employed or authorised.

Note: [RG 104](#) and [RG 205](#) provide guidance on licensee obligations relating to monitoring and supervising representatives.

Who is a referee licensee?

Referee licensees are the current and former licensees of a prospective representative in the last five years. As a recruiting licensee, you need to obtain references from the licensees described in Table 1.

Table 1: Licensees from whom a reference must be sought

If a prospective representative...	a reference must be sought from...
is currently employed or authorised by a licensee (current licensee)	the current licensee(s)
has been employed or authorised by the current licensee for less than 12 months	the most recent former licensee in the past five years (in addition to the current licensee(s))
is not currently employed	the most recent former licensee (and, if the prospective representative was with that licensee for less than 12 months, the preceding licensee as well) in the past five years

You may also wish to obtain references from additional former licensees. For example, you may want to know about any systemic issues relating to a prospective representative, including repeated conduct or performance issues that demonstrate the prospective representative has not responded to remedial action.

This information may only come to light from references given by a prospective representative's other former licensees. Other former licensees who receive a request for a reference from you under the ASIC protocol will be obliged to give a reference in relation to a prospective representative's conduct for the five years before the reference is given.

When to obtain a reference

You have some flexibility about when a reference is to be obtained. For example, in consultation with a prospective representative, this may be:

- at the beginning of the recruitment decision-making process
- at the end of the recruitment decision-making process, or
- if you are making an offer of employment or authorisation subject to satisfactory reference checking – before the prospective representative starts in their new role.

Note: See Section 2 of *Reference checking in the financial services industry* issued by ASIC and Standards Australia in October 2007 ([Standards Australia handbook](#)) for guidance on the timing of reference requests.

Sub-authorisation

Obligations under the ASIC protocol also apply where a corporate representative, with a licensee's consent, sub-authorises an individual under section 916B of the Corporations Act or section 65 of the National Credit Act to provide personal advice about relevant financial products or mortgage broking services.

Recruiting licensees must take reasonable steps to conduct reference checking in accordance with the ASIC protocol about each sub-authorised individual. You may decide what arrangements to put in place to ensure you comply with the ASIC protocol in such situations, since the protocol allows licensees to authorise agents to meet their responsibilities.

Recruiting licensee must seek consent

Your obligations as a recruiting licensee are set out in section 7 of the ASIC protocol.

Under the ASIC protocol, personal information about a prospective representative can only be shared with the consent of the prospective representative.

Before requesting a reference, you must obtain written consent from a prospective representative for the reference(s) to be obtained.

This ensures that personal information is being handled consistently with the consent given by a prospective representative and that the collection, use, disclosure and storage of that personal information by licensees does not breach the Australian Privacy Principles contained in the *Privacy Act 1988* (Privacy Act).

Under the [Australian Privacy Principles \(APP\) guidelines](#), consent must be given for a specific purpose, and information must only be collected, used and disclosed for that purpose.

Information you collect must only be used, disclosed and stored for the purpose of reference checking under the ASIC protocol. Also, if you are an APP entity, you will need to comply with APP 5 by notifying the prospective representative about the collection of their personal information.

Template consent form

ASIC has provided a template [consent form](#) for you to use when complying with the ASIC protocol: see Schedule 1 to the protocol.

Withdrawal of consent

A prospective representative who has previously given consent may withdraw their consent in writing (including by email) to you at any time.

If a prospective representative withdraws their consent, you cannot rely on their past consent for any future use or disclosure of their personal information. Where consent is withdrawn, you must also notify the referee licensee(s) of that withdrawal.

Note: The [APP guidelines](#) (July 2019) provide further information on withdrawing consent.

Recruiting licensee must request a reference

Your obligations as a recruiting licensee are set out in section 8 of the ASIC protocol.

If you obtain written consent from a prospective representative, you must ask the referee licensee(s) in writing to answer the questions in the [template reference request](#) about the prospective representative.

You must include a copy of the prospective representative's [completed consent](#) with your reference request.

You may make minor amendments to the format of the template reference request, as long as your amended request includes all the information required by the questions in the template reference request. You must not amend or alter any of the questions.

Requesting additional references from the same licensee

You may request more than one reference from a referee licensee, as you may want the referee licensee to clarify or give further details about information they originally gave you in a reference.

When responding to a request for an additional reference, a referee licensee will need to give a new reference. A referee licensee cannot simply rely on their initial reference, or merely refer to it. Rather, they should respond to all questions in the [template reference request](#), providing any additional clarification or details they can.

Requesting additional information

You may also want to request information about a prospective representative that is additional to the [template reference request](#) (e.g. background checking information and other information from the [Standards Australia handbook](#)).

Nothing in the ASIC protocol limits or prevents you from requesting additional information from a referee licensee(s), as long as the additional information you request does not reduce the scope of the template reference request.

We expect you to ensure that you comply with the Australian Privacy Principles in relation to any additional information you seek from a referee licensee. This includes:

- seeking consent from a prospective representative to ask for any additional information and identifying the purpose for which it is being sought
- giving a copy of the [completed consent](#) to the referee licensee(s), and
- explaining to the referee licensee(s) why the additional information is being requested.

Referee licensee must give a reference

Your obligations as a referee licensee are set out in section 9 of the ASIC protocol.

You must respond in writing to a recruiting licensee's request for a reference within 10 business days, unless both of you agree to a longer period (up to a maximum of 20 business days).

Note: You must not give a recruiting licensee a reference if the recruiting licensee has not given you a copy of the written consent of the prospective representative or has given you written notice that the prospective representative has withdrawn their consent.

You must give a written reference to the recruiting licensee that includes all the information you are aware of and reasonably consider to be relevant to answer the [template reference request](#).

Your response should be complete, accurate and based on documented facts that have been verified. Information given in a reference should be objective and relevant to the role and the information required by the template reference request.

You should give information that is:

- factual – subjective information or opinions should be avoided and the information should be able to be substantiated, and
- current and complete – it should accurately address current circumstances and historical performance.

If you are unable to answer any of the questions in the template reference request, you must explain in writing to the recruiting licensee why you cannot answer them.

You do not need to give additional information requested by a referee licensee that is not covered by the template reference request.

In addition, you only need to give information about conduct of the prospective representative that occurred up to five years before you give the reference to the recruiting licensee.

Although you are not prohibited from sharing information with a recruiting licensee about the conduct of a prospective representative that occurred more than five years before the reference request, or that goes beyond the template reference request, the [defence of qualified privilege](#) does not apply to such information that is shared outside the obligations of the ASIC protocol.

Defence of qualified privilege

To enable licensees to share information honestly and frankly, the defence of qualified privilege applies when you share information in accordance with the ASIC protocol. The defence of qualified privilege allows open communication in certain relationships without the risk of defamation action.

This defence applies if you give information about a prospective representative who is currently, or was previously, your representative because you are obliged to do so under section 9 of the ASIC protocol. It does not apply to any information you share that you are not obliged to give (e.g. information about conduct that occurred more than five years ago or information that is additional to the [template reference request](#)).

Also, you are not liable for any action based on breach of confidence relating to your obligation to share information under the ASIC protocol.

Referee licensee must update references

Your obligations as a referee licensee are set out in section 10 of the ASIC protocol.

In some situations, an investigation, inquiry or compliance audit may be underway, or an unresolved complaint raised, at the time you give a reference to a recruiting licensee.

You must give an updated reference to a recruiting licensee if you have given a reference stating that there were ongoing matters relating to a prospective representative's conduct when you gave the reference.

'Ongoing matters' include:

- outstanding compliance audit issues
- unresolved complaints, and/or
- ongoing inquiries or investigations by the referee licensee(s).

You must give an updated reference in the form of the [template reference request](#) as soon as an ongoing matter has been resolved, or within six months of the initial reference being given if the ongoing matter has not been resolved within that time.

However, you do not have to give an updated reference to a recruiting licensee where:

- the licence of the recruiting licensee has been suspended or cancelled
- the recruiting licensee tells you they no longer intend to employ or authorise the prospective representative
- the prospective representative is no longer employed or authorised by the recruiting licensee at the time the updated reference is to be given, or
- the prospective representative has withdrawn their consent.

Template reference request

The template reference request set out in Schedule 2 and Schedule 3 to the ASIC protocol asks for information about a prospective representative in the past five years. Schedule 2 applies to all prospective representatives, except where the prospective representative is a licensee. Schedule 3 applies where the prospective representative is a licensee in their own right.

Table 2 gives an overview of the questions asked in the template reference request in Schedule 2 to the ASIC protocol and gives general guidance on interpreting and answering the questions.

Table 2: Overview of template reference request in Schedule 2 of the ASIC protocol

Questions	Overview	General guidance
1. Background information	<p>These questions help identify the prospective representative, seek details about their previous role and responsibilities, and confirm the professional relationship between the person giving the reference and the prospective representative.</p> <p>Note: Schedule 3 to the ASIC protocol includes similar questions about a prospective representative's background where they are a licensee.</p>	<p>Question 1(c) asks you to provide the ASIC reference number (if known) for the prospective representative. An ASIC reference number includes an authorised representative number or credit representative number.</p>
2. Compliance audits	<p>These questions ask about the most recent compliance audit that you as a referee licensee completed for the prospective representative in relation to their financial advice or mortgage broking activity, and any remedial action taken as a result of the audit.</p> <p>Note: Schedule 3 to the ASIC protocol includes similar questions about compliance audits conducted on a prospective representative's activities as a licensee.</p>	<p>Question 2(a) asks whether you have conducted a compliance audit for the prospective representative.</p> <p>Note: A 'compliance audit' means an audit, review or observation by a licensee of the prospective representative's compliance with financial services laws or credit legislation, and the licensee's policies and procedures, as part of the licensee's monitoring and supervision obligations: see section 912A(1)(ca) and (f) of the Corporations Act and section 47(1)(e) and (g) of the National Credit Act.</p> <p>If you have conducted a compliance audit, question 2(b) asks for details of the last compliance audit completed for the prospective representative, including whether the audit findings led to representative remedial action and/or client remedial action.</p> <p>'Remedial action' includes an intervention or action by you as a result of the compliance audit to correct the situation.</p>

Questions	Overview	General guidance
		<p>If there was representative remedial action, question 2(c) asks you to specify the type of remedial action. This includes, for example, where the prospective representative was subject to additional training or increased monitoring and supervision by you.</p> <p>If there was client remedial action, question 2(d) asks you to specify the type of remedial action. This includes where:</p> <ul style="list-style-type: none"> - corrective disclosure is given to the client, and/or - compensation is paid to the client. <p>Any disclosure of compensation under this question relates directly to the compliance, risk management and advice activities of the prospective representative.</p>
<p>3. Conduct of a prospective representative</p>	<p>These questions ask about breach reports made to ASIC by you as a referee licensee that were caused or contributed to by the prospective representative in any capacity (not just financial advice or mortgage broking), and other conduct-related matters.</p> <p>Note: Schedule 3 to the ASIC protocol includes similar questions about the conduct of a prospective representative as a licensee.</p>	<p>Question 3(a) asks whether you reported a breach to ASIC (under section 912DAA of the Corporations Act, section 50B of the National Credit Act or otherwise) concerning the prospective representative.</p> <p>Question 3(b) asks you about the prospective representative's involvement in:</p> <ul style="list-style-type: none"> - dishonesty - unprofessional conduct - conduct justifying instant dismissal or immediate termination of representative status - refusal, failure or deliberate non-compliance in relation to financial services law or credit legislation - gross incompetence or gross negligence, or - a breach of the Financial Planners and Advisers Code of Ethics 2019 made by Financial Adviser Standards and Ethics Authority Ltd. <p>The conduct need not amount to a contravention of the law for you to refer to it in response to the template reference request.</p> <p>For the purposes of this question, 'unprofessional conduct' includes:</p> <ul style="list-style-type: none"> - improper conduct affecting the representative's professional character, indicating a failure to understand or practise honesty or fair dealing with retail clients or the public

Questions	Overview	General guidance
		<ul style="list-style-type: none"> - unsatisfactory professional conduct that involves a substantial or consistent failure to reach reasonable standards of competence and diligence, and - conduct which is, or could reasonably be considered likely to be, prejudicial to the interests of an AFS licensee or a credit licensee or retail clients. <p>If you have indicated that the prospective representative has been involved in any of the conduct listed in question 3(b), you will need to give further details about that conduct to the recruiting licensee under question 3(c).</p> <p>This includes all internal assessments (e.g. internal audits), external notifications (e.g. from a regulatory agency or another licensee) and complaints against the prospective representative.</p>
<p>4. Ongoing matters</p>	<p>These questions ask about any ongoing or unresolved inquiries, investigations, complaints or compliance audit issues in progress for the prospective representative at the time the reference is given.</p> <p>Note: Schedule 3 to the ASIC protocol includes questions about any client complaints and unresolved matters arising from a compliance audit relating to a prospective representative's conduct as a licensee.</p>	<p>If you indicated that there is an ongoing matter at the time you gave the reference, you may have an obligation to give an updated reference to the recruiting licensee.</p>

Related obligations

Your other obligations as a recruiting licensee or referee licensee are set out in sections 11–15 of the ASIC protocol.

Agents acting on behalf of licensees

You may authorise an agent to collect, use, disclose and store personal information on your behalf in relation to a prospective representative for the purposes of reference checking and information sharing in accordance with the ASIC protocol.

In these circumstances, you are responsible for the acts or omissions of your agent in relation to the ASIC protocol.

Use of information

Information that you or your agent collect about a prospective representative under the ASIC protocol:

- must only be collected, used, disclosed or stored for the purpose of reference checking and information sharing under the protocol, and
- must not be collected, used, disclosed or stored for a purpose other than that for which it was collected – unless the prospective representative has consented to that use or disclosure, or another exception under the Privacy Act applies.

No arrangements or agreements

You must not enter into any arrangements or agreements with any individual that limits your ability to collect, use, disclose and store information under the ASIC protocol.

Contact for reference checking and information sharing

You must have adequate arrangements in place for a recruiting licensee to identify how to contact you for reference checking and information sharing purposes.

You may wish to make this information publicly available on your website. If you do not have a website, you will need to have other arrangements to ensure that a recruiting licensee can readily identify how to contact you.

For example, this could be through standard arrangements when someone phones your principal public contact number or through your industry association.

Record keeping

You must keep accurate and complete written records for five years demonstrating your compliance with the ASIC protocol. The types of records you must keep include:

- consents given, requested, refused or withdrawn
- references requested by a recruiting licensee
- references and updated references given by a referee licensee
- agreements with agents relating to the ASIC protocol, and
- policies and processes for handling personal information.

Keeping these records will help you comply with the ASIC protocol. ASIC will also be able to monitor whether you are undertaking reference checking in a timely, efficient and compliant manner.

What happens if I don't comply?

ASIC can take enforcement action against you if you contravene your obligation to comply with the ASIC protocol (e.g. if you fail to give written references to recruiting licensees as a referee licensee).

A civil penalty applies for non-compliance with the ASIC protocol. We may also take administrative action if you do not comply with the ASIC protocol, which could include suspending or cancelling your licence, or imposing additional licence conditions.

Note: See Information Sheet 151 *ASIC's approach to enforcement (INFO 151)* explaining how we approach our enforcement role and www.asic.gov.au/penalties for information about penalties, including the value of a penalty unit.

Checklists

Tables 3 and 4 are checklists of questions you should ask yourself when requesting a reference or receiving a request for a reference under the ASIC protocol.

The checklists prompt you as either a recruiting licensee or referee licensee to take certain steps to help you comply with your reference checking and information sharing obligations – they do not provide a complete list of the obligations that apply to licensees under the ASIC protocol.

Table 3: Checklist for recruiting licensees

Obligation	Questions to ask
Recruiting licensee must take reasonable steps	Are you considering employing or authorising an individual as a financial adviser or mortgage broker (prospective representative) who is currently or was formerly a representative of an AFS licensee or credit licensee at any time in the past five years?
Recruiting licensee must seek consent	Have you sought written consent from the prospective representative to request a reference from the referee licensee(s) using the template consent form ?
Recruiting licensee must request a reference	Where written consent has been given by the prospective representative, have you requested, in writing, a reference from the referee licensee(s) using the template reference request? Have you given a copy of the completed consent form to the referee licensee(s) when making the reference request?
Recruiting licensee must seek consent	Where the prospective representative has withdrawn their consent before the referee licensee(s) has given a reference or an updated reference , have you notified the referee licensee(s) in writing of the withdrawal?
Recruiting and referee licensee(s) must keep records demonstrating compliance	Have you kept records demonstrating your compliance with the ASIC protocol?

Table 4: Checklist for referee licensees

Obligation	Questions to ask
Recruiting licensee must seek consent and request a reference	Has the recruiting licensee given you a copy of the template consent form completed by the prospective representative consenting to the reference check?
Referee licensee must give a reference	Will you be able to respond to the recruiting licensee's request for a written reference within 10 business days (or have you otherwise agreed with the recruiting licensee to a longer period, up to 20 business days)? Do you have evidence to substantiate your answers in the reference request?
Referee licensee must give a reference	Have you answered all the questions in the template reference request? If not, have you given a written explanation to the recruiting licensee about why any information is missing?
Referee licensee must update references	Have you given a written reference stating that there were ongoing matters relating to the prospective representative's conduct? If so, do you have processes in place to ensure that you give the recruiting licensee an updated reference in writing as soon as the ongoing matter is resolved (or within six months of the initial reference being given, if the matter is not resolved within that time)?
Recruiting and referee licensee(s) must keep records demonstrating compliance	Have you kept records demonstrating your compliance with the ASIC protocol?

Where can I get more information?

- Download a copy of the ASIC protocol ([ASIC Corporations and Credit \(Reference Checking and Information Sharing Protocol\) Instrument 2020/XX](#))
- See the template consent form in Schedule 1 and template reference requests in Schedule 2 and Schedule 3 to the ASIC protocol
- Read [RG 104 Licensing: Meeting the general conduct obligations](#)
- Read [RG 205 Credit licensing: Meeting the general conduct obligations](#)
- Read [INFO 151 ASIC's approach to enforcement](#)
- Review the [Standards Australia handbook](#)
- Visit the website of the Office of the Australian Information Commissioner and read [Consent to the handling of personal information](#) and [APP 5 – Notification of the collection of personal information](#)
- Visit our [Reference checking directory](#) for the financial services industry
- [Contact us online](#) or call 1300 300 630.

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law on that topic, and it is not a substitute for professional advice. You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.

This is **Information Sheet 000 (INFO 000)**, issued on XX Month 2020.