



Date 5 September 2025

Maria Hadisutanto
Senior Manager
Regulatory Reform and Implementation
Australian Securities and Investments Commission (ASIC)
via email: rri.consultation@asic.gov.au

Proposed update to RG 181 Licensing: Managing conflicts of interest

The Super Members Council (SMC) thanks ASIC for the opportunity to make a submission to this consultation. SMC advocates for the collective interests of over 12 million Australians with more than \$1.6 trillion in retirement savings managed by profit-to-member super funds. We support a robust super system that is underpinned by strong consumer protections.

To that end, SMC supports member-focussed improvements to ASIC's conflicts management framework. The updated guidance RG 181 uses straightforward language focused on concrete requirements and expectations. The explanatory notes and illustrative examples clarify concepts, making abstract legal obligations more tangible and easier to understand. The scenario-based examples help super funds understand complex conflicts, especially in emerging areas like private markets, related-party dealings, and fee arrangements. The inclusion of the roadmap shows how conflict management links to other legal duties (risk management, operating efficiently, honestly and fairly), making it easier for super funds to implement comprehensive compliance frameworks. This clarity helps funds design more effective, tailored conflicts management frameworks in line with regulatory expectations.

Clearer and more practical guidance promotes effective management of conflicts of interest, which directly benefits members. Illustrative examples help to clarify the regulator's understanding of conflicts, and this leadership assists funds to further refine conflicts identification, assessment, disclosure, and ultimately management and avoidance. This is a virtuous cycle: regulatory certainty promotes decisive trustee management, which facilitates member confidence in both their fund and the system.

SMC welcomes the guidance as a significant regulatory milestone that incorporates legal and market changes over the past two decades. SMC makes three key recommendations in this submission.

About the Super Members Council

We are a strong voice advocating for the interests of 12 million Australians who have over \$1.6 trillion in retirement savings managed by profit-to-member super funds. Our purpose is to protect and advance the interests of super fund members throughout their lives, advocating on their behalf to ensure super policy is stable, effective, and equitable. We produce rigorous research and analysis and work with Parliamentarians and policy makers across the full breadth of Parliament.

Avoiding conflicts of interest

Conflicts of interest cannot always be completely avoided. Effective management requires recognising when conflicts arise and implementing controls and disclosure. The current RG 181 made that point clear at paragraph 181.27 stating '*the conflicts management obligation does not prohibit all conflicts of interest. It does not provide that a licensee can never provide financial services if a conflict of interest exists.*

Rather, the conflicts management obligation requires that all conflicts of interest be adequately managed.'

This paragraph is omitted from the proposed new version of RG 181. SMC recommends that this



statement, or similar wording, be included in the new version of RG 181.

Conflicts of interest can sometimes be unavoidable in business, or organisational environments. Recognising this reality ensures that members and stakeholders understand the obligation is about handling conflicts responsibly, not about forbidding all instances. A conflicts management framework should:

- **Distinguish between identification and prohibition:** The purpose of a conflicts management framework is to identify, disclose, and manage conflicts of interest rather than to eliminate or prohibit them. This helps set realistic expectations that having a conflict is not inherently wrong, but managing it properly is required.
- **Facilitate appropriate management and decision making:** By clarifying that not all conflicts are prohibited, the framework encourages transparency and proper controls (such as disclosure, recusal, or oversight) rather than blanket bans. This helps preserve legitimate business or fiduciary activities while maintaining trust and compliance.

The APRA 2025 Governance Review Discussion paper also referenced contemporary good practice for conflicts management as involving ‘*officers and directors identifying actual, potential and perceived conflicts of interest; disclosing these conflicts to the board and other stakeholders; actively managing conflicts including through recusal from decisions and structural changes where necessary; and documenting and sharing information as appropriate.*’

This reinforces that a robust conflicts management framework must accommodate situations where conflict cannot be avoided.

SMC recommends

RG 181 continue to include a clear statement to the effect that conflicts of interest cannot always be avoided and that they are not prohibited, rather they must be managed appropriately and transparently.

Illustrative examples of conflicts

SMC welcomes the illustrative examples at Table 1 as a non-exhaustive list of what may be scenarios of conflicts of interests. These examples help members and trustees understand the concept of conflicts of interest beyond the theory.

SMC considers that Table 1 could be made even more robust by adding an additional column which separates the type of conflict with the potential outcomes if a conflict is not adequately managed. It would also create an opportunity to align Table 1 with the following section (from paragraph RG 181.35 onwards) on specific considerations when identifying conflicts.

Example 1

Table 1 (Example as drafted)	
Type of conflict	Illustrative example
Conflicts with clients or members	A broker excessively buying and selling securities in a client's account to generate commissions and obtain remuneration incentives inconsistent with the client's objectives.



Table 1 (alternative approach to example)		
Type of conflict	Scenario	Potential negative outcome
Conflicts with clients or members	Broker has remuneration incentives that could influence behaviour to favour their own interests above the clients.	The broker excessively buys and sells securities giving preference to the generation of commissions inconsistent with the client's objectives.

For this example, the actions to prevent the negative outcome of **excessive trading for commissions** might be a combination of structural, procedural, and cultural actions within the organisation. By referencing this detail (remuneration incentives) it draws out the reasons that may create the conflict rather than just the outcome.

Example 2

Table 1 (Example as drafted)		
Type of conflict		Illustrative example
Conflicts with clients or members		A fund charging excessive or unnecessary fees to members, not in their best financial interests.
Table 1 (alternative approach to example)		
Type of conflict	Scenario	Potential negative outcome
Structural conflicts	The promoter of a superannuation product is a separate entity from the trustee. The promoter has a commercial interest to maximise fee revenue which conflicts with the trustees best financial interests' duty to members.	The promoter makes recommendations for excessive or unnecessary product fees to members based on its own costings which are influenced by its commercial interests. The trustee adopts the recommendations without taking adequate steps to recognise the potential conflict of interests and suitably assess and challenge the recommendation.

If ASIC chooses to add in an additional column, it may be prudent to change the position of Table 1 within the document and move it after the section on 'Specific considerations when identifying types of conflicts.' This is because the table will be more comprehensive and capture those specific considerations within the illustrative examples and link it to the potential negative outcome.

Disclosing conflicts of interest

SMC broadly supports the intent of Table 4 which sets out principles and requirements for effective disclosure of conflicts of interest which are directly relevant to the Financial Services Guide (FSG) requirements in the *Corporations Act 2001*.

Current Industry FSGs: Most FSGs are relatively concise, focusing on the existence of conflicts, types of remuneration, and general relationships, often using short and standardised language. Disclosure of conflicts is usually brief and does not detail the likelihood, consequences, or specific risk-management actions.

Draft RG 181 requirements: The draft guidance would require:

- Disclosure of the likelihood of a conflict occurring.
- Disclosure of the potential consequences if the conflict does occur, including harms or disadvantages.
- Disclosure of actionable steps taken to mitigate or manage the risks.

These elements are not commonly present in FSGs reviewed across the industry.



Adequate disclosure provides clients with clear, concise, and meaningful information about any material conflicts of interest, allowing them to assess how these conflicts might affect the advice or service and whether to rely on that service. Disclosures should strike a balance between transparency and avoiding complex or lengthy documents.

Including detailed, scenario-specific disclosures may increase the size and complexity of FSGs, making them potentially harder for clients to navigate.

Complex or lengthy documents may increase the risk that clients will not fully understand or engage with important disclosures, which can lead to poor financial decisions, distrust, and reduced effectiveness of the FSG. Meeting this standard may also necessitate broad changes in FSG drafting processes for super funds including compliance systems, staff training, and technology solutions for document management.

RG181.73 cautions against excessive or unnecessary disclosure that would obscure or distract from the key issues. The expectations under Table 4 may challenge the current balance achieved for clear and simple FSGs with additional disclosure requirements.

SMC recommends

It be clarified that the intent of Table 4 is that FSG conflict disclosures remain concise allowing proportional detail that does not unduly increase document complexity.

Scope of the conflicts management obligation

SMC welcomes ASIC's clarification regarding the scope of the obligation outlined at paragraphs RG 181.10 - 12. To further support interpretation and practical application of the scope of the conflicts management obligation, SMC recommends ASIC expand on the examples provided in paragraph RG 181.11. Additional examples related to a super fund, and its partner organisations would be beneficial for the following reasons:

- **Enhanced clarity and relevance:** Super funds may operate within complex group structures and have multiple interconnected entities and relationships. Specific examples reflecting these complexities would help trustees, responsible entities, and service providers better understand how the conflicts management obligation applies in their real-world contexts.
- **Improved practical guidance:** Concrete illustrations of conflicts that can arise between different parts of a super fund's business (between the trustee, and related entities) would assist licensees to identify and manage these conflicts more effectively and tailor their arrangements accordingly.
- **Risk mitigation:** Given the significant fiduciary duties and best-interest obligations in superannuation, more detailed examples would highlight key risk areas, prompting stronger controls and avoidance of conflicts that could harm members or undermine trust.
- **Regulatory consistency:** It would promote consistent interpretation and application of the obligations across the superannuation industry, reducing ambiguity and potential gaps in compliance.

SMC recommends

Including more super fund specific examples at paragraph RG 181.11 to enhance clarity, relevance and improve practical guidance.

SMC looks forward to further collaboration with ASIC to shape policies that reinforce consumer protections and promote transparency and trust in the sector.