

5 September 2025

Maria Hadisutanto, Senior Manager Regulatory
Reform and Implementation
Australian Securities and Investments Commission
GPO Box 9827, Melbourne VIC 3001

By email only: rri.consultation@asic.gov.au

Dear Maria

Proposed update to RG 181 Licensing: Managing conflicts of interest

The Property Council of Australia (the Property Council) welcomes the opportunity to respond to the Australian Securities and Investments Commission's (ASIC's) consultation paper 385 (CP 385) on ASIC's proposals to update Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181).

The Property Council is the peak body for owners and investors in Australia's \$670 billion property industry. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private.

The property industry is the country's second largest employer, providing over 1.4 million jobs to Australians, representing a direct gross domestic product (GDP) contribution of \$232 billion, or 10.6 per cent of total GDP, as well as 18.2 percent of total tax revenues totalling \$129.6 billion.

The Property Council supports the intent of RG 181 to promote trust and transparency within financial markets. Within financial markets however, real estate investment has unique features, and it is critical that guidance from ASIC remains proportionate and practical so as to not unintentionally cause investor uncertainty or economic harm.

These features include illiquidity, a model that relies on independent valuations, and frequent related-party development and management agreements, all of which are intrinsic to real estate investment in Australia and enable efficient capital deployment and value for investors.

Considering this, and noting the implication for Australian financial services (AFS) licensees by reforms to RG 181, the Property Council seeks to ensure that any updated to RG 181 meets the following objectives:

- Recognises the legitimate and well-established features of real estate investment structures, including valuation frameworks and related-party arrangements and transactions, when subject to appropriate governance
- Provides proportionate and practical guidance that differentiates between wholesale and retail financial products

- Otherwise avoids duplication or extends regulation beyond legislative intent under any other regulatory guides, prudential standards and the *Corporations Act 2001 (Cth)* (the Act), and
- Offers clear guidance for AFS licensees in the property sector about how the regulator expects conflicts to be identified, managed and disclosed.

Considering these objectives, the Property Council has provided responses to ASIC's consultation questions (B1-B7) at **Appendix A**.

In reviewing the draft guidance, the Property Council is particularly concerned about the potential expansion of scope beyond section 912A(1)(aa) of the Act. The Act requires AFS licensees to have adequate arrangements for managing *conflicts of interest*, however the draft amendments to RG 181 references both conflicts of interest and *conflicts of duties*.

This raises material questions as to whether "duty-duty" conflicts are within the statutory obligation and, if so, on what basis. The Property Council requests that ASIC clarify this issue specifically in the final RG 181.

We are concerned that the draft RG 181 has removed the definition of "conflict of interest" included in the original guidelines (RG 181.15). This omission creates greater uncertainty about the scope of the obligations under s912A(1)(aa) of the Act and while examples are valuable they cannot substitute for a clear definition.

Considering that elements of the draft RG 181 overlaps with ASIC's ongoing work into private markets, we request that ASIC defer finalising those aspects until the private markets roadmap has been released and industry has had the opportunity to provide comment.

Finally, the Property Council requests that ASIC provide a reasonable implementation period following the release of the final, updated RG 181 of at least 9-12 months to allow AFS licensees to update their governance arrangements.

The Property Council welcomes the opportunity to discuss this submission in more detail. Please contact [REDACTED]

Yours sincerely

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[REDACTED]
[REDACTED]

Appendix A

| Proposal | Property Council feedback |
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| 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. | The Property Council requests that ASIC clarify the basis for including “conflicts of duties” within the scope of s912A(1)(aa), which expressly refers to “conflicts of interest”. |
| 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>The Property Council welcomes the roadmap linking RG 181 to other obligations such as fiduciary duties, market integrity rules and prudential requirements insofar that they remain non-exhaustive, are used for signposting purposes, are not a checklist and otherwise does not uplift the existing statutory baseline.</p> <p>However, this roadmap will be quickly outdated as other regulatory guides are updated. The Property Council would support this roadmap being featured outside RG 181 as a separate, living document.</p> <p>Further to this, ASIC may consider assisting AFS licensees map their obligations more broadly by producing guidance which outlines obligations across a number of regulatory guides such as RG 104, 105, 166, 175 and 246, for example.</p> |
| B3 We propose to update our guidance on types of conflicts of interest that an AFS licensee should consider. | <p>The Property Council notes that ASIC’s draft guidance has added new types of conflicts of interest.</p> <p>Whilst further examples are valuable, the Property Council asks ASIC to confirm that these new conflicts reflect the existing statutory duty and that established expectations on industry are not changing. As outlined previously, the Property Council requests further clarity on “duty-duty” conflicts and whether they extend beyond the Act.</p> <p>ASIC could consider that “duty-duty” conflicts are within scope only when they risk causing consumer harm or market integrity issues.</p> |

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| <p>B4 We propose to include illustrative examples of the types of conflicts of interest that an AFS licensee may need to consider.</p> | <p>The Property Council welcomes additional examples which make guidance valuable and practical.</p> <p>We ask ASIC to consider providing further advice to cover wholesale property funds and unlisted vehicles.</p> <p>In addition, we ask ASIC to clarify the term “affected parties” used at RG 181.33 insofar as they apply to the examples which follow, in particular whether borrowers in private credit funds or lessees in property trusts are within scope, and whether disclosure obligations are subject to confidentiality duties.</p> |
| <p>B5 We propose to include additional guidance on what ‘adequate arrangements’ involve. That is, adequate arrangements:</p> <ul style="list-style-type: none"> (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. | <p>The Property Council asks ASIC to explicitly confirm that “adequacy” will be assessed proportionately, taking into account business size, complexity, and investor base.</p> |
| <p>B6 We propose to include guidance on a proportionate and risk-based approach to having and applying adequate arrangements.</p> | <p>The Property Council strongly supports a proportionate, risk-based approach given the diversity of structures in the property industry.</p> <p>In order to meet its objective of being proportionate and risk-based, ASIC should consider whether some structures should benefit from tailored application of the conflicts framework, such as trusts managed within stapled groups with integrated governance, or structures that deal solely with institutional investors and no retail customers.</p> <p>We request ASIC include explicit recognition that materiality, potential harm and business complexity have on the “adequacy” of an arrangement. Adequacy should be judged by outcomes, and not a prescriptive check list.</p> |

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| <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> | <p>The Property Council supports the framework outlined in draft RG 181 to avoid, control and disclose conflicts of interest.</p> <p>However, ASIC should confirm that for wholesale property funds, disclosure remains a legitimate and market efficient tool when combined with appropriate governance arrangements such as independent investment committees, fairness opinions or related-party transactions.</p> <p>Avoidance is not always possible or desirable in property markets, where related-party arrangements can deliver value to investors and shareholders when properly managed.</p> |
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