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PIFA Submission on ASIC Draft RG181 – Conflicts of Interest

Background

The Profession of Independent Financial Advisers (PIFA) is the professional association that sets and upholds the Gold Standard of Independence® in financial advice. The Gold Standard means no commissions, no asset-based fees, and no affiliations or ties with product issuers. PIFA's mission is to elevate financial advice beyond the minimum requirements of law and regulation, building a culture of professionalism that is worthy of public trust.

PIFA welcomes ASIC's progress in the draft RG181. Moving beyond the 2004 high-level, disclosure-oriented regime toward one that recognises disclosure alone is "unlikely to be sufficient," and that places greater weight on governance, accountability, and enforcement, is an important and necessary step forward.

Remuneration conflicts cannot be managed

However PIFA has long maintained that remuneration conflicts cannot be managed or disclosed. While this position has sometimes been regarded as 'purist' within the industry, it has since been vindicated by the Royal Commission into Misconduct in Financial Services as well as by subsequent collapses (First Guardian, for instance). What was once seen as aspirational is now clearly essential to protect consumers and restore trust.

PIFA members already meet the standard that ASIC should be aiming for: they have removed remuneration conflicts entirely. This demonstrates that a higher benchmark is not only possible, but already being practised.

Royal Commission's findings as a standard

The Royal Commission was exhaustive, independent, and tested under oath. Its findings carry more authority than consultation-tempered guidance.

Hayne was unequivocal:

> *"Conflicts of interest and conflicts between duty and interest should be removed. Experience shows that conflicts between duty and interest can seldom be managed. Self-interest will almost always trump duty."*

These words cannot be diluted. They must anchor ASIC's approach.

Hayne showed that remuneration and incentives lie at the heart of misconduct:

> *"Providing a service to customers was relegated to second place. Pursuing profit became the priority."*

These findings prove that conflicted remuneration is not just a theoretical problem but the engine of systemic failure. It is therefore not credible to frame remuneration conflicts as issues that can be disclosed or managed. They must be eliminated.

Real-World Evidence Since Hayne

The lesson of Hayne has already been reinforced by real-world events. Despite the Commission's clarity, conflicted remuneration has continued to drive harm. The collapse of the Shield and First Guardian funds (impacting over 12,000 investors and $1.2 billion) and the collapse of Australian Fiduciaries Ltd (impacting around 600 SMSFs with $160 million at risk) both demonstrate that investors are still being induced into high-risk schemes by remuneration-driven advice and referral networks. These failures occurred within existing disclosure frameworks, proving again that disclosure is not a safeguard. It is camouflage.

This problem is not limited to the big end of town, the same issue is borne out in ASIC's experience dealing with complaints from individual investors against their financial advisers. There are 12 published determinations in the FSCP outcomes register since 1 January 2022 that relate to financial advice, and fully one-third of them relate to conflicts of interest.

Carve-Outs in s963A

The so-called ban on conflicted remuneration in s963A is porous, containing exemptions for general insurance, life commissions, consumer credit insurance, basic banking products, intragroup payments, stamping fees, and so-called "minor benefits." Politicians boast of a ban, but in reality conflicted remuneration remains widespread. ASIC cannot credibly rely on a disclosure-and-management approach when the statutory framework itself is compromised by carve-outs.

FASEA's Standard 3

The professional standard, binding in law under s921E, is unequivocal:

> *"You must not advise, refer or act in any other manner where you have a conflict of interest or duty."*

The explanatory materials confirm its intent: conflicts must be eliminated, not managed. Standard 3 is the ethical embodiment of Hayne's principle, and ASIC must align RG181 with it.

ASIC's narrow reading of independence

ASIC's interpretation in RG175.60 wrongly confined s923A to volume-based payments from third parties. This was a flawed inference. The statute itself is broader: any remuneration that could reasonably influence advice undermines independence. Independence is binary. An adviser is either independent, or they are not. Narrow readings weaken consumer protection and must be corrected in RG181.

Case Study – Asset-Based Fees

Asset-based fees are a case study in why remuneration conflicts cannot be managed. They incentivise advisers to retain and grow funds under management, and to avoid recommendations that reduce them (such as debt repayment or consumption).

An asset fee – whether paid by a third party or charged to the client by the adviser directly – is an incentive payment structure; the more you invest, the more the 'adviser' is paid. An adviser who is incentivised cannot be impartial.

Use of this term, 'impartial', is unlawful unless one meets the test of impartiality laid out in s923A, however ASIC's current interpretation is to excuse it on dubious grounds of inference. It's not about who pays an incentive, it's about who receives them: incentives remove impartiality, regardless of who pays them.

Advisers who charge asset-based fees cannot call themselves independent. ASIC should make this explicit: either abandon asset-based fees, or abandon the use of the term "independent."

Conflicts of interest risk study

Attached to this submission is Schedule A: a full conflict risk assessment applying ASIC's identify-assess-respond framework. Its findings are decisive:

- Of 20 common conflicts in financial planning, almost all remuneration conflicts are High likelihood and High consequence → they must be avoided.
- Only a handful of process-level conflicts can be controlled, such as research tool bias or comparison website bias.
- No conflict tested justified disclosure alone. Disclosure is not a management tool. It has failed.

Conclusion – Seize the Opportunity

The conclusion is stark but simple: remuneration conflicts must be structurally removed. Independence requires freedom from commissions, asset-based fees, and ties to product issuers. This finding reinforces Hayne's principle, FASEA's Standard 3, and PIFA's Gold Standard of Independence®.

We welcome the opportunity to discuss these issues in person if that would be helpful.

Sincerely,

[redacted]
Profession of Independent Financial Advisers Ltd