

JOINT-LICENSEES GROUP SUBMISSION

Response to ASIC Consultation Paper 385: Proposed Update to RG 181 Licensing: Managing Conflicts of Interest

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Via email: rri.consultation@asic.gov.au

Dear Ms Hadisutanto,

RE: Proposed Update to RG 181 Licensing: Managing Conflicts of Interest

The Joint-Licensees Group appreciates the opportunity to provide feedback on ASIC's proposed updates to Regulatory Guide 181 Licensing: Managing Conflicts of Interest (RG 181).

About the Joint-Licensees Group

The Joint-Licensees Group is a collaborative assembly of CEOs, founders, principals, and senior executives from the following Australian Financial Services Licensees (AFSLs): WT Financial Group Limited, Entireti, AMP Advice, Rhombus Advisory Limited, Infocus Wealth Management Limited, and Otivo Pty Ltd. We are each members of the Licensee Leadership Forum and hold individual memberships across key financial services associations including the FSC and the FAAA.

Collectively, the Joint-Licensees have a network of more than 3,500 authorised representatives who are either directly employed advice practitioners or are practitioners operating within privately-owned advice practices across the country. We provide ongoing financial advice to more than 500,000 retail and wholesale consumers and provide episodic and transactional advice and services to many more. That number is extended through the reach of the Otivo fintech platform.

Shared Objectives and the Path Forward

We support the modernisation of regulatory guidance that has remained unchanged for 20 years. The financial advice profession has matured significantly since 2004, with enhanced education standards, professional obligations, and a strengthened focus on delivering quality outcomes for Australian consumers.

Effective regulation should be clear, practical, and enhance consumer protection without creating unnecessary barriers to advice accessibility. We share ASIC's commitment to maintaining trust in financial services whilst ensuring Australians can access the professional advice they need.

However, we are concerned that the proposed guidance, whilst well-intentioned, risks undermining these shared objectives through:

- Unclear requirements that will drive defensive over-compliance
- Regulatory layering that creates confusion rather than clarity
- Impractical expectations that divert resources from client service

Our submission focuses on how we can work together to ensure the updated guidance genuinely enhances consumer outcomes whilst maintaining a sustainable advice ecosystem.

Executive Summary

The proposed guidance creates significant implementation challenges that, if not addressed, will likely reduce adviser capacity and increase costs for consumers - ultimately working against ASIC's stated objectives. Our key concerns and recommendations centre on:

1. **Unclear standards driving over-compliance:** Subjective terms like "adequate arrangements" without clear benchmarks will force conservative interpretations, increasing compliance costs that inevitably flow to consumers
2. **Impractical supervision expectations:** Requirements that don't recognise the diverse business models across the profession risk making compliant supervision impossible for many licensees
3. **Regulatory confusion through overlap:** The guidance creates confusion by overlapping with existing frameworks without clarifying how these interact
4. **Flawed risk assessment methodology:** The proposed risk assessment framework is logically inconsistent when applied to actual conflicts that already exist
5. **Technical deficiencies in examples:** ASIC's illustrative examples fail to properly demonstrate competing interests, creating confusion rather than clarity
6. **Implementation without support:** No transition period or implementation resources despite being the first update in 20 years
7. **Disproportionate impact on smaller licensees:** Requirements that don't scale to business size threaten the viability of smaller advice practices

We provide detailed recommendations to address these concerns whilst maintaining robust consumer protection.

Recommendations for Effective Reform

1. Clear, Objective Standards That Enable Compliance

The Challenge

The proposed guidance repeatedly uses subjective terminology ("adequate," "material," "serious," "appropriate") without providing objective criteria or safe harbours. This creates a problematic dynamic where:

- Licensees must guess at ASIC's expectations, driving defensive over-compliance
- Resources are diverted from client service to compliance documentation
- Smaller licensees face disproportionate burden without compliance teams to interpret requirements
- Innovation is stifled as licensees avoid any practice not explicitly approved

With penalties up to \$15.65 million for breaches, unclear standards create unacceptable business risk that will inevitably reduce advice availability and increase costs.

Our Recommendation

ASIC should:

- Define clear, objective criteria for key terms with practical examples
- Establish safe harbour provisions for industry-standard practices
- Provide materiality thresholds below which simplified compliance applies
- Create a consultation mechanism for licensees to confirm interpretation before enforcement

- Recognise that perfect documentation doesn't equal good consumer outcomes

Why This Matters

Clear standards enable efficient compliance, allowing advisers to focus on client service rather than defensive documentation. This directly supports ASIC's goal of accessible, quality financial advice.

2. Recognising Diverse Business Models in Supervision

The Challenge

The proposed Table 2 framework requires comprehensive monitoring at every stage across all authorised representatives, without acknowledging the practical realities of supervising diverse networks. Our members collectively supervise over 3,500 representatives operating under vastly different models - from single practitioners to large firms, employed advisers to self-licensed practices.

A one-size-fits-all approach to supervision ignores that:

- Different business models require different supervision approaches
- Geographic dispersion makes certain monitoring impractical
- Risk-based supervision is both efficient and effective
- Existing supervision frameworks already provide consumer protection

Our Recommendation

ASIC should:

- Explicitly endorse risk-based, scaled supervision approaches
- Provide different supervision standards for employed vs self-employed representatives
- Clarify minimum requirements vs best practice for different business models
- Acknowledge that technology-enabled supervision can be more effective than traditional methods
- Allow flexibility in how outcomes are achieved rather than prescribing methods

Why This Matters

Practical supervision requirements ensure licensees can effectively oversee their networks whilst maintaining business viability. Impractical requirements don't improve supervision - they make it impossible.

3. Streamlining Rather Than Layering Obligations

The Challenge

The proposed guidance creates problematic overlap with existing obligations without clarifying interactions:

- The best interests duty already requires advisers to prioritise client interests
- Professional standards address ethical obligations
- The Code of Ethics Standard 3 specifically addresses conflicts
- Design and Distribution Obligations manage product-level conflicts
- Multiple disclosure requirements risk overwhelming rather than informing clients

This regulatory layering creates confusion about which framework takes precedence and how to demonstrate compliance across multiple overlapping requirements.

Our Recommendation

ASIC should:

- Map how the updated RG 181 interacts with existing obligations
- Confirm that compliance with one framework contributes to meeting related obligations
- Eliminate duplication by referencing rather than recreating existing requirements
- Provide integrated guidance showing how obligations work together
- Clarify that existing compliant practices don't need wholesale restructuring

Why This Matters

Regulatory clarity enables efficient compliance. Confusion and duplication divert resources from client service without improving outcomes.

4. Practical Guidance for Real-World Scenarios

The Challenge

The guidance lacks practical examples for managing common advice industry conflicts, leaving licensees to interpret broad principles for specific situations:

- Insurance commissions under the life insurance framework
- Referral arrangements with other professionals
- Asset-based fee structures
- Platform relationships and APLs
- Technology provider arrangements
- Related party transactions

Without clear guidance, each licensee must independently determine appropriate management, creating inconsistency and inefficiency across the profession.

Our Recommendation

ASIC should:

- Provide specific examples of appropriate management for common scenarios
- Acknowledge that industry-standard practices can be appropriately managed
- Clarify expectations for technology-enabled advice delivery
- Recognise that disclosure plus governance can effectively manage many conflicts
- Confirm that existing compliant practices remain acceptable

Why This Matters

Practical guidance enables consistent, efficient implementation whilst maintaining consumer protection. Uncertainty drives cost and complexity without benefit.

5. Realistic Implementation Timeline

The Challenge

The proposal provides no transition period despite requiring fundamental changes to 20-year-old practices. Immediate implementation is unrealistic given the need to:

- Review and update all policies and procedures

- Implement new monitoring systems
- Train thousands of representatives
- Modify technology platforms
- Establish governance frameworks

Rushing implementation increases the risk of poor outcomes and non-compliance.

Our Recommendation

ASIC should:

- Provide an 18-month transition period from finalisation
- Allow phased implementation prioritising highest-risk areas
- Grandfather existing compliant arrangements during transition
- Provide implementation support including templates and training
- Commit to education before enforcement during transition

Why This Matters

Adequate implementation time ensures robust, sustainable compliance rather than rushed, inadequate responses that require later remediation.

7. Supporting Smaller Licensees

The Challenge

Small and medium licensees face disproportionate implementation burden with limited resources, risking market consolidation that reduces choice for both advisers and consumers. The same obligations and penalties apply regardless of size or systemic importance.

Our Recommendation

ASIC should:

- Provide explicitly scaled requirements based on licensee size and complexity
- Offer simplified compliance options for smaller licensees
- Recognise lower systemic risk in proportionate enforcement
- Provide additional implementation support for smaller licensees
- Consider the cumulative regulatory burden on business sustainability

Why This Matters

Maintaining licensee diversity ensures competitive markets and consumer choice whilst recognising proportionate risk.

The Importance of Evidence-Based Reform

Notably absent from the consultation is any cost-benefit analysis or evidence that current arrangements are failing consumers. Before implementing requirements that will significantly impact the profession, ASIC should:

- Provide evidence of consumer harm under current arrangements
- Conduct formal Regulatory Impact Assessment
- Quantify expected benefits against implementation costs
- Consider less burdensome alternatives

- Assess cumulative regulatory burden on the profession

Conclusion

The Joint-Licensees Group stands ready to work with ASIC to develop guidance that genuinely enhances consumer outcomes whilst maintaining a sustainable advice profession. We believe effective regulation should be:

- **Clear** - providing objective standards that enable compliance
- **Practical** - recognising business realities and diverse models
- **Proportionate** - scaled to risk and business size
- **Integrated** - working with rather than duplicating existing frameworks
- **Supported** - with implementation resources and reasonable timeframes

We urge ASIC to reconsider the proposed guidance through this lens, ensuring it delivers on our shared objective of accessible, quality financial advice for all Australians.

We welcome the opportunity to discuss our recommendations in detail and contribute to developing guidance that protects consumers whilst supporting a thriving advice profession.

Yours sincerely,

Joint-Licensees Group

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