

Submission

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ASIC CP385 Proposed update to RG 181 Licensing: Managing conflicts of interest

The National Insurance Brokers Association of Australia (NIBA) welcomes the opportunity to provide feedback on ASIC Consultation Paper 385 (CP385) and the associated draft Regulatory Guide 181. NIBA supports ASIC's objective of ensuring that Australian financial services licence holders maintain arrangements that identify, assess, and manage conflicts of interest in a manner that protects consumers and preserves market integrity.

NIBA is the peak representative body for the general intermediated insurance profession. NIBA serves as the collective voice of approximately 450 member firms and 15,000 individual brokers. Our membership encompasses a diverse range of entities, including large multinational insurance brokers, Australian broker networks, as well as small and medium-sized businesses located in cities and regional areas around Australia. NIBA advocates for the interests of general insurance brokers and their clients, ensuring that the general industry operates with integrity and professionalism.

NIBA's work is guided by our core pillars: community, representation, and professionalism. NIBA's mission is to enhance the professional standing of insurance brokers through robust advocacy, education, and ethical standards. By fostering a collaborative and innovative environment, NIBA aims to elevate the quality of service provided to consumers, strengthening trust and confidence in the insurance broking profession.

General insurance brokers play a distinct role within the broader financial services landscape, acting as intermediaries between insurers and consumers. Brokers operate under a well-established framework of legal and regulatory obligations, including duties arising at common law such as the duty to exercise reasonable care and skill, fiduciary obligations to act in the best interests of their clients and to avoid conflicts of interest, and statutory obligations under the Corporations Act and other financial services legislation. These are supported by access to external dispute resolution mechanisms and industry self-regulation through the Insurance Brokers Code of Practice. Any update to ASIC guidance should build on these existing protections, be proportionate to the nature and scale of licence holders and enable licence holders to exercise informed judgment in applying the conflicts management obligations within their respective businesses.

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The broad statements in CP385 regarding the expansion of the practical clarity of RG181 are, on balance, welcome. In particular, guidance that explains how the conflict management obligation interacts with other legal obligations and provides practical examples of conflicts is likely to assist licence holders. At the same time, the draft regulatory guide in its current form contains a number of drafting choices and conceptual framings that risk imposing disproportionate compliance burdens on smaller broking firms or that will be difficult to apply in practice without further detail.

The principal changes NIBA proposes are intended to preserve ASIC objectives while ensuring that the final guide is practicable for the full breadth of licence holders. NIBA recommends ASIC adopt the following approach in the final guidance:

1. The conflict management obligation should remain principles-based and proportionate;
2. Materiality should be central to the assessment of what must be managed and documented;
3. The existing regulatory and industry framework should be explicitly recognised as an integral part of determining adequacy of arrangements; and
4. Practical worked examples should be provided to reduce complexity and compliance costs for small and medium-sized financial firms.

Clarifying the “wholly outside” test

Draft RG181 clarifies that the conflict management obligation applies to all conflicts of interest other than those “wholly outside” the financial services business of a licence holder or its representatives. Although this proposition reflects legislative intent, in NIBA’s view, the phrase “wholly outside” requires further clarification to prevent confusion and inconsistent application by AFSL holders and their representatives. Brokers often operate in local markets and, as such, have community and commercial relationships that may, in a literal sense, overlap with business activities. Without further guidance, NIBA is concerned that some brokers may adopt an overly cautious approach, recording or escalating immaterial matters, which increases administrative costs without delivering improved consumer protections.

To address this, NIBA proposes that ASIC adopt clear guidance and examples on the test for “wholly outside”. A workable test is whether the relationship, interest or activity has a real and direct connection to the provision of a financial service by the licence holder or its representatives or is reasonably capable of influencing client outcomes or the perception of impartiality. By contrast, a personal social relationship with no business interaction and no reasonable prospect of influencing services or outcomes should ordinarily be outside the scope of the obligation.

Interaction with other legal obligations and the roadmap

The proposed roadmap of related obligations would be a useful consolidation of material. Brokers operate within a complex framework of overlapping obligations and would benefit from clarity on how compliance with these regimes can inform and support their conflict management framework.

NIBA notes that Table 7 states that “Certain insurance commissions are exempt from the ban on conflicted remuneration if the AFS licensee or representative first obtains the client’s informed consent.” This wording is potentially misleading, as it implies that informed consent is always required to satisfy the exemption. In fact, informed consent is only required where personal advice is provided to retail clients. General insurance commissions linked to the provision of personal advice to wholesale

clients are excluded from the conflicted remuneration ban without requiring informed consent. To address this, NIBA recommends that ASIC amend the wording in Table 7 to read:
"Certain insurance commissions are exempt from the ban on conflicted remuneration. Where personal advice is provided to a retail client, the exemption applies only if the client's informed consent is obtained. For wholesale clients, the exemption applies without informed consent."

NIBA supports a roadmap that signposts relevant legislation, ASIC guidance and (where appropriate) industry codes. NIBA acknowledges that the draft guide already makes it clear that the roadmap is intended as a signposting tool rather than an exhaustive checklist. To maintain this clarity in the final version, NIBA encourages ASIC to retain express wording confirming that the roadmap does not create new legal obligations and that evidence of compliance with existing regulatory regimes is relevant in demonstrating adequate arrangements.

Types of conflicts and broker-specific examples

Draft RG181's expanded taxonomy of conflicts and bank of illustrative examples will be helpful for many AFSL holders. The existing examples in draft RG181 are concentrated on wholesale markets, fund management, and public and private market transactions. To ensure the guide is accessible to all AFSL holders, the examples provided should reflect the diversity of the Australian financial services market, including general insurance brokers.

Typical situations that could appear include remuneration and commission structures, including volume incentives that remain lawful, claims management and outsourced claims services where referral relationships or related parties may create conflicts, situations of vertical integration where a broking group has an affiliated underwriting entity and cross-selling or referral of allied services that generate remuneration for the broker.

For each scenario, ASIC should provide short indicative examples of proportionate controls. Such controls can include;

- documented panel selection criteria and rotation practices,
- documented comparative analysis supporting placement decisions,
- defined policies on acceptance of outside business activities,
- periodic supplier due diligence for claims services, and
- escalation triggers for independent review where arrangements exceed a materiality threshold.

NIBA notes that the draft guidance (see, in particular, RG 181.59) states that effective conflict management will generally involve a combination of avoiding, controlling, and disclosing conflicts of interest. This wording may be misinterpreted to mean that avoidance is always required. Later statements in RG 181.71 suggest that this is not the case, but this should be clarified. For brokers, conflicts are generally managed in one of the following ways:

- avoidance; or
- a combination of controls, disclosure, and client agreement.

NIBA further notes the draft guidance on remuneration (see RG 181.78-81), which makes broad statements about commission-based structures and the need to avoid remuneration practices that create significant conflicts. In the broking context, commissions remain a lawful and long-established form of remuneration that enables clients to access advice and services without upfront cost. It is important that the final guidance recognises that commission-based remuneration can be acceptable

provided it is subject to appropriate management. Statements that remuneration structures should “avoid reliance solely on commission-based pay” risk being misapplied in this context.

The proposed approach to disclosure in Table 4 is extensive and risks creating duplication with existing statutory disclosure requirements. While the principles are expressed at a high level, the requirements for disclosure content and form are detailed and, if applied rigidly, could impose significant compliance costs on brokers. Broker disclosure statements are already appropriate and effective, with their suitability determined by the nature and significance of the conflict identified. These disclosures are subject to a range of requirements under financial services law, including Financial Service Guides and, where applicable, Statements of Advice.

The final guidance should clearly state that proportionate, context-specific disclosure is sufficient and that ASIC should not establish a baseline position suggesting that existing disclosures are inherently inadequate. NIBA's preferred position is that disclosure should be proportionate, supporting existing legal requirements and operating as one element within a broader conflicts management framework, so that it is meaningful and practical without creating unnecessary prescriptive obligations and complexity.

Clarity on these points will ensure the final guidance provides meaningful direction on how to manage conflicts in practice, without inadvertently undermining lawful remuneration models that continue to deliver value and choice for clients.

Adequate arrangements, registers and record-keeping

The draft guidance states that adequate arrangements should identify, assess, and respond to conflicts and must be implemented, monitored, maintained, and reviewed. In NIBA's view, additional operational clarity is required regarding what constitutes proportionate documentation. In particular, ASIC should provide a conflict register template and outline the minimum information that is typically expected. NIBA proposes that ASIC publish a simple conflict register template that contains the following fields:

- date
- nature of interest or relationship
- parties involved
- assessment of likelihood and materiality
- controls adopted
- responsible person for monitoring
- review date and review outcome
- details of any client disclosure and the client response.

The final version of the guide should confirm that records must be proportionate to the significance of the conflict, with material matters requiring contemporaneous documentation of the decision and rationale.

Operationalising proportionality and materiality

Draft RG181 correctly identifies that arrangements should be proportionate and risk-based. To operationalise proportionality, NIBA recommends ASIC include an illustrative risk matrix that links likelihood and consequence to an intensity of management and a set of contextual indicators of materiality. Indicators might include the percentage of firm revenue derived from an arrangement,

whether the arrangement could foreseeably lead to materially inferior client outcomes and the visibility of the arrangement to clients.

Enforcement, supervisory expectations and remediation

NIBA is concerned about uncertainty regarding how ASIC will assess and respond to failings that reflect scale or intent. The final guide should, where appropriate, explain that ASIC's supervisory approach is proportionate and that the agency will consider the size, complexity, and risk profile of the licence holder when assessing adequacy of arrangements and any enforcement response. For example, remediation and enhanced controls may be an appropriate response to shortcomings that did not cause client harm. At the same time, administrative penalties or civil consequences may be reserved for systemic failings or matters that caused material consumer detriment.

Transition and practical support for small business

To ensure an orderly implementation, NIBA recommends that ASIC provide a reasonable transition period between the publication of final RG181 and its effective operation. NIBA suggests a minimum implementation period of 12 months for guidance that does not require systems change and up to 18 months for elements that require changes to governance or information systems. In parallel, ASIC should publish worked examples, a conflict register template, and the illustrative risk matrix described above.

Regulatory impact analysis and further consultation

NIBA understands the need for ASIC to identify and address conflicts across a wide range of financial services, from global investment banks to sole practitioner brokers. At the same time, the final guide should be informed by industry-specific impact analysis that considers distribution models and the small business broking sector. The financial services sector is highly diverse, ranging from global institutions to sole practitioners. A uniform approach risks imposing obligations designed for large institutions onto small firms, creating disproportionate costs. Compliance costs borne disproportionately by smaller brokers may, in turn, affect competition and consumer choice in the insurance distribution market and limit access to critical risk advice. Without sector-specific analysis of costs and benefits, ASIC cannot be confident that the guidance achieves its intended purpose without unnecessary regulatory burden.

Undertaking regulatory analysis that includes qualitative and, where possible, quantitative estimates of compliance costs by firm size will provide the necessary evidence base. Equally, targeted follow-up consultation with industry representatives will allow ASIC to test the practicality of proposed examples, templates and control measures in real operating contexts. This will support workable, evidence-based guidance, help reduce the risk of inconsistent application across sectors, and ensure consumer protection objectives are achieved in a proportionate manner.

NIBA supports ASIC's objective in CP385 to modernise RG181 and to provide greater clarity on the operation of the conflicts management obligation. We encourage ASIC to adopt the refinements outlined in this submission to ensure the final guidance is both effective in protecting consumers and proportionate across the breadth of the financial services sector.

NIBA would welcome the opportunity to discuss these issues further. Should you have any queries in relation to this submission or wish to discuss any of the matters raised, please do not hesitate to contact [REDACTED]

Yours sincerely,

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