



FINANCIAL
SERVICES
COUNCIL

ASIC Consultation Paper 333: Implementing the Royal Commission recommendations: Reference checking and information sharing

FSC Submission

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1. About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advice licensees and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing \$3 trillion on behalf of more than 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

2. Executive Summary

The FSC welcomes the intention of the proposed options for legislative instruments (**LI**) in *ASIC Consultation Paper 333: Implementing the Royal Commission Recommendations: Reference checking and information sharing*.

The FSC recommends the following as ASIC's Reference Checking and Information Sharing Protocol ("**the Protocol**") is finalised:

- Alignment of the proposals and templates that will form the basis of ASIC's reference checking and information sharing protocol with the existing Australian Banking Association (**ABA**) protocol that industry has followed since 2017.
- Improvements and points for clarification of ASIC's proposed LI's implementing obligations on licensees and templates.

While the consultation seeks feedback on what the LIs might contain, industry would welcome a finalised draft legislative instruments to provide comment on.

3. Recommendations

1. The Protocol reflect the ABA protocol with improvements and clarification identified that address specific issues or unintended consequences, resulting from the protocol, identified in the course of its consultation.
2. The issues and points of clarification identified in ASIC's proposed obligations on licensees be resolved in the finalised LI.
3. The issues and points of clarification identified with respect to ASIC's proposed templates are resolved in the finalised legislative instrument implementing the Protocol.

4. Alignment with the existing practice

Since it commenced in March 2017¹, the Australian Banking Association (**ABA**) protocol² (“**the ABA protocol**”) has become an embedded industry practice for meeting higher standards of recruitment of authorised representatives (**ARs**).

ASIC’s protocol and templates in CP 333 go further than the ABA protocol. For example, proposed questions regarding the type and extent of information requested, while more onerous, could have unintended consequences as to the substantial compliance risk on advice businesses and their overall costs.

This would add to the cost of providing affordable advice to consumers, that would be passed to consumers. The Protocol should have the *same effect* as the ABA protocol as per Recommendation 2.7 of the Financial Services Royal Commission and be replicated as it stands today.

Instances where the current process or ABA template have resulted in unexpected issues or concerns³ should be communicated by ASIC in the course of its consultation. This should include the reasons for needing to make amendments to what is currently a well embedded and well-functioning process many licensees already comply with. The FSC has identified several areas where the proposals could be reconciled with the existing ABA protocol and these are set out further in this submission.

Recommendation

1. The Protocol reflects the ABA protocol with improvements and clarification identified that address specific issues or unintended consequences, resulting from the protocol, identified in the course of its consultation.

¹ “Transition and Implementation Dates. The Protocol is published on 20 September 2016. Subscribing Licensees may need to make certain changes to their existing recruitment practices, internal systems and processes, and record keeping in order to implement the Protocol. The Protocol commences from 1 March 2017, unless otherwise implemented earlier by Subscribing Licensees”.

² Financial Advice, Recruitment and Termination – Reference Checking and Information Sharing Protocol, 20 September 2016, Australian Banking Association. (Source: [Microsoft Word - ABA-#127046-v4-Reference Checking and Information Sharing Protocol-FINAL_v1_0 \(ausbanking.org.au\)](#))

³ Page 5, CP333: [Implementing the Royal Commission recommendations: Reference checking and information sharing \(asic.gov.au\)](#)

5. Proposed Legislative Instrument: Obligations for Licensees

5.1 Obligations on recruiting licensees

Taking reasonable steps to obtain a reference

ASIC should address the following issues relating to its proposals in B1⁴ and B2⁵

- **Five-year history:** A recruiting licensee should have to obtain a reference from all previous licensees for five years.
 - Paragraph 50⁶ of the CP sets out the contact protocols licenses should undertake. This is different to the current practice licensees undertake in line with the ABA protocol requiring a lookback of five years for which the adviser was authorised to provide advice. This does not enable a prospective licensee to get the full picture of information. It is important to note these requirements impose a different compliance burden for smaller Australian Financial Services Licence (**AFSL**) holders compared with larger AFSL holders with greater capacity to conduct these investigations. The dates and timeframes proposed are unnecessarily complex and require too much decision making in different date scenarios. This requirement should align with the ABA protocol to collect a reference from every AFSL in the preceding five years from the date of adviser consent. Consideration should be made as to the correct procedure for reference-checking if an adviser was employed for fewer than 12 months or no advice was provided to a retail consumer.
- **Audit history:** ASIC only seeks last or previous audits, rather than *audit history* for previous five years.
- **'Reasonable steps':** in relation to obtaining a reference about a prospective representative the protocol should be clearer as to what constitutes best practice and this could be clarified through the course of further consultation.

Seeking consent of prospective representatives

ASIC should address the following issues relating to its proposals set out in B3⁷:

- **Form of consent:** There might be other matters to which the licensee may wish to seek the prospective representative's consent, and this would then require two separate forms. If this issue can be resolved then a consistent consent form that simplifies the ABA consent form should be used. If the recruiting licensee requires consent for any other purposes or checks this can be handled separately as per current process.
 - **Verification:** A consent form should be accompanied by certified a copy of the adviser's signed photo ID (passport or driver's license). This enables the consent signature to be verified.

⁴ Page 13, CP 333.

⁵ Page 14, CP 333.

⁶ Page 50, CP 333.

⁷ Page 17, CP 333.

- An ASIC *template* consent form, rather than a prescribed form could promote a more efficient approach under this proposed Protocol. Any amendments to the template should only be made if necessary to enhance the form, and these amendments should be done in consultation with industry.

Requesting a reference

ASIC should address the following issues relating to its proposals set out in B4:⁸

- **Other information not required:** No *other information*⁹ should be required as part of a request for a reference.
- **Consistent and accessible templates:** Recruiting licensees should not be required to send a reference template to a referee licensee. The template should be accessible to all AFSLs on the ASIC website with the template allowing for customisation to be built into AFSL compliance systems and processes and generated in the format most efficient for each AFSL, rather than manually typing up a reference in the provided Word template.
 - This is notwithstanding the fact that all the required questions are responded to as per ASIC guidance notes and with the same numbering system. All that should accompany a request is the adviser consent and photo ID.
 - The finalised protocol form should also clarify that a referee licensee is not in breach of the ASIC Protocol if it does not provide a response to a request for additional information that is not prescribed in the reference request template.
- **Further guidance in relation to requests for further information is needed:** In the absence of such clarification, in practice, a second request is likely to lead to the recruiting licensee receiving an identical response as it had received from the first request. The original consent to conduct a reference check is sufficient and appropriate to cover any additional information.

Additional requests for a reference from the same licensee

- The FSC supports the proposal set out in B6¹⁰ to be able to make a second request for a reference where the recruiting licensee wants to follow up on a matter, for example, an investigation that was underway into a prospective representative's conduct. This would improve standards of recruitment as the advice sector shifts towards a profession.
 - Where the consent of the prospective employee allows for this, a recruiting licensee should be permitted to seek references from other licensees that were former employers of a prospective representative.
 - Follow up engagements could occur via verbally, or in writing, to support efficiency in the process.

No limitation on requesting additional information

The FSC is supportive of the proposal set out in B7¹¹ although clarity is needed in several areas:

⁸ Page 18, CP 333.

⁹ Page 19, CP 333.

¹⁰ Page 20, CP 333.

¹¹ Page 21, CP 333.

- **Requirement to undertake all standard background checks of prospective representatives:** If interpreted correctly all other standard background checks must still be undertaken) then we agree with this proposal.
- **Requesting additional information should not be restricted** however there should not be an onus on providing additional information.

5.2 Obligations for referee licensees

Giving references

ASIC should address the following issues relating to its proposals set out in B8¹²:

- **In writing:** References should be provided in writing only and not verbally that could lead to conflicts where the process is contested, or the information collected is contested. These should be confirmed by the requesting licensee. Qualified privilege would provide effective protections for information verbally collected given it relies on the manner in which the prospective licensee accurately records responses. Follow up verbal clarification should be permitted to support efficient turnaround. An alternate scenario of lengthy exchanges would have an unintended consequence of requiring everything in writing.
- **Response time for service level agreements should be clarified:** Given the depth and breadth of information ASIC propose be shared with regard to the provision of references, meeting the 10 business days a service level agreement in some cases will not be possible. For the more complex cases sourcing all expected information within 20 business days might not be practical either. For this reason, the requirements should be simplified.
 - Clarity is required for an applicable date as '*from the date the information is shared*'¹³ is not entirely workable and is unknown at the start of the process.
 - The FSC recommends from the 'date of adviser consent'.
- A dilemma persists for the sequencing of a prospective licensee reference checking proposed representatives. Under ASIC's proposals, where an adviser is employed by a licensee it is difficult for a new licensee to ask for a reference from the original licensee without compromising the prospective representative. Current practice involves an AR being authorised on a provisional basis subject to reference checks verifying their suitability. A licensee must seek the consent of the AR. The AR is not obliged to provide that consent but the licensee is obliged to seek it. The sequencing to ensure the licensee is not compromised should be clarified.

Updating a reference

ASIC should address the following issues relating to its proposals set out in B9¹⁴:

- **Obligations should sit with the recruiting licensee with a limited number of exceptions:** ASIC's proposal imposes responsibilities on the *referee licensee* for

¹² Page 30, CP 333.

¹³ Page 24, CP 333.

¹⁴ Page 25, CP 333.

updating the recruiting licensee on any open matters at the time of providing the reference.

- The responsibility for sourcing a complete reference and following up on open matters should rest with the *recruiting licensee* for reasons that include:
 - the fact that circumstances surrounding the adviser and their appointment status can change,
 - in most instances the recruiting licensee should have sufficient information to make an initial decision on whether to appoint and adviser at the time of the initial reference rather than perhaps waiting for an open item to be closed, which could take many months. As the obligation for background checking rests with the recruiting AFSL, then any follow ups and close out actions also should.
- Where the reference is provided and includes reference to ongoing or unresolved issues, the referee licensee should only be required to provide an update on the request from the recruiting licensee. The referee licensee should not be obligated by the incoming Protocol to provide an update other than upon request. Prospective licensees should be obligated to request and update on ongoing matters.
- The obligation on the referee licensee should be explicitly ruled out, with an exception in instances where the adviser has subsequently been reported to ASIC.
- **Clarity as to provision of information about a representative:** Further guidance is required on the circumstances in which a question may not be able to be answered and in what circumstances this is acceptable.
 - For example, is it acceptable in all circumstances not to answer a question provided a reason is given?
- **Addressing existing circumstances and current performance:** Where ASIC requests for the reference to include information 'addressing current circumstances and historical performance' clarity is needed as to what information should be included.
 - Further clarity is required around ASIC's views on the risks and potential consumer impacts associated with authorising an adviser whilst knowing there are open matters disclosed in the reference.

5.3 Obligations on all licensees

Agents acting on behalf of licensees

The FSC supports the recruiting licensees being able to use the services of third parties to obtain references in accordance with ASIC's finalised protocol as proposed in B11¹⁵

- Recruiting licensees should being able to use the services of third parties to obtain references. If a licensee proposes to outsource reference checking, the licensee should impose obligations on the third party consistent with the licensee's obligations, but not to impose a requirement that the recruiting licensee obtain the

¹⁵ Page 27, CP 333.

consent of the prospective representative to the engagement of a third party for reference checking purposes.

Permitted use of information

Information collected through references provided in accordance with this protocol for the purposes of proposal B12¹⁶ should only be used for reference checking purposes.

The legal parameters of sharing the reference with the adviser, as proposed in B13¹⁷, remain unclear opening referee licensees up to the possibility of litigation and additional costs unnecessarily:

- Sharing this sometimes unconfirmed and sensitive information could open the referee to conflict where the adviser might seek further information or ask for details of a matter, which a licensee is not in a position to share, in particular, if it pertains to consumer names or files and other sensitive information. In principle we do not support this approach to sharing. In some instances, adequate audit reporting cannot be accessed due to these details. The Protocol should guard against this always being a basis for refusing to share this information.
- **Providing copies of a reference to a prospective representative:**
 - The FSC agrees in principle that a recruiting licensee may provide a copy of the reference received to the prospective representative. The provision of the reference to a prospective representative be done only with the consent from the referee licensee who has provided the reference.
 - Further guidance from ASIC in relation to the use of discretion to provide these copies is needed.
 - The form or information required to support this process if prescribed by ASIC could seek objections to providing the reference to the prospective reference could be stated.

No arrangements or agreements to limit information

- Further clarity and examples of scenarios where the proposed provisions of the protocol proposal B14¹⁸ might apply need to be provided by ASIC.

Maintaining a contact point for reference checking

ASIC should modify its proposals set out in B15¹⁹ in several areas:

- **Email addresses:** The FSC would suggest this be clarified by requiring a general enquiries or a dedicated reference checking email address be provided as the key contact, rather than a nominated person.
 - Businesses frequently undergo restructures, and as such details of a specific individual would become frequently out of date making it difficult to comply

¹⁶ Page 28, CP 333.

¹⁷ Page 28, CP 333.

¹⁸ Page 29, CP 333.

¹⁹ Page 20, CP 333.

with the requirement in line with the overall intent of the 'key contact' provision in the legislation.

- Locating correct contact details to request a reference is time-consuming and will add additional costs to the operation of advice businesses at a time where mergers and acquisitions of some AFSLs and cessation of others has impacted the location of relevant reference information and the efficiency with which this can be identified.
- **Management of a central register of key contacts:** The empowering legislation outlines a system by which licensees will provide a 'key contact' for reference checking. Page 30²⁰ of the CP notes ASIC will not be keeping a register of contact persons. Given the Government's recent announcement that ASIC will assume responsibility and oversight of the disciplinary regime for financial advice, in addition to the Financial Advisers Register (**FAR**) it currently operates by this issue should be revisited.
- ASIC should add one additional field to the FAR of key contact and could work with AFSL holders on ensuring this information is up to date.
- This would mirror the requirement set out in the ABA protocol currently and provide a more practical and effective means facilitating this compliance. In relation to Paragraph 113²¹ we are not aware of the ABA maintaining or making available any contact information. Each subscribing AFSL has maintained their own working register of contacts, which has been built over time.
- Over time there might need to be a joint effort or solution and ASIC should consider building an initial register based on all the data they already have oversight off for all AFSLs and perhaps consider a method for allowing AFSLs to add and maintain key email addresses for reference purposes, and to disclose which AFSLs and underlying businesses they are responsible for providing references for. This way there is a quick and easy centralised source of truth.

Keeping records

The FSC provides comment on proposal B16²²

- Additional record keeping should not be required beyond the proposals.
- ASIC should provide some guidance on the number of acceptable attempts to source a reference (with no/unhelpful response) from a particular AFSL.

Recommendation

2. The issues and points of clarification identified in ASIC's proposed obligations on licensee be resolved in the finalised LI.

²⁰ Page 30 "Under the ABA protocol, subscribing licensees must identify and notify the ABA of a key contact point (this may be a dedicated email address) for reference checking and information requests. The ABA maintains a list of contact details. ASIC does not intend to maintain a list or central register of contact persons, given the large number of licensees (in excess of 10,000 licensees) that must comply with the ASIC protocol".

²¹ Ibid.

²² Page 31, CP 333.

Section 14 – Draft Instrument

Section 14 of the draft instrument states:²³

“A financial services licensee or a credit licensee must have in place adequate arrangements to ensure that a recruiting licensee can readily identify how to contact them for the purposes of reference checking and information sharing in accordance with this Protocol”.

- This poses practical issues for licensees in terms of where to look to find the appropriate contact points for such references from other licensees. Further inefficiencies and confusion could be created under a scenario of each licensee having differing arrangements.

²³ Attachment 1 to CP 333 / ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2020/XX [ASIC Corporations and Credit \(Reference Checking and Information Sharing Protocol\) Instrument 2020/XX](#)

6. Proposed Legislative Instrument: Templates

6.1 General comments

The FSC makes several general comments in relation to the proposed templates set out in Section C's *proposed legislative instrument – Template reference request*.²⁴

The benefits of the requirement to provide a far greater level of detail, and the need to deviate from the current and workable ABA Protocol are not entirely clear.

The FSC does not support a specific template as this would prevent the ability of businesses to use technology and embed within compliance systems such questions. However, the FSC would welcome a prescribed set of questions aligned to that already in use under the ABA protocol. How the referee licensee produces and formats this template should be at their discretion given system variations and methods for generating. The questions should be restated verbatim to ensure consistency across industry and alignment with the intent of the protocol.

The FSC notes the following issues:

- **Scope of questions:** the questions proposed are more onerous and granular than those prescribed under ABA protocol. These would require extensive depth and breadth of knowledge of the adviser. Of concern to the FSC is the commercial practicality and value of what is being proposed - the ability for the person providing the reference (unlikely to know the adviser personally and to have been personally involved in all risk and compliance aspects) to be broadly and deeply across all these aspects, the extensiveness of these questions and the ability to accurately and reliably source responses to the level of detail required - especially for larger licensees where this information and the systems and processes for capturing it are complex, have evolved over time and aspects of all these factors have been handled by multiple teams across complex advice businesses. The value of going so far and above the requirements of the ABA protocol (which is understood to be operating effectively today) is unclear and it is uncertain how this will offset the time, effort and therefore cost in producing this granular level of detail.
- **Timeliness:** The timeframe should be 10 days unless additional time is requested of the licensee rather than seeking agreement of the licensee to approve that. This should be available as an option but not necessarily a routine practice. This is suggested with the caveat that the level of detail being requested, in relation to the roles held, role responsibilities, breaches, audit issues, investigations or adviser behaviour and reasons for departing would in certain instances be a challenge to locate in a timely manner, with the risk of the 10-20 business days not being met. This is especially challenging for licenses whose systems are not all integrated, or where the detail is buried in documents saved to internal or legacy repositories and systems. Often older information is less reliable or accessible, especially with key individuals having left the business over time.

²⁴ Page 32, CP 333.

- Issues being investigated at the time might result in larger scale issues or a non-issue and there is a high degree of interpretation and subjectivity in some of the matters being dealt with, which has the potential to be ambiguous and become complex, which the FSC believes is fraught with risk when speculated upon.
Adhering to the current ABA Protocol template where possible is preferred..
- **Awareness:** The template consent form does not provide the authorised representative with details about the information. Reference checking should be strictly fact based and the requirements for this should be clearly established in the information sharing protocol ASIC finalises.
- **Cost and complexity:** These proposals are at odds with regulatory objectives of ensuring ensure less costly and more efficient advice provision, bringing added subjectivity and risk to compliance. It also presents practical challenges in verifying the integrity of information provided. The new template questions proposed would likely exacerbate the level of complexity, thereby increasing the chance for error, lack of clarity and reliability, despite best efforts by licensees to enable a robust reference checking process, and while dealing with some subjectivity as the status of open investigations and other matters evolves. There is also lack of finality, certainty, reliability, and access to easily accessible information in relation to some reference questions.
- **Assumptions:** The assumptions in CP 333 are narrow and imply a person providing a reference is the person who was the adviser’s direct leader as well as their risk, compliance, complaints, investigation, and performance manager over the period. In reality, the person completing the reference would not have personally known the adviser, apart from possibly advisers authorised by small AFSLs.
- **Issues already in progress:** Some issues requiring disclosure under ASIC’s proposed templates could be in progress, are complex and could be subject to privacy, Fair Work obligations and litigation, or are confidential in nature. As such only limited information can be provided or certain facts known, that can be shared or were clearly made known and communicated across the business in years gone by. This runs counter to the objective of high standards of scrutiny as to AR’s competency the reference checking protocol is meant to uphold under the legislation.

There is overall value in some of these proposals and the importance of having an ASIC reference checking protocol which is enforced, is robust, offers clarity, and which promotes a high level of transparency, where the facts are known and there is industry alignment and consistency in what and how information is shared.

6.2 Template reference request: Background information (CP 333 – Table 4)

- Further guidance in relation to how a referee licensee should respond, including the level of detail required.
- **Competently tracking Continuing Professional Development (CPD):** A question should be added to the Reference Check about ARs meeting their CPD requirements. Licensees have 30 business days to update the FAR with ARs that have failed to meet their CPD requirements. This creates an opportunity for a licensee to appoint an AR that has failed to meet their CPD requirements because the licensee has not updated the FAR as the licensee is still operating within less than 30 business days after the licensee’s CPD year).

- **Details of work relationship:** Q1(d) of the draft ASIC Protocol asks:
“Please provide details of your work relationship with the representative (including name of organization, your role in the organisation and period of time known)”. This appears to set an expectation that the reference will be made by a specific individual (rather than the licensee organisation as a whole), and that there is relationship between that person and the representative (because it asks for the referee’s role and the period of time they have known the referee). In practical terms, however, the reference will be prepared by a number of different people within different functions on behalf of the licensee (e.g. compliance, Human Resources, potentially people within the business etc). Even if one person at the licensee is nominated to be the person providing the reference, it would be somewhat artificial for them to be giving information about the period of time they knew the representative – and depending on who the nominated person is, its possible they will not know the representative at all. Q1(d) should be removed or amended in a way to make it generic (e.g. perhaps merely asking for a contact person and role title for the reference).

6.3 Template reference request: Compliance Audits (CP 333 – Table 5)

- The FSC supports introducing a materiality threshold in order to provide greater clarity to non-compliance incidents. This is a complex issue.
- What might not be material in one reference, might well be material if the issue is noted across more than own referee licensee or perhaps multiple times by an individual licensee. Unless a very specific black and white materiality definition can be provided it might be simpler to disclose all factors relevant to the question being asked and leave the judgement in the hands of the recruiting licensee when reviewing all collated references for the adviser.
- Unless a clear materiality definition can be provided it might be simpler to disclose all factors relevant to the question being asked and leave the judgement in the hands of the recruiting licensee when reviewing all collated references for the adviser.
- The meaning of ‘remedial action’ should be defined.

6.4 Template reference request: Conduct of a prospective representative (CP 333 – Table 6)

- Any reference to the FASEA Code of Ethics should be linked to the obligations to report a relevant provider to ASIC in s 922 of the Corporations Act 2001, provided that the wording is subjective and contingent on the referee licensee’s interpretation of the Code of Ethics.
- The detail required in question 3(c) should not be required to be provided.
 - An unintended consequence of doing so may arise whereby it would require the passing of a significant amount of consumer information.
 - This information would have already been assessed by the referee licensee in determining to report the prospective representative to ASIC and in practice it will be sufficient that a receiving licensee is aware of the response to 3(a).
 - If the referencing licensee answered “yes” to question 3(b) it would be counterproductive if a prospective licensee could not obtain details of the issue or incident. Licensees’ compliance regimes do vary between each other and scorecards for audit reports also vary. Ultimately, the assessment of competency, professionalism, and breaches of the Code of Ethics are subjective. Details should be provided to allow the licensee seeking the reference to apply their own judgement.

6.5 Template reference request: Ongoing matters (CP 333 – Table 7)

Further guidance is needed in several areas:

- An example responses information sheet to assist referee licensees to understand the level of detail required and to help achieve consistency across industry.
- Whether it is necessary to respond to the question where the investigation is not as a result of any action or inaction on the part of the prospective representative, but is a result of the referee licensee's ongoing compliance activities.
- Confirmation that template reference requests are only required in relation to compliance, risk management and quality of advice only.

Recommendation

3. That the issues and points of clarification are identified with respect to ASIC's proposed templates are resolved in the finalised legislative instrument implementing the Protocol.

7. Information Sheet issued by ASIC

The FSC supports an information sheet to provide further clarity on the Protocol, noting that the information sheet should not simply be a restatement or edited version of the explanatory statement accompanying the legislative instrument.

It should contain practical guidance in relation to completing reference requests. This should include completed reference requests for certain scenarios as well as sample answers to provide an indication on the level of detail required and help achieve consistency of responses.

8. Other issues

The FSC has identified several other issues ASIC should consider as it finalises its protocol.

8.1 Single disciplinary body oversight

Clarity is also needed as to how this process will interact with the incoming single disciplinary body. The FSC notes the Government's announcement in December 2020 that certain functions of this body, for which the responsibility of licensees and advisers remains unclear, will be split between Treasury and ASIC's Financial Services and Credit Panel (FSCP).²⁵

8.2 Scenarios

We recommend that ASIC apply the same reference checking process when issuing new AFSLs and undertaking their background and onboarding checks in relation to license holders/licensees.

Clarity is needed in relation to ASICs expectations around the obligation to provide or seek references in these scenarios:

- **Ceased businesses, but still have an active license while continuing to complete consumer remediation activities**
- **Ceased businesses/cancelled AFSLs, who no longer have an active license.**
- **Businesses who no longer have a key person/principal (e.g. deceased) and no one remains in a position to provide a reference for ex-advisers.** It is not clear what the process is for when a previous licensee has gone into administration and there is no licensee staff to provide a reference will be needed. Consideration by regulators is needed as to scenarios such as this are important as they seek to professionalise advice further.

8.3 Facilitative approach to compliance

Higher reference checking and information sharing rules are not an insignificant change to the culture and professionalisation of financial advice. It is important that compliance systems properly adapt these changes and put in place robust standards of best practice.

While it is likely industry could adapt these changes before commencement, an accommodation that ensures some licensees do not end up breaching the law because of the timeframe in which they have had to comply, is recommended. This acknowledges the need for an orderly transition, consistency and minimal disruption to consumers. It also anticipates that ASIC will require time to embed a considerably revised mandate and that the disciplinary body for financial advisers is yet to be introduced.

²⁵ Australian Government Media Release. 'Simplifying the regulatory framework applying to financial advisers'. (Source: [Strengthening and streamlining oversight of the financial advice sector | Treasury Ministers](#))

8.4 Applicability to business

While the effect of the regime is targeted to include mortgage brokers clarification is needed from ASIC to confirm whether the intent of the regulatory guide is to specifically target mortgage brokers, or if business brokers are also included in the new regime.

The FSC recommends ASIC introduce unique mortgage broker identifiers as part of (or alongside) this regime to make it easier for credit providers and aggregators to track and share information about brokers. This is not included in the draft proposals contained within CP333.

Clarity is also needed on how the regime works for aggregators where a broker is a licensee (and not a representative). Credit providers currently rely on aggregators to conduct appropriate checks of the brokers that sit under them (whether they are representatives or licensees themselves). However, the regime currently appears to assume brokers are all representatives.