



**AUSTRALIAN BANKERS'  
ASSOCIATION INC.**

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# Financial Advice – Recruitment and Termination

Reference Checking & Information Sharing Protocol

**20 September 2016**



## Table of Contents

Introduction .....	1
Purpose.....	1
Definitions .....	2
Scope.....	2
Subscription .....	2
Transition and Implementation Dates.....	2
Subscribing Licensee obligations .....	3
Resourcing and key contact .....	3
Written responses.....	3
Record keeping.....	3
Current/ Previous Licensee obligations .....	3
Responding to a request.....	3
Exceptions .....	4
Recruiting Licensee obligations .....	5
Making a request .....	5
Confidentiality and legislative requirements .....	5
Appendix A: Industry Reference Checking Form .....	6
Document Governance and Review requirements.....	10
Acknowledgements.....	10

## Introduction

### Purpose

There is an established public and community interest in enhancing consumer protection by ensuring that consumers receive financial advice only from professional, competent and ethical Financial Advisers.

The character, competency and conduct of a Financial Adviser is demonstrated through their compliance, risk management and advice quality.

The Reference Checking & Information Sharing Protocol (**'Protocol'**) is intended to contribute to improving the quality of financial advice received by consumers whilst managing the legal and operational risks for Australian Financial Services Licensees (**AFS Licensees**) who have subscribed to this Protocol (**'Subscribing Licensees'**).

The Protocol has been created to promote improved reference checking during the recruitment of Financial Advisers.

The Protocol is intended to promote better information sharing about the performance history of Financial Advisers focusing on compliance, risk management and advice quality.

The Protocol builds on the Standards Australia Handbook: Reference Checking in the Financial Services Industry [HB 322 — 2007] (**the Handbook**)<sup>1</sup>. As part of Subscribing Licensees' reference checking falls outside the scope of the Protocol, Subscribing Licensees may wish to refer to the Handbook for further guidance and information.

The Protocol sets minimum standards for Subscribing Licensees with regards to:

- Reciprocal information sharing obligations
- A standard process and timeframes for provision of references and information
- Fact and data based, standard reference checking questions, and
- Record keeping obligations.

The purpose of the Protocol is not to prescribe recruitment processes or outcomes in relation to the appointment of Financial Advisers for Subscribing Licensees and Subscribing Licensees acknowledge their legal obligation not to enter into any arrangement or understanding with each other about those matters.

The Protocol does not include:

- Obligations or guidance on assessing risk in relation to appointing a Financial Adviser
- Obligations or guidance on internal governance, risk or compliance processes in relation to appointing a Financial Adviser, and
- Obligations or guidance on competency, risk management or development plans for Financial Advisers recruited by a Subscribing Licensee.

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<sup>1</sup> [http://download.asic.gov.au/media/1342874/Reference\\_checking\\_in\\_the\\_financial\\_services\\_industry\\_HB\\_322.pdf](http://download.asic.gov.au/media/1342874/Reference_checking_in_the_financial_services_industry_HB_322.pdf)



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## Definitions

**Current/ Previous Licensee:** A Subscribing Licensee who currently or previously employed/ authorised the Financial Adviser.

**Financial Adviser:** An individual person providing personal advice to retail clients on Tier 1 financial products and is/ was a representative of a Subscribing Licensee as per section 910A of the Corporations Act 2001.

**Implementation Date:** The date the Protocol comes into operation or the date an AFS Licensee subscribes to the Protocol, whichever is later.

**Recruiting Licensee:** A Subscribing Licensee who is in the process of recruiting the Financial Adviser.

**Request Period:** The period the Financial Adviser provided personal advice on Tier 1 financial products, up to 5 years preceding the date of the request.

**Subscribing Licensees:** All AFS Licensees who have subscribed to the Protocol and their related entities which have Financial Advisers. It also includes an agent of a Subscribing Licensee involved in their recruitment process.

**Tier 1 financial products:** All financial products, other than basic deposit products, non-cash payment products, general insurance products, except for personal sickness and accident, and consumer credit insurance products.

## Scope

The scope of the Protocol is limited to reference checking and information sharing regarding a Financial Adviser's compliance, risk management and advice quality.

The Protocol is intended to sit alongside Subscribing Licensees existing processes for reference checking and information sharing in relation to obtaining other information regarding a Financial Adviser, for example, experience, qualifications, competency, and other background checks, such as police checks, qualification checks.

## Subscription

The ABA will maintain and make publicly available the following:

- The Protocol, and
- List of Subscribing Licensees.

Subscribing Licensees may be ABA and non ABA members who have subscribed by written notification to the ABA. Any AFS Licensees with Financial Advisers operating under their licence can subscribe to the Protocol and must adhere to the obligations. To become a Subscribing Licensee, please contact the ABA.

In addition, the ABA will maintain a list of key contacts from each Subscribing Licensee, accessible only by the Subscribing Licensees, to facilitate the implementation of the Protocol.

## 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.



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## Subscribing Licensee obligations

The Protocol will operate among Subscribing Licensees only. Subscribing Licensees will make best endeavours to meet the requirements of the Protocol and will:

- Give and receive information, in accordance with the Protocol procedures and timeframes
- Have in place policies and procedures, tools, templates, training and systems to enable compliance with the Protocol, and
- Ensure that all internal policies and contractual arrangements entered into from the Implementation Date with Financial Advisers allow the sharing of information, in accordance with the Protocol.

Where it is not possible to meet the above obligations, a Subscribing Licensee should notify the ABA.

The ABA should also be contacted if there are any issues or concerns regarding the operation of the Protocol, including where Subscribing Licensees encounter difficulties with the application of the Protocol and the manner in which other Subscribing Licensees are meeting the Protocol.

## Resourcing and key contact

Staff responsible for the reference checking and information sharing activities under the Protocol should have access to required information, resources and systems, and be appropriately experienced and trained to meet the requirements of the Protocol.

All Subscribing Licensees must identify and notify the ABA of a key contact point (may be a dedicated email) for reference checking and information requests. A list of key contact details is maintained by the ABA to facilitate the implementation of the Protocol.

## Written responses

Subscribing Licensees' internal policies should set out that responses provided to the questions in the 'Standardised Reference Checking Form' (set out in **Appendix A**) must be in writing. Subscribing Licensees may also provide additional information to these responses verbally.

## Record keeping

Subscribing Licensees should maintain records that enable them to demonstrate that they have met the requirements of the Protocol. These records must be maintained for a period that is in line with the Subscribing Licensees' internal record keeping requirements.

## Current/ Previous Licensee obligations

### Responding to a request

In responding to an information request under the Protocol, the Current/ Previous Licensee must ensure the following:

- All of the questions in the Standardised Reference Checking Form should be answered in writing and in line with the guidance provided and requirements of the Protocol. Under the Protocol, the Current/ Previous Licensee does not have to provide a response to questions other than those in the Standardised Reference Checking Form. The Current/ Previous Licensee may, however, wish to provide additional information and seek consent to do so to explicitly allow information sharing beyond the Standardised Reference Checking Form.



- Unless otherwise agreed between the Current/ Previous and Recruiting Licensees on a case by case basis (taking into account the obligation of the Current/ Previous Licensee to provide a response which is fair and reasonable), the responses must be provided to the Recruiting Licensee within 10 business days from either:
  - The date of the receipt of the information request sent by the Recruiting Licensee (using the questions in the Standardised Reference Checking Form), or
  - The date the consent and/ or release forms were provided to the Current/ Previous Licensee, if requested by the Current/ Previous Licensee whichever date is later.
- If the Current/ Previous Licensee is unable to provide a response to questions in the Standardised Reference Checking Form, an explanation should be provided (see below for further detail).
- The response must be based on ascertainable facts which must be based on reports, documentation or records.
- Responses provided to the questions in the Standardised Reference Checking Form are considered to be at a point in time. Each request received must be treated as a new request and information must be accurate at the time it is given (i.e. if a request is made for the same Financial Adviser at a later stage, the Current/ Previous Licensee must treat this as a new request and provide information that is accurate at the time it is given, rather than relying on the responses previously provided).
- As per the above, information must be accurate at the time it is given, and there is no ongoing obligation on the Current/ Previous Licensee to 'update' the responses to questions in the Standardised Reference Checking Form. If a Recruiting Licensee subsequently hires the Financial Adviser, that Licensee can make further requests in relation to the progress and/ or outcome of an investigation/ inquiry (see guidance to question 5 for further detail).
- Subscribing Licensees are not obligated to respond to an information request using the questions in the Standardised Reference Checking Form by non-Subscribing Licensees. Notwithstanding, the Protocol is a demonstration of the commitment to improved reference checking and information sharing, and therefore it is hoped there is broad adoption of the Protocol across the industry.
- The information is provided to the Recruiting Licensee's key contact.
- The response to questions in the Standardised Reference Checking Form covers the period the Financial Adviser provided personal advice on Tier 1 financial products, during the Request Period.

## Exceptions

Current/ Previous Licensees may not be able to provide the necessary documentation/ information to the Recruiting Licensee in some instances. These can only include:

- Legal obligations or considerations which prevent the sharing or disclosure of information (e.g. litigation proceedings, legally privileged material, Privacy Act requirements, and historic restrictions in an employment contract, termination deed or other legal documentation entered into prior to the Implementation Date), and
- Due to operational reasons information cannot be provided (e.g. the Current/ Previous Licensee does not have the required records as there was no process in place to maintain the records prior to the Implementation Date).



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The Current/ Previous Licensee must provide an explanation to the Recruiting Licensee as to why the records cannot be provided. The explanation should be expressed in a manner which is not detrimental to the Financial Adviser. When considering whether an exception applies, the Current/ Previous Licensee should ensure that appropriate escalation and decision making processes apply to the decision as per their internal governance processes.

## Recruiting Licensee obligations

### Making a request

When making a request under the Protocol, the Recruiting Licensee must ensure the following:

- The request clearly sets out the Financial Adviser's details and is in line with the questions in the Standardised Reference Checking Form (set out in **Appendix A**).
- Prior to making the request, the Recruiting Licensee has obtained and documented the Financial Adviser's consent to the disclosure by the Current/ Previous Licensee of the Financial Adviser's information to the Recruiting Licensee in relation to the Standardised Reference Checking Form, and can provide the Current/ Previous Licensee with a copy if requested.
- Prior to making the request, the Recruiting Licensee has obtained the standard release from the Financial Adviser to release the Current/ Previous Licensee from any liability relating to the disclosure of information in relation to the Standardised Reference Checking Form, and can provide the Current/ Previous Licensee with a copy if requested.
- A consent and release is obtained for each individual Financial Adviser with regards to the Standardised Reference Checking Form. In the case of recruitment at the practice level, consent and release must be obtained for all advisers within that practice.
- As there is no ongoing obligation on the Current/ Previous Licensee to update the responses to questions in the Standardised Reference Checking Form, the Recruiting Licensee may wish to make further requests in relation to the progress of an investigation/ inquiry if the Financial Adviser is appointed (see guidance to question 5 for further detail).

Recruiting Licensees may wish to consider contacting all of the Financial Adviser's Previous Licensees within the last 5 year period.

### Confidentiality and legislative requirements

Information given under the Protocol should be kept confidential and used only by the Recruiting Licensee or their agent for the purpose for which it is given. It should not be provided to the Financial Adviser or any third party without consent from the Current/ Previous Licensee, unless required by law.

In implementing the Protocol, Subscribing Licensees must have regard to their legislative requirements, including those under confidentiality requirements and the Privacy Act. For example the Recruiting Licensee will also need to ensure that it complies with Australian Privacy Principle 5, which requires that the Financial Adviser be notified of or otherwise made aware of certain matters about the collection of the Financial Adviser's personal information.



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## Appendix A: Industry Reference Checking Form

All information should relate to the period up to 5 years preceding the date of the request. Hand written notes will not be accepted.

Unless otherwise agreed between the Current/ Previous and Recruiting Licensees on a case by case basis, the responses must be provided to the Recruiting Licensee within 10 business days from either:

- The date of the receipt of information request sent by the Recruiting Licensee (using the questions in this Standardised Reference Checking Form), or
- The date the consent and/ or release forms were provided to the Current/ Previous Licensee, if requested by the Current/ Previous Licensee, whichever date is later.

### Background information

- 1) What was the scope of the Financial Adviser's authority?
- 2) For what period?

### Compliance, risk management and advice quality

The questions should be answered in relation to the Financial Adviser's compliance, risk management and advice quality only.

- 3) What were the Financial Adviser's internal monitoring and supervision program (audit) results/ outcomes?
- 4) Has the Current/ Previous Licensee undertaken any of the following which was caused or contributed to by the Financial Adviser's action/ in action (e.g. not system failure or Licensee issue):
  - a) Reported a breach to ASIC (whether under section 912D of the Corporations Act or otherwise), or
  - b) Identified a material incident, or
  - c) Provided compensation as a result of an impact on any of the Financial Adviser's client base.
- 5) Was there an inquiry or investigation by the Current/ Previous Licensee in progress at the time of the Financial Adviser's termination/ resignation?

See below and the 'Exceptions' section above for guidance on responding to the questions in this Standardised Reference Checking Form. Subscribing Licensees may use standardised wording or classification in their responses.

### Guidance

- Question 3: The Current/ Previous Licensee should provide a description of the meaning of the audit result at the time the results/ outcome was determined and as it was applied by the Current/ Previous Licensee.
- Question 4a: The Current/ Previous Licensee should advise the Recruiting Licensee about the nature/ type of breach reported.
- Question 4b: The Current/ Previous Licensee should make the Recruiting Licensee aware of all material incidents in relation to the Financial Adviser (e.g. not system failure or Licensee issue).



A material incident could be identified through internal assessment or external notification (i.e. regulatory investigations, complaints received, etc).

When assessing the materiality of an incident, consideration should be given, but not limited to the factors listed below. It is up to the Subscribing Licensee to determine the extent to which the factors contribute to the assessment of materiality on an incident by incident basis.

- The actual or potential impact on the client, including financial loss
  - The number or frequency of similar previous incidents
  - The relevance or importance of the breached obligation in managing risk for the client and/ or the Current/ Previous Licensee
  - Whether the incident resulted in an intervention or action by the Current/ Previous Licensee as a consequence of the incident and in order to correct the situation
  - Complaints received including the nature, type and frequency of the complaints, and/ or
  - Known civil actions resulting from the provision of financial advice.
- Question 4c: Compensation refers to a financial payment offered to a client and/ or any other non-financial remedy given to a client, such as free financial advice, etc. When considering the impact on the Financial Adviser's client base, consideration should be given, but not limited to the following:
    - Whether categories of the client base were affected, for example, all clients who received a particular category of personal advice on Tier 1 financial products or recommended a particular product or strategy, and/or
    - Significance, as determined by the Current/ Previous Licensee, of the amount of compensation made.

The Current/ Previous Licensee is not required to disclose actual compensation amounts paid, nature of the non-financial compensation provided, or the reasons for providing compensation. The Current/ Previous Licensee is also not required to disclose compensation provided on commercial terms, where this does not relate directly to the compliance, risk management and advice activities of the Financial Adviser.

- Question 5: In responding to this question, the Current/ Previous Licensee should advise the Recruiting Licensee of:
  - The progress/ status of the inquiry/ investigation
  - Nature of the complaint or breach that triggered it, and
  - Whether the Financial Adviser was made aware of the inquiry/ investigation.

If the inquiries/ investigations undertaken by the Current/ Previous Licensee into the Financial Adviser are in the early stages, the Current/ Previous Licensee can provide information on the status of the inquiry/ investigation.

A Recruiting Licensee, that subsequently appoints the Financial Adviser, may make additional requests about the updated status of the inquiry/ investigation at a later date and the Current/ Previous Licensee should provide information on the inquiry/ investigation that is in line with the requirements of Question 5 where applicable.

The Recruiting Licensee may need to gain further information from the Financial Adviser and the Subscribing Licensee in relation to the investigation. In doing so, confidentiality must be maintained by all parties where required.

The Protocol is not a decision making tool, but outlines a process to facilitate improved reference checking and information sharing.

INDUSTRY REFERENCE CHECKING FORM	
Financial Adviser (full name):	
ASIC ID:	
Date completed:	
Completed by:	
<i>All information should relate to the period up to 5 years preceding the date of the request. Hand written notes will not be accepted.</i>	
<b>Background</b>	
1) What is the scope of the Financial Adviser's authority?	
2) For what period?	
Response	Applicable Dates
<b>Compliance, risk management and advice quality</b>	
Questions 2 – 4 should be answered in relation to the Financial Adviser's compliance, risk management and advice quality only.	
3) What were the Financial Adviser's internal monitoring and supervision program (audit) results/ outcomes?	
Response	Applicable Dates
<i>Guidance for Current/ Previous Licensees:                      Include description of the meaning of the audit result at the time the results/ outcomes was determined and as it was applied.</i>	
4) Has the Current/ Previous Licensee undertaken any of the following which was caused or contributed to by the Financial Adviser's action/ in-action (e.g. not system or Licensee issue):	
a) Reported a breach to ASIC (whether under the Corporations Act s912D or otherwise)	
Response	Applicable Dates
<i>Guidance for Current/ Previous Licensees:                      Include the nature/ type of breach reported.</i>	

b) Identified a material incident	
Response	Applicable Dates
<p><i>Guidance for Current/ Previous Licensees:</i></p> <p>A material incident could be identified through internal assessment or external notification (i.e. regulatory investigations, complaints received etc.) When assessing the materiality of an incident, consideration should be given, but not limited to the factors listed below. It is up to the Current/ Previous Licensee to determine the extent to which the factors contribute to the assessment of materiality on an incident by incident basis.</p> <ul style="list-style-type: none"> <li>- The actual or potential impact on the client, including financial loss</li> <li>- The number or frequency of similar previous incidents</li> <li>- The relevance or importance of the breached obligation in managing risk for the client and/ or the Current/ Previous Licensee</li> <li>- Whether the incident resulted in an intervention or action by the Current/ Previous Licensee as a consequence of the incident and in order to correct the situation</li> <li>- Complaints received including the nature, type and frequency of the complaints, and/ or</li> <li>- Known civil actions resulting from the provision of financial advice.</li> </ul>	
c) Provided compensation as a result of an impact on any of the Financial Adviser's client base due to the compliance, risk management and advice activities of the Financial Adviser.	
Response	Applicable Dates
<p><i>Guidance for Current/ Previous Licensee:</i></p> <p>Compensation refers to a financial payment offered to a client and/ or any other non-financial remedy given to a client e.g. free financial advice. When considering the impact on the client base, consideration should be given, but not limited to:</p> <ul style="list-style-type: none"> <li>- Whether categories of the client base were affected, for example all clients who received a particular category of Tier 1 financial product advice or recommended a particular product or strategy, and/ or</li> <li>- Significance, as determined by the Current/ Previous Licensee, of the amount of compensation made.</li> </ul> <p>The Current/ Previous Licensee is not required to disclose actual compensation amounts paid, nature of the non-financial compensation provided, or the reasons for providing compensation. The Current/ Previous Licensee is also not required to disclose compensation provided on commercial terms, where this does not relate directly to the compliance, risk management and advice activities of the Financial Adviser.</p>	
5) a) Was there an inquiry or investigation by the Current/ Previous Licensee in progress at the time of the Financial Adviser's termination/ resignation?	
Response	Applicable Dates
b) Is the Financial Adviser aware of any of these inquiries or investigations? (Yes / No)	
<p><i>Guidance for Current/ Previous Licensees:</i></p> <p>Include the following:</p> <ul style="list-style-type: none"> <li>- Progress/ status of the inquiry/ investigation, and</li> <li>- Cause/ trigger of the inquiry/ investigation.</li> </ul> <p>If the inquiries/ investigations undertaken by the Current/ Previous Licensee into the Financial Adviser are in the early stages, provide information on the status of the inquiry/ investigation.</p>	



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## Document Governance and Review requirements

Version: 1.0

Owner: Australian Bankers' Association

Date created: 20 September 2016

Implementation Date: 1 March 2017

Next review date: 1 March 2018

The Protocol will be reviewed periodically and updated for any changes in legal requirements and industry standards.

As part of the review, the ABA will take into consideration feedback from Subscribing Licensees and other stakeholders in relation to the practical application and operationalisation of the Protocol.

The Protocol will be reviewed to align with the new education, ethical, professional standards framework and other relevant legal obligations.

The initial review will be commenced by 1 March 2018, 12 months after the Implementation Date.

Subsequent reviews will be commenced by the next review date as prescribed in the next version of the Protocol.

## Acknowledgements

The ABA would like to acknowledge the contribution and input from a number of professional associations and other stakeholders in the development of the Protocol. It is hoped the Protocol will be part of a program of greater interaction and information sharing between banks and other AFS Licensees, with professional associations, the regulator, and other stakeholders as part of the professionalisation of the financial advice industry.