



ASIC

Australian Securities & Investments Commission

REPORT 557

Response to submissions on CP 284 Example Statement of Advice for life insurance: Update to RG 90

December 2017

About this report

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 284](#) *Example Statement of Advice for life insurance: Update to RG 90* (CP 284) and details our responses to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see [Regulatory Guide 90](#) *Example Statement of Advice: Scaled advice for a new client* (RG 90).

Contents

A	Overview	4
	Responses to consultation.....	4
	ASIC’s response	5
B	Disclosure of commissions	6
	Demonstrating prominent, upfront disclosure.....	6
C	Use of repetition	8
	Repetition as an aid to client understanding.....	8
D	Structure of the draft example SOA.....	10
	Order of the sections	10
E	Other feedback.....	12
	General feedback	12
	Appendix: List of non-confidential respondents	14

A Overview

- 1 In [Consultation Paper 284 Example Statement of Advice for life insurance: Update to RG 90](#) (CP 284), we sought feedback on:
 - (a) a new draft example Statement of Advice (SOA) for personal insurance, including life and total and permanent disability (TPD) cover, income protection insurance and trauma insurance; and
 - (b) related guidance in draft updated [Regulatory Guide 90 Example Statement of Advice: Scaled advice for a new client](#) (RG 90).
- 2 As part of the life insurance advice reform package announced in November 2015 by the Hon Kelly O'Dwyer, Minister for Revenue and Financial Services, ASIC was asked to review life insurance SOAs. We were asked to consider how to make SOAs simpler and more effective for consumers, as well as how to assist advisers make better use of SOAs. We were also asked to consider prominent upfront disclosure of commissions in SOAs. The consultation formed part of this review.
- 3 The draft example SOA was developed in keeping with our increasing use of behavioural research in order to understand regulatory problems. We engaged a consultant with expertise in the design and user testing of documents who conducted two rounds of user testing with small groups of consumers and one round of interviews with a small group of financial advisers. The results of the user testing phase were used to refine the draft example SOA before it was released for public consultation.
- 4 This report highlights the key issues that arose out of the submissions received on CP 284 and our responses to those issues.
- 5 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 284. We have limited this report to the key issues.
- 6 For a list of the non-confidential respondents to CP 284, see the appendix. Copies of these submissions are currently on the ASIC website at www.asic.gov.au/cp under CP 284.

Responses to consultation

- 7 We received 16 non-confidential and seven confidential responses to CP 284. One respondent who provided a non-confidential response asked to remain anonymous.
- 8 We received submissions from industry bodies, Australian financial services (AFS) licensees, individual financial advisers, providers of financial

planning software or related technology solutions, consumer organisations, a compliance specialist and an external dispute resolution (EDR) scheme. Many of these submissions were very detailed and we are grateful to respondents for taking the time to send us their comments.

- 9 Following the public consultation, we also conducted a roundtable with representatives from the Financial Services Council, the Association of Financial Advisers and the Financial Planning Association to obtain feedback on a revised version of the draft example SOA.
- 10 In general, respondents agreed that the draft example SOA presented the advice in a way that was easy for clients to read and understand, but highlighted issues in relation to:
- (a) how the document demonstrated prominent, upfront disclosure of commissions;
 - (b) the use of some repetition as an aid to client understanding; and
 - (c) the structure of the document.

ASIC's response

- 11 In revising the draft example SOA, we have tried to balance the interests of advisers and clients. The feedback we received from these two groups of stakeholders differed considerably, both during the user testing phase for the draft example SOA and in response to CP 284. This demonstrates that advisers and clients approach SOAs very differently.
- 12 After considering all of the feedback, we have made significant structural changes to the example SOA, including changing the way that commissions are disclosed. In addition, we have reduced the level of repetition and made refinements based on feedback that some respondents from the financial advice industry provided about the advice scenario.
- 13 Finally, we have also updated the related guidance in [RG 90](#) to reflect the updated example SOA.

B Disclosure of commissions

Key points

This section outlines the feedback we received about the way that the draft example SOA demonstrated prominent, upfront disclosure of commissions.

In the draft example SOA, we sought to strengthen remuneration disclosure by including a summary of commissions on the front page of the document. In addition, a full breakdown of commissions was set out at the back of the document, before the authority to proceed.

Many respondents from the financial advice industry expressed concern about including a summary of commissions on the front page, arguing that it placed commissions out of context.

Demonstrating prominent, upfront disclosure

- 14 One of the objectives of our review of SOAs, as announced by the Hon Kelly O’Dwyer, was to consider prominent, upfront disclosure of commissions.
- 15 In the draft example SOA, we sought to strengthen remuneration disclosure by including a summary of commissions associated with the advice on the front page. In addition, a full breakdown of commissions was provided towards the back of the document, before the authority to proceed. This was intended to draw clients’ attention to the information and give them an opportunity to review the commissions before signing the document.
- 16 Consumer testing indicated that placing a summary of commissions on the front page of the example SOA, in addition to the full breakdown before the authority to proceed, was effective in drawing clients’ attention to the information.
- 17 In CP 284, we consulted on whether the disclosure of commissions in the draft example SOA was sufficiently upfront and whether clients’ understanding is enhanced by upfront disclosure.

Stakeholder feedback

- 18 Many respondents from the financial advice industry expressed concern about including a summary of commissions on the front page of the draft example SOA. The main arguments against this mode of disclosure were that it placed too much focus on adviser remuneration, rather than on the client’s needs, and that it communicated information about commissions out of context. For example, a few respondents stated that starting the document

with the summary of commissions made the advice appear more like a commodity or product sale.

- 19 Some respondents recommended placing the summary of commissions in an executive summary towards the front of the document—as a way of helping clients link the commissions with the advice being provided.
- 20 In contrast, a handful of respondents supported front-page disclosure of commissions, citing the importance of transparency in light of the strong correlation between high commissions and poor consumer outcomes identified in ASIC [Report 413](#) *Review of retail life insurance advice* (REP 413).
- 21 Nevertheless, one consumer organisation, which supported front-page disclosure, also highlighted the importance of placing commissions in context. They emphasised that merely disclosing commissions does not necessarily result in a client proactively assessing the advice they receive. Therefore, they argued, it is important that commissions are disclosed in a way that will also engage clients with the advice.

ASIC's response

In the updated example SOA, we have moved the summary of commissions into an executive summary called 'Summary of my insurance recommendations and commissions': see the example SOA in Appendix 2 to updated [RG 90](#). A full breakdown of the commissions remains at the back of the example SOA, before the authority to proceed.

Prominent, upfront disclosure does not necessarily mean that commissions need to appear on the front page. While front-page disclosure ensures that clients will notice the information, it may not lead them to understand it in the context of the advice or to critically engage with the advice itself.

We consider that there is merit in the argument that commissions should be better contextualised. Ideally, commission disclosure should not only be prominent, but it should also help engage clients with the advice they receive and whether it meets their needs.

We consider that including a summary of commissions in an executive summary towards the front of the document (in addition to the full breakdown at the back) is sufficiently prominent and provides better context for the disclosure.

C Use of repetition

Key points

This section outlines the feedback we received about the use of repetition in the draft example SOA as an aid to client understanding.

Although the use of repetition in the draft example SOA was based on behavioural insights about how consumers read such documents, many respondents from the financial advice industry were opposed to this approach. They argued that repetition increases the length of SOAs, making it harder for advisers to create SOAs that are clear and concise.

Repetition as an aid to client understanding

- 22 The draft example SOA included some repetition of information as an aid to client understanding. This was based on previous research into disclosure documents, which indicated that many people do not read these types of documents from cover to cover. Some people may only skim the document and/or engage with specific sections. For those people, the table of contents allows them to find the information they want to read and only read that information. Therefore, some repetition was necessary to enable each section to make sense by itself.

Stakeholder feedback

- 23 Although the above rationale was explained in CP 284, the biggest criticism we received about how the information in the draft example SOA was expressed was that there was too much repetition.
- 24 Many respondents from the financial advice industry argued that repetition increases the length of SOAs, making it harder for advisers to create SOAs that are clear and concise. They contended that the increased length makes it less likely that clients will read the document in full.
- 25 One respondent pointed out that the draft example SOA contained a fairly simple advice scenario and that using repetition in a more complex scenario could result in a much longer document.
- 26 A few respondents also noted that the repetition had made the text in a few parts of the draft example SOA too dense, resulting in a lack of white space and making those parts difficult to read.
- 27 In contrast, one respondent from the advice industry supported employing some repetition, agreeing that not all clients will read SOAs from cover to cover.

28 In addition, stakeholders who do not work within or represent the financial advice industry did not object to the use of the repetition as an aid to client understanding.

ASIC's response

We have removed some of the repetition in the updated example SOA in order to create a shorter, more streamlined document: see the example SOA in Appendix 2 to updated [RG 90](#). We did this mostly by merging the tables in the 'What you want', 'Reasons for my recommendations' and 'Consequences of my advice' sections.

However, we do not believe that removing all repetition will enhance client understanding. This would be contrary to what we have learned from past research into disclosure documents and the results of consumer testing of the draft example SOA.

Understandably, advisers may have reservations about this approach because they read SOAs very differently from clients. For example, for the purposes of providing responses to the consultation, most advisers would have read the draft example SOA from cover to cover. It is therefore unsurprising that the document seemed very repetitive to them. However, many clients are likely to treat an SOA more like a reference document and repetition will facilitate this.

D Structure of the draft example SOA

Key points

This section outlines the feedback we received on the structure of the draft example SOA. While much of the feedback we received was conflicting, the majority of respondents from the financial advice industry considered that the scope of the advice should be closer to the front of the document.

In addition, a few respondents also recommended that the adviser's reasons for recommending the policies be moved forward.

Order of the sections

- 29 The draft example SOA was divided into separate sections, each of which dealt with a particular topic. The order of the sections was based on the results of consumer testing and on our consultant's recommendations about how consumers read and understand the information in an SOA.
- 30 In general, the topics were broadly set out in chronological order, reflecting the process of giving personal advice. However, the scope of the advice was placed later in the document than is common. This was because it was our consultant's view that in reading an SOA, clients would first seek to understand what the advice is before looking at the limitations of the advice.

Stakeholder feedback

- 31 We received a lot of feedback about the structure of the draft example SOA. Several respondents made positive comments about how the structure would help clients to navigate the document. In particular, the table of contents was perceived as useful in assisting clients to find information. One respondent also noted that there was effective use of headings and subheadings to provide clear direction about where to find information.
- 32 Some of the feedback we received about the structure was conflicting. For example, some respondents thought that the draft example SOA made good use of tables to communicate information clearly and efficiently. However, one respondent would have preferred a more narrative structure.
- 33 Respondents from the financial advice industry made varying recommendations about the order of information, demonstrating that advisers have different preferences in regards to the structure of an SOA. For example, some respondents supported the use of the 'Summary of my recommendations' table towards the beginning of the document because it provided a useful early reference point for clients. In contrast, a couple of

respondents thought that the product recommendations should not appear before the strategic recommendations.

- 34 Nevertheless, the majority of respondents from the financial advice industry considered that the scope of the advice should be placed closer to the front of the document. They argued that it is important for clients to be reminded of the scope before they read the advice, because understanding what the advice does or does not cover provides the context for the advice.
- 35 A few respondents also considered that the adviser's reasons for recommending the policies should be moved forward to ensure that clients understand the basis of the advice.
- 36 One respondent identified that the privacy notice, which appeared after the scope of the advice, was not directly relevant to the advice and could be better placed in another document (e.g. in the Financial Services Guide).

ASIC's response

We have placed the scope of the advice close to the front of the example SOA, directly after the clients' preferences and needs: see the example SOA in Appendix 2 to updated [RG 90](#).

Moreover, the reasons for the recommendations have been placed directly after the advice. We think this structure will provide better context around the advice and help to ensure that the above information is sufficiently prominent.

In addition, we have replaced the heading 'Why my advice is appropriate and in your best interests' with 'Reasons for my recommendations'. The simplified language is intended to make it easier for clients to understand what this section is about.

We have also removed the privacy notice.

E Other feedback

Key points

This section outlines some other key pieces of feedback that we received in response to CP 284 and during the roundtable with key industry associations.

General feedback

- 37 In addition to the feedback outlined in previous sections of this report, some respondents from the financial advice industry provided detailed feedback about the advice scenario in the draft example SOA. We received comments about the recommended strategies, including levels of cover, as well as minor suggestions for better conveying information about the advice and the advice process. For example, one respondent suggested that information about the adviser's continuing review service could be better phrased to highlight the importance of this service.
- 38 A few respondents highlighted the potential of technology to transform the way that SOAs are delivered. They recommended that we develop guidance on using technology to deliver SOAs in innovative ways (e.g. by providing a digital example SOA).
- 39 A handful of respondents also recommended that we provide example SOAs for other financial advice scenarios, including investment and superannuation advice.
- 40 Respondents from the advice industry, including AFS licensees and providers of financial planning software, did not identify any technological barriers to using the draft example SOA as a model. However, some noted that the level of personalisation in the document meant that it contained a lot of free text that must be populated by advisers.
- 41 Finally, a few participants at the industry roundtable expressed interest in guidance around scoping of advice, given that the example SOA presents an example of scaled advice. For example, clarity was sought on whether it is acceptable to scope out a client's existing superannuation arrangements when providing life insurance advice.

ASIC's response

We have taken into account the feedback we received about the advice scenario to make small refinements to the example SOA: see the example SOA in Appendix 2 to updated [RG 90](#).

However, while we have tried to ensure that the financial advice scenario is as realistic as possible, we recognise that there may still be disagreement with some aspects of the scenario. The advice we developed is one of a number of possible outcomes. It is not designed to illustrate what we would consider to be the best advice in this scenario.

We agree that technology has the potential to transform how SOAs are presented and delivered. We encourage AFS licensees and advisers to explore innovative ways of delivering SOAs and are open to assisting them by granting individual relief from regulatory barriers where appropriate.

We provide guidance on digital disclosure and set out the existing relief available to remove barriers to digital disclosure in [Regulatory Guide 221 *Facilitating digital financial services disclosures*](#) (RG 221). However, it would be impractical for us to develop an example digital SOA because there is so much variation in potential modes of presentation (e.g. PC, tablet or mobile telephone).

Similarly, while we cannot provide example SOAs to cover all advice scenarios, we have tried to create an example SOA that can be adapted to other scenarios.

In removing some of the repetition, we have reduced the length of the document and decreased the amount of free text that must be populated by advisers. However, we have retained a high level of personalisation because providing personalised information enhances client engagement.

Finally, the question of whether it is appropriate to limit the scope of advice in a particular way will normally depend on a client's relevant circumstances and goals. We have provided more information about scaled advice in Section D of [Regulatory Guide 244 *Giving information, general advice and scaled advice*](#) (RG 244).

Appendix: List of non-confidential respondents

- Anonymous
 - Association of Financial Advisers
 - Consumer Action Law Centre
 - Credit and Investments Ombudsman
 - Everingham, Mark
 - Financial Planning Association
 - Financial Rights Legal Centre
 - Financial Services Council
 - First Mutual Australia
 - Industry Fund Services
 - Industry Super Australia
 - Miller, Michael
 - Mine Wealth + Wellbeing Superannuation
 - Mortgage Choice Financial Planning Limited
 - Patterson, James
 - YTML Group
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