



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 284

Example Statement of Advice for life insurance: Update to RG 90

May 2017

About this paper

This consultation paper sets out ASIC's proposals for updating Regulatory Guide 90 *Example Statement of Advice: Scaled advice for a new client* (RG 90).

We are proposing to replace the example Statement of Advice (SOA) in the current RG 90 with a new example SOA for scaled advice (i.e. personal advice that is limited in scope) about life insurance for a new customer, and to update the guidance in RG 90 to reflect this change.

This paper attaches the draft updated RG 90. We are seeking your feedback on the proposed updates and, in particular, the new example SOA.

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.

Document history

This paper was issued on 31 May 2017 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our guidance on Statements of Advice. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section D, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous, we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 31 July 2017 to:

Natasha Nguyen
Lawyer
Financial Advisers
Australian Securities and Investments Commission
email: natasha.nguyen@asic.gov.au

What will happen next?

| | | |
|----------------|---|--|
| Stage 1 | 31 May 2017 | ASIC consultation paper and draft updated regulatory guide released |
| Stage 2 | 31 July 2017 August to September 2017 | Comments due on the consultation paper Final drafting of regulatory guide |
| Stage 3 | September 2017 | Updated regulatory guide released |

A Background to the proposals

Key points

We are proposing to replace the example Statement of Advice (SOA) in [Regulatory Guide 90 Example Statement of Advice: Scaled advice for a new client](#) (RG 90) with a new example SOA for scaled advice (i.e. personal advice that is limited in scope) about life insurance for a new customer.

RG 90 provides an example SOA to illustrate clear, concise and effective disclosure.

Since RG 90 was last updated, there have been a number of policy developments in the retail life insurance advice sector which have highlighted the need for better SOAs.

On 6 November 2015, the Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer, announced an industry package of reforms to address problems in the retail life insurance advice sector. The package of reforms included an ASIC review of SOAs, of which this consultation forms a part.

This consultation paper asks for your feedback on the attached draft updated RG 90 and, in particular, the new example SOA.

Note: See the attached draft updated RG 90 for a list of the 'Key terms' that are also relevant to this consultation paper.

Current ASIC guidance

- 1 The obligation to provide a Statement of Advice (SOA) is a statutory requirement which generally applies when personal advice is given to a retail client. It is designed to help retail clients understand the advice and make an informed decision about whether or not to act on the advice.
- 2 The provisions governing SOAs are found in Div 3 of Pt 7.7 of the *Corporations Act 2001* (Corporations Act) and include a requirement that statements and information in an SOA must be worded and presented in a 'clear, concise and effective' manner: s947B(6) and 947C(6).
- 3 In August 2005, ASIC published *Example Statement of Advice (SOA) for a limited financial advice scenario for a new client*, which was rebadged as Regulatory Guide 90 in July 2007. An updated version—[Regulatory Guide 90 Example Statement of Advice: Scaled advice for a new client](#) (RG 90)—was published in August 2013. This guide was revised to incorporate technical updates to reflect the Future of Financial Advice (FOFA) reforms.

- 4 The focus of RG 90 is an example SOA for personal advice based on a hypothetical limited financial advice scenario that does not require a full financial plan. The aim of the SOA is to illustrate what a clear, concise and effective SOA might look like. It is intended to show how an adviser could produce a compliant SOA that is not lengthy or complex.
- 5 RG 90 summarises the aims of the example SOA, highlights the various sections of the example SOA, and explains what these sections contain and why.
- 6 Further examples of SOAs can be found in [Regulatory Guide 244](#) *Giving information, general advice and scaled advice* (RG 244), issued in December 2012.
- 7 ASIC has also provided detailed guidance on SOAs in [Regulatory Guide 175](#) *Licensing: Financial product advisers—Conduct and disclosure* (RG 175). Section D of RG 175 explains when an adviser is required to provide an SOA, and outlines the regulatory requirements for what must be included in an SOA. It also gives guidance on how to meet these requirements.
- 8 Despite the guidance that ASIC has provided, industry continues to produce lengthy SOAs that are difficult for customers to understand. This was noted by the Trowbridge *Review of retail life insurance advice* in 2015: see paragraphs 15–19 of this paper.
- 9 We also note that, since RG 90 was last updated, there have been a number of important policy developments in the retail life insurance sector which have further highlighted the need for better SOAs.

Policy developments in the retail life insurance advice sector

- 10 The quality of advice given in the retail life insurance sector has long been an area of concern for ASIC.
- 11 In 2014, we undertook a surveillance to understand the personal advice that customers were receiving about life insurance, and to identify opportunities to promote personal advice that would be in the best interests of the customer.
- 12 The findings of this surveillance were published in [Report 413](#) *Review of retail life insurance advice* (REP 413). We found unacceptable levels of poor quality advice, and a strong correlation between high upfront commissions and poor customer outcomes—including in situations where advisers recommended that their customer switch products. We also found that 37% of the advice we reviewed failed to comply with the laws in force at the time the advice was given.

13 REP 413 set out a number of recommendations for insurers, Australian financial services (AFS) licensees, advisers and their professional associations. These focused largely on ensuring that customer interests were met and on balancing the issue of affordability versus cover.

14 REP 413 also recommended that insurers should change their remuneration arrangements and develop simpler products, while advisers should review their business models to address structural barriers to the provision of compliant life insurance advice.

Trowbridge report

15 The Association of Financial Advisers (AFA) and the Financial Services Council (FSC) responded to REP 413 by establishing the Life Insurance and Advice Working Group (LIAWG), chaired by John Trowbridge, a former member of the Australian Prudential Regulation Authority (APRA).

16 The LIAWG commissioned its own review of the retail life insurance sector. The findings of this review were set out in a final report, *Review of retail life insurance advice* (Trowbridge report), published in March 2015.¹ The review found problems in the remuneration structures for advisers, as well as poor customer understanding of the advice and products they were being sold.

17 The review found that an overemphasis on compliance had resulted in some AFS licensees producing SOAs that were too long and too legalistic: see page 10 of the Trowbridge report. The report suggested that this approach was taken to protect licensees and advisers from legal action by customers.

18 The report acknowledged the guidance that ASIC had already provided on SOAs but noted that many financial advisers were still producing SOAs that were too long and complicated. It emphasised that lengthy and complex SOAs were difficult for customers to understand and were contrary to the regulatory requirement for clear, concise and effective disclosure.

19 The report recommended shorter SOAs as part of a number of reforms to place customer engagement and decision making at the centre of the advice process.

Life insurance reform package

20 Following the recommendations made in the Trowbridge report, the Government called on industry to develop its own reforms to address the problems in the retail life insurance advice sector.

¹ John Trowbridge, [Review of retail life insurance advice: Final report](#), 26 March 2015.

- 21 On 6 November 2015, the Minister for Revenue and Financial Services, the Hon Kelly O’Dwyer, announced the final industry package of reforms.² The announcement referred to the consensus reached by industry on the implementation of important improvements to the remuneration arrangements in the retail life insurance advice sector.
- 22 Key elements of the reform package included a phased reduction in initial commissions, a cap on ongoing commissions and a clawback period of two years if the policy lapsed or the premium decreased.
- 23 The *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*, giving effect to these reforms, was passed on 9 February 2017 and commences on 1 January 2018. The supporting Corporations Amendment (Life Insurance Remuneration Arrangements) Regulations 2017 were made on 9 March 2017. The regulations prescribe circumstances where commissions are (or are not) considered to be conflicted remuneration, as well as prescribing circumstances where clawback does not apply.
- 24 In addition, the package of reforms included a review by ASIC of SOAs for life insurance advice, including promoting prominent upfront disclosure of commissions to strengthen the disclosure of adviser remuneration. The objectives of the review were to make SOAs more effective and easier for customers to read and understand, as well as to assist financial advisers to make better use of SOAs. This consultation paper forms a part of that review.

Proposed updates to RG 90

- 25 We propose to replace the example SOA in the current RG 90 with a new example SOA for scaled advice about life insurance for a new customer, and to update the guidance in RG 90 to reflect this change.
- 26 The new example SOA is based on a limited financial advice scenario of a married couple with two young children who have asked a financial planner to advise them on life insurance cover in the event of death or disability, taking into account their current income and assets.
- 27 The example SOA has been developed in line with ASIC’s increasing use of behavioural research to understand regulatory problems and, in some cases, design and refine solutions for them.
- 28 Financial products and services are inherently complex and often require customers to make important decisions involving risk and uncertainty.

² The Hon Kelly O’Dwyer MP, [Government announces significant improvements to life insurance industry](#), media release, 6 November 2016.

Behavioural economics tells us that this can create a fertile environment for behavioural biases to affect people's decisions.³

29 In a complex environment where customers are subject to behavioural biases, proper disclosure may help customers make informed decisions about the products and services they are purchasing.⁴

30 ASIC is increasingly drawing on methodologies and principles from the cross-disciplinary field of behavioural economics to understand and respond to regulatory problems. Some of the insights gathered in this field help us to identify and reduce frictions in both processes and communications.

31 In keeping with this approach, we have drawn on behavioural research to inform and refine the example SOA.

32 We engaged a consultant with expertise in designing and user testing documents to work with us on the design of the example SOA.

33 The first step in the development of the example SOA was to identify a series of performance requirements that the document had to meet. These requirements were based on the legislative requirements for SOAs, existing ASIC guidance and feedback from key industry stakeholders.

34 The example SOA was tested with small groups of consumers to determine whether it met the performance requirements. This involved conducting interviews to determine whether consumers could find and understand key information. Based on the results of the initial round of testing, changes were made to the SOA before a second round of consumer testing was conducted.

35 The revised example SOA was also tested with a small group of financial advisers to better understand any barriers that advisers may face in using the example SOA as a model.

36 The results of the user testing phase enabled us to make refinements to the example SOA before this consultation.

37 To assist with stakeholders' consideration of the new example SOA, and changes to RG 90, we have included an appendix to this consultation paper, which outlines the process we undertook in developing and testing the example SOA. The appendix sets out the performance requirements for the example SOA, the reasoning for key design decisions, and the modifications made to the example SOA as a result of the user testing phase.

³ Financial Conduct Authority (UK), [Applying behavioural economics at the Financial Conduct Authority](#), Occasional Paper No. 1, April 2013.

⁴ Australian Treasury, [Financial System Inquiry Interim Report](#), July 2014; Australian Treasury, [Financial System Inquiry Final Report](#), November 2014.

Your feedback

- 38 We have prepared and attached to this consultation paper a draft of our proposed updates to RG 90, which incorporates the new example SOA for scaled advice about life insurance for a new customer.
- 39 The draft updated guidance should be considered in light of our general approach to compliance with the SOA requirements, as set out in Section D of RG 175.
- 40 We are interested in your general feedback on the example SOA and, in particular:
- (a) any changes you think are needed to make it a more effective tool for communicating information to customers;
 - (b) any barriers to financial advisers adapting and using the example SOA, and what may help to overcome these barriers; and
 - (c) how ASIC can assist financial advisers to use the example SOA as a model when preparing their own SOAs.
- 41 Your feedback will assist us to improve our guidance on preparing SOAs, and to promote industry use of the new example SOA.

B Illustrating clear, concise and effective disclosure

Key points

SOAs that are too long and difficult to understand detract from customer engagement and may lead to poor decision making. They are also contrary to the requirement for clear, concise and effective disclosure.

In developing the new example SOA, we have endeavoured to use simple, plain language and a structure that is easy for customers to follow.

We have also sought to minimise the length of the example SOA by excluding unnecessary information, while ensuring that the SOA still meets disclosure requirements.

Finally, the example SOA seeks to illustrate prominent and upfront disclosure of commissions.

Language used in the example SOA

Proposal

B1 We have tried to use simple, plain language to make the new example SOA as clear and easy as possible for customers to read and understand.

Your feedback

B1Q1 Do you have any comments about the way that any of the information in the example SOA is expressed? In particular, do you have any specific suggestions about how to make the language simpler and easier for customers to understand?

Rationale

- 42 The purpose of an SOA is to communicate to the customer important and relevant information about the advice being provided, so they can make an informed decision about whether or not to act on the advice.
- 43 SOAs that are difficult to understand detract from customer engagement and may lead to poor decision making.
- 44 The new example SOA is underpinned by our current guidance on the SOA requirements, including the requirement for clear, concise and effective disclosure.
- 45 In developing the example SOA, we have tried to use simple, plain language that can be easily understood by customers. Our aim was to develop an SOA

that could be read and understood by anyone seeking financial advice, regardless of their previous level of understanding about financial products.

- 46 Based on the Flesch-Kincaid grade level readability test,⁵ the example SOA requires a person to be educated to a grade 8 level (based on the US education system) to be able to understand it. Experts in readability scores advise that documents with a public audience should have a grade level of 8 or below. The test measures readability only by reference to the average length of sentences and average number of syllables in words used. It does not take into account the subject matter of the document or the way that information is structured and presented.
- 47 We have used the following strategies to make the new example SOA easier to read and understand:
- (a) where possible, technical words and phrases have been replaced with more commonly understood terms;
 - (b) where legal terms have been used, these are explained at the first point of usage;
 - (c) the use of acronyms and abbreviations has been minimised;
 - (d) short, simple sentences have been used, with no complex sentence structures;
 - (e) where possible, tables and bullet points have been used to break up the text and present information in a clear, accessible way; and
 - (f) different types of information have been identified and separated into two ‘voices’, using a different style to represent each voice:
 - (i) the first ‘voice’ (in normal text) is the voice of the adviser, and sets out key information, facts and recommendations; and
 - (ii) the second ‘voice’ (in italics with an arrow bullet) provides further explanation or expands on the implications of what the first voice has said.
- 48 In addition, some information has been repeated throughout the example SOA, based on the knowledge that many people do not read these types of document from cover to cover. Some people may only skim the document and/or engage with specific sections. For these people, the table of contents allows them to find the information they want to read and only read that information. Some repetition has been necessary to enable each section to make sense by itself.

⁵ The Flesch-Kincaid grade level readability test is one of the most common measures of readability and is used in a wide variety of contexts, including to assess the readability of texts used for educational purposes.

- 49 We note that SOAs are challenging documents for customers. We would expect the adviser to talk through the SOA with the customer as part of the advice process.

Structure of the example SOA

Proposal

- B2** We have tried to structure the example SOA so that it is easy for customers to follow.

Your feedback

- B2Q1 Do you think the structure of the example SOA assists customers to understand and find information? If you do not find the structure helpful, please explain why.
- B2Q2 Do you have any suggestions that would improve the structure of the example SOA so that it is easier for customers to follow?
- B2Q3 Do you have any specific comments about the order in which the information has been set out? For example, what do you think about where the information about the scope of the advice has been placed? Please provide an explanation for your comments.

Rationale

- 50 The example SOA is divided into separate sections, each of which deals with a different topic. To make the document easier to navigate, we have included a table of contents at the front of the document, and large headings at the beginning of each section. We have also included a summary of the adviser's recommendations near the front of the document for easy reference.
- 51 The remainder of the information in the example SOA has been broadly set out in chronological order, reflecting the process of giving personal advice. This information includes:
- (a) the customers' personal circumstances and financial situation;
 - (b) the customers' goals and objectives;
 - (c) the advice;
 - (d) the consequences and risks of the advice;
 - (e) why the advice is in the customers' best interests and appropriate;
 - (f) what the advice does and does not cover (i.e. its scope);
 - (g) what the customers should do to follow the advice; and
 - (h) the commissions associated with the advice—these have also been summarised on the front cover in order to strengthen the remuneration disclosure.

Content and length of the example SOA

Proposal

- B3** We have tried to minimise the length of the example SOA by excluding information that can be provided elsewhere, while ensuring that the SOA still meets the disclosure requirements.

Your feedback

- B3Q1** Have we included any information in the example SOA that you think should be excluded? Please provide an explanation for your comments.
- B3Q2** Have we excluded any information in the example SOA that you think should be included? Please provide an explanation for your comments, bearing in mind that the SOA is only one part of the advice process and that additional information can be provided to the customer in other ways.

Rationale

- 52 Lengthy SOAs are common in the retail life insurance industry and can impede customer understanding of the advice.
- 53 One of the key aims of the example SOA is to illustrate how to produce more concise SOAs. In developing the example SOA, we have considered what information could be excluded based on the disclosure required by law and the purpose of the SOA in the context of the whole adviser–customer relationship. This means that we have confined the SOA to explaining the advice and the basis for the advice, taking into account the mandatory content requirements and ASIC’s existing guidance.
- 54 Over the course of their relationship, customers and their advisers will discuss a broad range of matters. This will help provide much of the background to the advice that is eventually provided.
- 55 The example SOA is based on the assumption that the adviser is maintaining information on a customer file. This customer file should show the steps that the adviser has taken to meet the best interests duty and related obligations in Div 2 of Pt 7.7A of the Corporations Act.
- 56 We have therefore not included in the example SOA all of the information that we would usually expect to find in the customer file. This information does not necessarily need to be included in the SOA, but can be provided to the customer:
- (a) in other documents, including the Financial Services Guide (FSG), relevant Product Disclosure Statements (PDSs), promotional literature or educational material;

- (b) in verbal communications, such as face-to-face meetings and telephone conversations; and
- (c) in other written communications, such as emails and letters.

What is not included in the example SOA

57 We have set out below the specific types of information that we have decided not to include in the example SOA.

Disclaimers and warnings

58 Consistent with the objectives of an SOA and its purpose as a communication tool (and not as a mechanism to protect against liability), we have not included in the example SOA any disclaimers designed to protect advisers from liability for the advice provided.

59 We have excluded this information because it is not designed to help the customers understand (and decide whether to act on) personal advice. If an adviser wishes to issue such disclaimers, we think it is more appropriate to include this type of information in other documents, such as the FSG or the letter of engagement.

60 However, if personal advice provided to a customer is based on incomplete or inaccurate information, a warning must be given to the customer. If the SOA is the means by which the advice is provided, or the SOA is given to the customer at the same time as the advice is provided, the warning may be given by including it in the SOA: s961H.

Financial product information

61 We have not included detailed information in the example SOA about the recommended financial products because this information will be in the PDS for each product. We have assumed that the adviser has drawn the customer's attention to the relevant information in each PDS and will provide these documents separately.

Financial services provided

62 We have not included information in the example SOA about any of the other financial services provided by the adviser because this information would be available in the FSG.

Educational information

63 We do not consider that it is necessary to provide general information in an SOA to educate a customer about financial products.

- 64 While we recognise that an SOA may have some educational value, its primary purpose is to disclose to the customer key information about the advice. This means that we have not included additional educational information in the body of the example SOA. Instead, we have included a reference to some (hypothetical) attached educational material and provided a link to [ASIC's MoneySmart website](http://www.moneysmart.gov.au) (www.moneysmart.gov.au) below the table of contents. Educational material may also be provided separately.

Upfront disclosure of commissions

Proposal

- B4** We have tried to strengthen the disclosure of adviser remuneration in the example SOA by ensuring that this information is prominent and set out upfront.

Your feedback

- B4Q1 Do you think the disclosure of commissions in the example SOA is sufficiently upfront and prominent? Please provide reasons.
- B4Q2 Do you think that customer understanding of commissions is enhanced by upfront disclosure? If not, why not?

Rationale

- 65 One of the key aims of ASIC's review of SOAs is to strengthen remuneration disclosure through the prominent upfront disclosure of commissions.
- 66 To illustrate appropriate disclosure of commissions, we have included a summary of commissions on the front cover of the example SOA under the headings, 'Payments to me (Sally Chong) and Planforit' and 'Total commissions'.
- 67 We have also included a full breakdown of commissions at the back of the example SOA, before the authority to proceed. This is intended to give the customers an opportunity to review the commissions before signing the document.

C Encouraging industry use of the example SOA

Key points

We have incorporated the draft new example SOA as an appendix to the draft updated RG 90.

RG 90 explains the structure of the example SOA, and the reasons for including or excluding certain information.

In developing the example SOA, we have sought to create a model document that can be adapted to different personal advice scenarios.

We are seeking your feedback on any barriers that advisers might face in using the example SOA as a model, and how ASIC can assist advisers to overcome these barriers.

Proposed updates to RG 90

Proposal

- c1 We propose to update the guidance in RG 90 to reflect the new example SOA. The draft updated guide is attached to this consultation paper. It is intended to assist financial advisers to make use of the example SOA and to better understand ASIC's expectations for SOAs.

Your feedback

- C1Q1 Do you have any comments about the draft updated RG 90?
C1Q2 Are there areas where you consider further guidance is needed?

Rationale

- 68 RG 90 is divided into three sections:
- (a) Section A sets out the scope of the guide;
 - (b) Section B explains the purpose of an SOA and summarises the legislative requirements that apply to SOAs; and
 - (c) Section C describes what each section of the example SOA contains and why.
- 69 We propose that the new example SOA for life insurance will replace the current published example SOA, which is in Appendix 2 of RG 90.
- 70 In updating RG 90, we have made some amendments to Sections A and B to provide background information on the new example SOA. However, the majority of the changes to RG 90 have been made in Section C.
- 71 The updated Section C provides guidance on how to use the new example SOA by explaining the design and structure of the example SOA, and the reasons for including or excluding certain types of information.

Adapting the example SOA to different scenarios

Proposal

- c2 We have tried to design an example SOA that will be easy for financial advisers to use as a model in producing their own SOAs.

Your feedback

- c2Q1 What, if any, difficulties do you think an adviser might face in adapting the example SOA to different life insurance or financial advice scenarios?
- c2Q2 How do you think ASIC can assist advisers to overcome these difficulties?

Rationale

- 72 Underlying many of the problems with SOAs is the fact that they are usually produced from templates. These templates often contain long sections of standardised disclosures and disclaimers that AFS licensees and advisers might consider necessary to meet disclosure requirements and to protect themselves from liability.
- 73 The resulting SOAs detract from the ultimate objective of communicating to the customer important and relevant information about the advice so that the customer can make an informed decision about whether or not to act on the advice.
- 74 The example SOA is designed to illustrate how an adviser might produce a compliant SOA that is clear, concise and effective. It provides advisers with a model to guide them on the types of information they should include in an SOA and the best way to present that information.
- 75 We have endeavoured to develop a model document that can be used in a variety of firms with different information technology systems.
- 76 Financial advisers working for small firms may have technical constraints because of the limited technology available to them. Consequently, we have formatted the SOA in a common word-processing package, and used simple design and layout techniques (e.g. headings, tables and bullet points).
- 77 Finally, the example SOA has been designed in accordance with the principles of the Web Content Accessibility Guidelines (WCAG) 2.0, which apply to all material published on Australian government websites. This will ensure that the document can be accessed and understood by people with disabilities, including those using assistive technologies such as screen readers.

Addressing other barriers to industry take-up

Issue

- c3 We are seeking to understand the barriers that exist for financial advisers in using the example SOA as a model. The process for producing SOAs is often influenced by other parts of the organisation (e.g. information technology and compliance areas), and this may present challenges for advisers in using the example SOA as a model.

Your feedback

- C3Q1 What organisational barriers exist for advisers to use the example SOA as a model? Please explain how these barriers might hinder industry take-up of the example SOA.
- C3Q2 How do you think ASIC can assist advisers to overcome these barriers and use the new example SOA as a model in producing their own SOAs?

Rationale

- 78 We recognise that the process of preparing SOAs may involve several parts of an organisation. These include legal and compliance areas as well as information technology systems and staff.
- 79 As part of this consultation, we are seeking further information about the processes, skills and technologies that financial advisers use to create SOAs and how these might affect the ability of advisers to use the example SOA as a model.

D Regulatory and financial impact

80 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us, we think they will strike an appropriate balance between:

- (a) assisting financial advisers to make better use of SOAs; and
- (b) making disclosure simpler and more effective for customers.

81 Before updating our guidance in RG 90, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

82 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

83 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 3.

Appendix: Designing and testing a new example SOA for life insurance

Background

- 84 This appendix provides an overview of the process ASIC undertook in working with a communications consultant to design a new example SOA for scaled advice on life insurance.
- 85 The draft example SOA attached for consultation was based on an early version developed by the consultant, which was then finalised by ASIC.
- 86 This appendix has been written from ASIC's perspective and explains the process of development as we understand it.
- 87 The objectives of an SOA are to communicate to customers important and relevant information about the personal advice they receive, and to help those customers make an informed decision about whether or not to act on the advice.
- 88 To meet these objectives, it is a legislative requirement for SOAs to be 'clear, concise and effective'. It is therefore essential that SOAs are written and formatted in a way that enables customers to easily find and use the information they contain.
- 89 In March 2016, ASIC engaged a specialist consultant to make recommendations on developing a new example SOA for scaled advice on life insurance, to be included as an appendix to RG 90. The consultant was given the task of helping ASIC to make disclosure simpler and more effective for customers, and to assist advisers to make better use of SOAs. We also requested that the consultant consider prominent upfront disclosure of commissions in the example SOA.
- 90 In keeping with ASIC's increasing use of behavioural research to inform regulatory decisions, the SOA was designed using a seven-stage approach, which applied the insights gained from an iterative user testing phase.
- 91 A paper-based version of the example SOA was tested with small groups of consumers, and discussions were held with relevant industry stakeholders and participants.
- 92 The seven-stage process involved:
- (a) developing performance requirements, including an analysis of the regulatory and legal requirements for SOAs;
 - (b) designing a new example SOA based on these performance requirements;

- (c) testing the example SOA with small groups of consumers;
- (d) redesigning the SOA based on the results of the consumer testing;
- (e) conducting industry interviews to determine any technical constraints;
- (f) final consumer testing of the redesigned SOA; and
- (g) developing a final draft example SOA.

93 The consultant conducted the first six stages of the work, and ASIC completed the final stage. In finalising the draft example SOA, we incorporated some further recommendations made by the consultant.

Developing performance requirements

94 The first step in designing the example SOA was to identify what tasks consumers should be able to perform while using an SOA. The consultant referred to this as the document's 'performance requirements'. The performance requirements set out a series of tasks that a customer should be able to perform when using the example SOA. These tasks related to the information that customers need to find and use when reading an SOA.

95 The consultant worked with ASIC and key industry bodies (i.e. the Financial Planners Association, Financial Services Council, and Association of Financial Advisers) to define the performance requirements. The requirements were drawn from:

- (a) the Corporations Act—including s947A, 947B, 947C, 947D, 961B, 961G, and 961H; and
- (b) ASIC regulatory guides—specifically, RG 90, [Regulatory Guide 168 Disclosure: Product Disclosure Statements \(and other disclosure obligations\)](#) (RG 168), RG 175 and RG 244.

96 The analysis resulted in 25 performance requirements. These are listed in Table 1.

Table 1: Full list of performance requirements

| Number | Performance requirement |
|--------|--|
| 1 | Find inquiries number or contact details for the adviser. |
| 2 | Identify the document. |
| 3 | Identify what the document is—that is, explain that: <ul style="list-style-type: none"> • it is a legal requirement when personal advice is provided by a financial adviser; • it is advice to a retail client; • it is a record of the advice given, consistent with regulatory requirements; and • it is a clear statement of any limitations on the advice given. |

| Number | Performance requirement |
|--------|--|
| 4 | Find out who is giving the advice. |
| 5 | Find out who is covered by the advice. |
| 6 | Explain what is meant by Statement of Advice. |
| 7 | Locate the financial products advised as part of that strategy. Identify the Product Disclosure Statements (PDSs) that are cited in the advice, and use the PDS appropriately in accordance with ASIC's Good Disclosure Principles. |
| 8 | Find and explain whether or not the adviser understands the client's reasons for seeking their advice. |
| 9 | Find and explain the scope of the advice: what is included and excluded. |
| 10 | Find and explain whether or not the adviser has used the correct information about the client's financial and personal situation. |
| 11 | Find and explain the risks associated with following or not following the advice. Are the risks acceptable to the client? |
| 12 | Find and explain the recommended advice. |
| 13 | Find and explain the strategy that has been advised. |
| 14 | Explain how the advice will change the client's financial position. |
| 15 | Identify the risks with the strategy and/or financial products recommended. |
| 16 | Explain why these recommendations have been given rather than others. |
| 17 | Find reference to educational material outside the SOA. |
| 18 | Find and explain the adviser's immediate fees for the advice and any ongoing fees that might be incurred. |
| 19 | Find and explain fees for the actual products. |
| 20 | Find and explain any costs to switch over to the products recommended. |
| 21 | Find and explain any ongoing costs or charges that might be incurred. |
| 22 | Find and explain other payments and benefits the adviser receives as a result of providing the client with this advice. |
| 23 | Review the plan. |
| 24 | Follow the steps to implement the plan, including providing authority for the adviser to proceed. |
| 25 | Find the appropriate contact details for further assistance. |

Developing the content in the SOA

- 97 ASIC's Financial Advisers team developed the original content for the new example SOA. We then worked with the consultant to modify this content to help the document meet the performance requirements. We ensured that the final draft example SOA met legislative requirements and ASIC's expectations for what should be in an SOA.
- 98 The SOA was designed to best meet the performance requirements and the needs of the end user. The typography, design elements and layout were chosen to meet these objectives. They were further refined through user testing and industry interviews.
- 99 The final example SOA does not always follow our existing regulatory guidance. This is because we are in the process of reviewing our guidance on SOAs in light of behavioural insights into how people read and understand SOAs. For example, the consultant's experience and broader behavioural research indicate that the length of a document alone and the avoidance of repetition do not necessarily determine a document's usability. Consequently, while consideration was given to creating a short example SOA, the final length was determined by reference to what would better meet the needs of the end user.
- 100 When designing the example SOA, the consultant first considered how financial advice customers would best read and understand information from the SOA. In the consultant's experience, to use a document effectively, readers need to be able to answer a series of questions. These questions are listed below.

How will I navigate the document?

- 101 ASIC's past research into disclosure documents has found that people do not necessarily read such documents from cover to cover. SOAs should therefore be structured in a way that allows customers to 'dip in' and 'dip out' to obtain the information they require.
- 102 As a result, a table of contents has been included at the front of the example SOA to help customers navigate the document and find information more easily.

Who is the document from?

- 103 It is important to make clear right from the start who the document is from.
- 104 In the example SOA, a large and coloured font has been used to communicate the name of the AFS licensee, which appears on the front cover and also on the header of every page.

Who are the authors?

105 The author of a document may not be same as the person or entity providing the document.

106 The author of the example SOA is a (hypothetical) individual working at an AFS licensee that provides financial advice to retail clients. To make it clear to the reader who is the author of the SOA, the name of the financial adviser has been formatted in a large coloured font. As with the name of the AFS licensee, the author's name appears on the front cover of the example SOA and also on the header of every page.

What 'voices' does the document use?

107 A key recommendation made by the consultant was the need for the content to be expressed in different voices. The term 'voices' refers to the purpose of the content and who is thought to be delivering it.

108 The initial assessment of the example SOA identified the need for two main voices. The 'first voice' is the voice of the adviser setting out key information, facts and recommendations, while the 'second voice' provides further explanation or expands on the implications of what the first voice has said.

Who are they talking to?

109 A document could have any number of audiences, and complex documents may have multiple audiences.

110 In the example SOA, the customers of the financial adviser are the audience. Because the content of the SOA communicates advice directly from the adviser to the customers, the reader of the SOA is often referred to as 'you'.

111 An SOA is not a compliance document—therefore, the audience is not ASIC or any other regulatory body. All information contained within the SOA is intended to communicate to customers important and relevant information about the personal advice they receive, and to help those customers make an informed decision about whether or not to act on the advice.

What are they talking about?

112 Readers of a document should be able to tell immediately what type of information is contained in the document and what it means for them.

113 Consequently, the front cover of the example SOA clearly states that the document is a Statement of Advice prepared for Brad and Zara Black by their financial adviser, Sally Chong.

Testing and refining the SOA

- 114 After developing the new example SOA based on initial recommendations, a paper version was then tested with small groups of consumers. The purpose of the testing was to assess whether the document was working as intended, by asking questions to elicit whether people could carry out the tasks in the performance requirements.
- 115 The testing was carried out with five or six people in each round. Although this may seem like a small sample size, in the consultant's experience, only a small number of participants are required to test and assess a document's performance. This is because the process is designed to test usability faults in the design, not to detect variability in a population of users.
- 116 The consumer testing was carried out by showing the participants the SOA, and then asking them a series of questions to reveal whether or not they could carry out the performance requirements. The actions of the participants in working out how to perform the tasks, as well as their verbal responses and comments, were noted by the consultant.
- 117 In general, a document that is considered to be performing effectively will have an overall performance standard of 81%. In broad terms, this means that a consumer should be able to find 90% of the information that they look for in the document and appropriately use 90% of the information that they find. The performance standard is obtained by multiplying 90% by 90%, giving an overall target of 81%. This figure has been agreed on by the consultant, together with many stakeholder groups, in developing performance standards for using information.
- 118 The results of the first round of testing showed that the example SOA was not as effective as it could be. Based on the first round of testing, refinements were made to create a second version of the example SOA. A further round of consumer testing showed that the document had improved, but could be improved further.
- 119 In most cases, the second version of the SOA showed an improvement in performance; however, there were also some decreases in performance. SOAs are challenging documents, so it is unsurprising that the performance levels were lower than they would be for simpler documents.
- 120 To address the decrease in performance related to the number of consumers who could explain why those particular products had been recommended, ASIC added more material to the example SOA to explain why the recommendations made were considered appropriate for the customers.
- 121 Because SOAs are complicated documents, we would expect advisers to talk through the SOA with customers and to provide verbal explanations of any information that the customer does not understand.

- 122 A comparison of the test results of the first and second versions of the new example SOA is shown in Table 2. The table lists the questions that were asked during the consumer testing, and identifies the performance requirement(s) each question relates to (as shown in Table 1).
- 123 The figures in Table 2 show the percentage of participants who easily and accurately found each item multiplied by the percentage of participants that could use the information appropriately. This has the effect of exaggerating the magnitude of failed responses. For example, if 70% of participants found the information and 70% could use it appropriately, the final figure is 70% multiplied by 70%, which is a total of 49%. This method is intended to identify and highlight the weaknesses in the document so that they can be remedied.

Table 2: Example SOA consumer testing results—Rounds 1 and 2

| Performance requirement | Question(s) | Round 1 | Round 2 |
|-------------------------|---|---------|---------|
| 2 | Can you tell me in your own words what this document is? | 0% | 64% |
| 3 | Can you tell me what is meant by the term 'Statement of Advice'? | 6% | 4% |
| 1, 6 | Can you tell me what is meant by 'Product Disclosure Statement'? | 11% | 4% |
| 1, 6 | If you received this document, how do you think you would use it? | 33% | 0% |
| 1, 6 | Okay, I would like you to try and use this document to do what you have just described. | 33% | 64% |
| 4 | Can you tell me who is providing the advice? | 69% | 60% |
| 5 | Now, can you tell me who this advice is for? | 69% | 100% |
| 8 | Using this SOA, can you describe to me the reasons why Brad and Zara are seeking advice? | 33% | 48% |
| 10 | How would you check the SOA to make sure that the advice is correctly using information about Brad and Zara's financial position? | 22% | 100% |
| 12 | How would you use this document to find the advice that is given to Brad and Zara? | 69% | 100% |
| 9 | Can you tell me about the limits of this advice: what it covers and what it doesn't? | 17% | 36% |
| 1 | Can you show me the products that the adviser is suggesting as part of that advice? | 25% | 48% |
| 13 | Can you explain why these products have been recommended? | 17% | 0% |
| 14 | If Brad and Zara take the advice, how will it change their financial position? | 3% | 24% |

| Performance requirement | Question(s) | Round 1 | Round 2 |
|-------------------------|---|---------|---------|
| 15 | Are there any risks associated with taking this advice and the products recommended? | 33% | 64% |
| 16 | Explain why the adviser has given these recommendations rather than others? | 3% | 16% |
| 18 | Will you have to pay any fees for the advice now and in the future? | 11% | 64% |
| 20 | What is it going to cost Brad and Zara to switch from their existing insurance to the new insurance? | 3% | 4% |
| 21 | Are there any ongoing costs or charges associated with this advice? | 17% | 16% |
| 22 | If you wanted to work out how much the adviser is going to earn by giving you this advice, how would you use this document to find this out? | 44% | 100% |
| 23 | Looking back, can you review the overall plan that the adviser has given? | 33% | 36% |
| 25 | Now let's suppose that, after reading through this document, you wanted to discuss something with the adviser, how would you contact them? | 100% | 64% |
| 24 | Let's imagine that you are satisfied with the advice provided in this document, can you show me what steps you would need to take for the advice to be implemented? | 33% | 64% |

Additional communication techniques in the final SOA

- 124 After the two rounds of consumer testing and the industry interviews, the consultant made further recommendations about how to make the final SOA more effective. ASIC incorporated a number of recommendations from the second round of consumer testing and industry interviews into the final SOA that is attached to this consultation paper.
- 125 Final changes that we incorporated into the example SOA, based on the consultant's advice, include:
- renaming headings to more directly express the content;
 - rearranging the sections to appear in a roughly chronological order, reflecting the process of giving advice;
 - where possible, replacing technical terms and jargon with more commonly understood terms;
 - explaining legal words and phrasing at the first point of usage;
 - better explaining premiums, fees and commissions;

- (f) including the licensee’s logo in colour on the front cover and in the page headers; and
 - (g) including only the top level headings in the table of contents.
- 126 Because the purpose of an SOA is to help customers make informed decisions about whether or not to act on the advice given, a list of the products recommended by the adviser is placed near the front of the document. This order is atypical for an SOA, which usually places the scope of the advice early in the document.
- 127 Recommendations by the consultant that were not incorporated into the final SOA developed by ASIC are listed below:
- (a) increasing white space throughout the document;
 - (b) reconsidering ways that the user can navigate the document—for example, by providing more secondary headings in the initial index or including an index at the beginning of each section;
 - (c) increasing the distinction between different voices in the document; and
 - (d) replacing references to the adviser from ‘I’ to ‘Sally Chong’.
- 128 Finally, we have made some modifications to address some of the deficiencies in the second version of the example SOA. For example, as previously mentioned, we have included more material to explain why the advice is appropriate.

Production constraints

- 129 In addition to the two rounds of consumer testing, the consultant conducted interviews with a range of financial advisers, representing small, medium and large firms. These interviews focused on the second version of the example SOA, and sought to assess whether advisers would have the technological capacity to implement it.
- 130 Based on the knowledge gained from industry discussions, the example SOA was designed in Microsoft Word. Early discussions with industry representatives and later interviews with financial advisers indicated that the most commonly used software to design SOAs is Xplan. However, the research process also found that small financial services organisations tended to use desktop computers with off-the-shelf software, templates and printers.
- 131 In keeping with our ‘inclusive design’ approach, the final example SOA was designed using Microsoft Word to ensure that all financial advisers can develop a document similar to the example SOA. However, certain limitations apply when developing an example SOA in Word. These mostly emerge from the primary purpose of Word as a word processor rather than design software. These limitations include poor control over letter spacing and configuration of text.

Final draft example SOA

132 The final draft example SOA is designed around the tasks a user must perform with the document, rather than any prescribed communication and design techniques. The function of the document, which is at the heart of the performance requirements, is to communicate to financial advice customers important and relevant information about the advice they receive, and to help these customers make informed decisions about whether or not to act on the advice.

133 The final draft example SOA has not been consumer tested, so it is not possible to compare its performance to the first and second versions. However, changes in the final SOA are designed to best answer the following questions:

- (a) What is the purpose of the document?
- (b) Who is the end user of the document?
- (c) What do users need to use the document?

These are the questions advisers should keep in mind when developing SOAs.

List of proposals and questions

| Proposal | Your feedback |
|--|---|
| <p>B1 We have tried to use simple, plain language to make the new example SOA as clear and easy as possible for customers to read and understand.</p> | <p>B1Q1 Do you have any comments about the way that any of the information in the example SOA is expressed? In particular, do you have any specific suggestions about how to make the language simpler and easier for customers to understand?</p> |
| <p>B2 We have tried to structure the example SOA so that it is easy for customers to follow.</p> | <p>B2Q1 Do you think the structure of the example SOA assists customers to understand and find information? If you do not find the structure helpful, please explain why.</p> <p>B2Q2 Do you have any suggestions that would improve the structure of the example SOA so that it is easier for customers to follow?</p> <p>B2Q3 Do you have any specific comments about the order in which the information has been set out? For example, what do you think about where the information about the scope of the advice has been placed? Please provide an explanation for your comments.</p> |
| <p>B3 We have tried to minimise the length of the example SOA by excluding information that can be provided elsewhere, while ensuring that the SOA still meets the disclosure requirements.</p> | <p>B3Q1 Have we included any information in the example SOA that you think should be excluded? Please provide an explanation for your comments.</p> <p>B3Q2 Have we excluded any information in the example SOA that you think should be included? Please provide an explanation for your comments, bearing in mind that the SOA is only one part of the advice process and that additional information can be provided to the customer in other ways.</p> |
| <p>B4 We have tried to strengthen the disclosure of adviser remuneration in the example SOA by ensuring that this information is prominent and set out upfront.</p> | <p>B4Q1 Do you think the disclosure of commissions in the example SOA is sufficiently upfront and prominent? Please provide reasons.</p> <p>B4Q2 Do you think that customer understanding of commissions is enhanced by upfront disclosure? If not, why not?</p> |
| <p>C1 We propose to update the guidance in RG 90 to reflect the new example SOA. The draft updated guide is attached to this consultation paper. It is intended to assist financial advisers to make use of the example SOA and to better understand ASIC's expectations for SOAs.</p> | <p>C1Q1 Do you have any comments about the draft updated RG 90?</p> <p>C1Q2 Are there any areas where you consider further guidance is needed?</p> |

| Proposal | Your feedback |
|--|---|
| <p>C2 We have tried to design an example SOA that will be easy for financial advisers to use as a model in producing their own SOAs.</p> | <p>C2Q1 What, if any, difficulties do you think an adviser might face in adapting the example SOA to different life insurance or financial advice scenarios?</p> <p>C2Q2 How do you think ASIC can assist advisers to overcome these difficulties?</p> |
| <p>C3 We are seeking to understand the barriers that exist for financial advisers in using the example SOA as a model. The process for producing SOAs is often influenced by other parts of the organisation (e.g. information technology and compliance areas), and this may present challenges for advisers in using the example SOA as a model.</p> | <p>C3Q1 What organisational barriers exist for advisers to use the example SOA as a model? Please explain how these barriers might hinder industry take-up of the example SOA.</p> <p>C3Q2 How do you think ASIC can assist advisers to overcome these barriers and use the new example SOA as a model in producing their own SOAs?</p> |