



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 175

Licensing: Financial product advisers—Conduct and disclosure

November 2017

About this guide

This guide is for persons who provide financial product advice to retail clients, and their professional advisers (such as lawyers). It considers how certain conduct and disclosure obligations in Pt 7.7 and Div 2 of Pt 7.7A of the *Corporations Act 2001* apply to the provision of financial product advice.

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 guide was issued in November 2017 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 175, issued May 2009, reissued April 2011, December 2012, October 2013 and March 2017
- Superseded Policy Statement 175, issued June 2003, reissued September 2003, May 2005 and May 2007, and rebadged as a regulatory guide 5 July 2007

Disclaimer

This guide 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.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

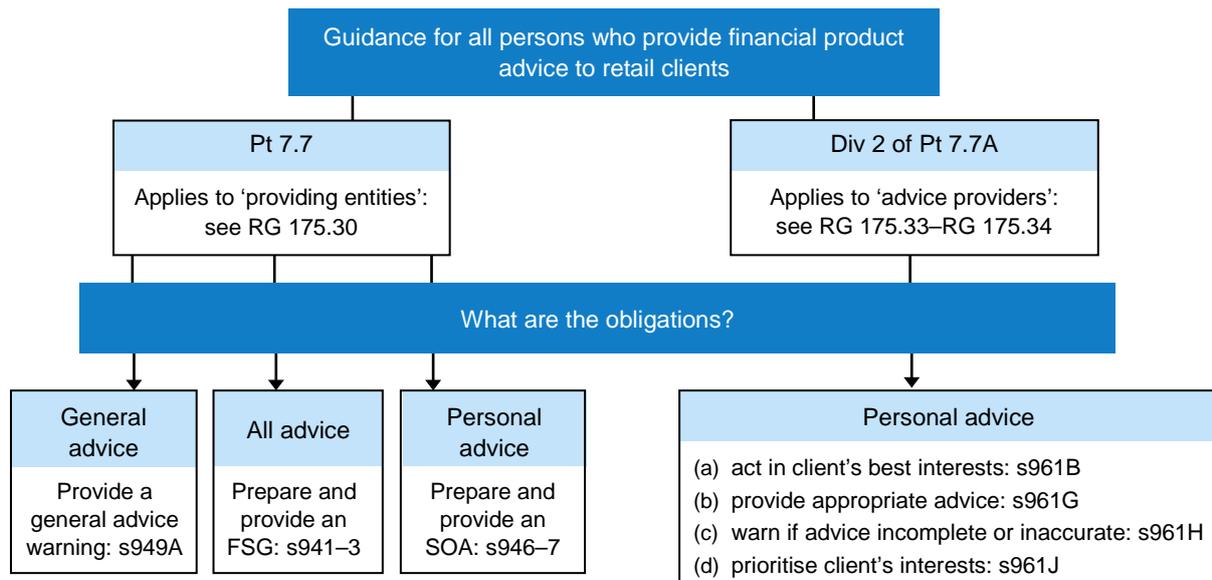
Under Pt 7.7 of the Corporations Act, providing entities that provide financial product advice to retail clients must:

- prepare and provide a Financial Services Guide (FSG);
- give a general advice warning when giving general advice; and
- prepare and provide a Statement of Advice (SOA) when giving personal advice.

Under Div 2 of Pt 7.7A, advice providers providing personal advice to retail clients must comply with the ‘best interests duty’ and related obligations, which were introduced as part of the Government’s Future of Financial Advice (FOFA) reform package to improve the quality of financial advice received by retail clients.

RG 175.1 Part 7.7 and Div 2 of Pt 7.7A of the *Corporations Act 2001* (Corporations Act) require persons who provide financial product advice to retail clients to comply with certain conduct and disclosure obligations. These obligations are designed to ensure that retail clients receive good quality advice about financial products and are able to make informed decisions about that advice. The obligations vary depending on whether the advice is personal advice or general advice. Figure 1 provides an overview of these obligations.

Figure 1: Overview of conduct and disclosure obligations



Note: See Table 3 for a text version (accessible) of the information contained in this diagram.

RG 175.2 This regulatory guide tells you how we will administer the law. Providing entities and advice providers must determine and comply with their legal obligations, including those arising under Pt 7.7 and Div 2 of Pt 7.7A.

Note 1: The obligations in Pt 7.7 and Div 2 of Pt 7.7A only apply where financial product advice is provided to retail clients.

Note 2: In this guide, references to parts (Pts), divisions (Divs) and sections (s) are to the Corporations Act, unless otherwise specified.

Disclosure obligations under Pt 7.7

RG 175.3 Under Pt 7.7, providing entities must:

- (a) where general advice is provided, ensure that a general advice warning is given to the client;
- (b) prepare and provide a Financial Services Guide (FSG) for general and personal advice; and

Note: This obligation applies to all providing entities that provide financial services to retail clients, not just financial product advisers.

- (c) where personal advice is provided, prepare and provide a Statement of Advice (SOA).

Note: Part 7.7 applies to the provision of all financial services. However, this guide generally considers Pt 7.7 only in relation to the provision of financial product advice to retail clients. This guide does not generally cover:

- (a) Pt 7.7 obligations as far as they may apply to classes of financial service other than financial product advice (such as the FSG requirements as they apply to dealing);
- (b) laws in detail (other than Pt 7.7 and Div 2 of Pt 7.7A) that may be relevant to the provision of retail financial product advice;
- (c) financial product advice provided to non-retail (wholesale) clients; or
- (d) the product disclosure obligations in Pt 7.9.

RG 175.4 The disclosure obligations in Pt 7.7 apply to ‘providing entities’. A providing entity may be an Australian financial services (AFS) licensee or an authorised representative: see RG 175.30. A providing entity includes a provider of secondary services.

Note: A secondary service provider is an AFS licensee or authorised representative who provides a financial service to a retail client via an intermediary: see RG 175.129.

Giving a general advice warning

RG 175.5 Under s949A, providing entities must give a prescribed ‘general advice warning’ when providing general advice to a retail client: see RG 175.51–RG 175.54.

RG 175.6 We have given relief under [ASIC Corporations \(General Advice Warning\) Instrument 2015/540](#) to allow providing entities to give a

shorter, simpler general advice warning when they provide oral general advice: see RG 175.55–RG 175.58.

- RG 175.7 In certain circumstances, we have also given conditional relief to licensed product issuers that provide general financial product advice in relation to securities (needing a disclosure document) in advertisements: see RG 175.59.

What is the difference between personal advice and general advice?

- RG 175.8 Financial product advice is a recommendation or a statement of opinion, or a report of either of those things, that is, or could reasonably be regarded as being, intended to influence a person or persons in making a decision about a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products: s766B.
- RG 175.9 All financial product advice is either ‘personal advice’ or ‘general advice’. Under the Corporations Act, personal advice has particular characteristics.
- RG 175.10 RG 175.26–RG 175.27 set out the definitions of ‘personal advice’ and ‘general advice’. For more guidance on the differences between personal advice and general advice, see Section B, Table 7 in Appendix 1 and [Regulatory Guide 244](#) *Giving information, general advice and scaled advice* (RG 244).

Table 1: The meaning of ‘personal advice’ and ‘general advice’

Personal advice	General advice
<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> • the person giving the advice has considered one or more of the client’s objectives, financial situation and needs; or • a reasonable person might expect the person giving the advice to have considered one or more of these matters: s766B(3). 	<p>All other financial product advice: s766B(4).</p>

Preparing and providing a Financial Services Guide

- RG 175.11 The obligation in s941–943 to prepare and provide an FSG applies to providing entities who provide both personal advice and general advice, as well as providers of other financial services.
- RG 175.12 The FSG provisions are designed to ensure that retail clients are given sufficient information to enable them to decide whether to obtain financial services from the providing entity.

Timing of FSGs

- RG 175.13 Providing entities must generally give an FSG to a client *before* providing a financial service to them—however, there are exceptions in some instances: see RG 175.97–RG 175.107.

Content requirements

- RG 175.14 An FSG must include various information, including how the providing entity and its associates will be paid for the advice: see RG 175.108–RG 175.126.

Relief for secondary services

- RG 175.15 We have given relief under [ASIC Corporations \(Financial Services Guides\) Instrument 2015/541](#) to certain providing entities that provide secondary financial services to retail clients permitting them to combine their FSG with other documents: see RG 175.137.

How FSGs relate to other disclosure documents

- RG 175.16 Retail clients may receive a number of different documents for a financial product transaction (e.g. buying a financial product). Each document has its own purpose and relates to a different stage of the transaction process, which can be characterised, from the client’s perspective, as:

- (a) What financial service am I getting? (Disclosure is in an FSG.)
- (b) What advice am I getting? (If it is personal advice, disclosure is in an SOA.)
- (c) What financial product am I buying? (Disclosure is in a Product Disclosure Statement (PDS), except where the product is a security, such as a share or debenture.)

Note: PDSs are regulated under Pt 7.9. This regulatory guide does not contain guidance on PDSs. For guidance on these documents, see [Regulatory Guide 168](#) *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

- RG 175.17 For more information on preparing and providing an FSG, see Section C.

Preparing and providing a Statement of Advice

- RG 175.18 Under s946–947, providing entities must generally give their clients an SOA where personal advice is being provided: see Section D. An SOA must include various information, including:

- (a) the advice;
- (b) the reasoning that led to that advice; and
- (c) all conflicts of interest that may affect the advice.

- RG 175.19 For more information on preparing and providing an SOA, see Section D.

Conduct obligations under Div 2 of Pt 7.7A

RG 175.20 Under Div 2 of Pt 7.7A, introduced by the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012* (FOFA Act No. 2), advice providers providing personal advice must:

- (a) act in the best interests of the client;
- (b) provide the client with appropriate advice;
- (c) warn the client if their advice is based on incomplete or inaccurate information; and
- (d) where there is a conflict with their own interests, or those of one of their related parties, prioritise the interests of the client.

RG 175.21 The obligations in Div 2 of Pt 7.7A—collectively referred to in this guide as the ‘best interests duty and related obligations’—are designed to ensure that retail clients receive advice that meets their objectives, financial situation and needs, and that advice providers act in the best interests of their clients in providing them with advice.

RG 175.22 These obligations apply to ‘advice providers’ who give personal advice to retail clients. An advice provider is generally the individual who provides the personal advice. However, if there is no individual that provides the advice, the obligations in Div 2 of Pt 7.7A apply to the legal person that provides the advice (e.g. a corporate licensee or authorised representative): see RG 175.222–RG 175.223. This may be the case if advice is provided through a computer program.

Note: See RG 255.88–RG 255.92 in [Regulatory Guide 255](#) *Providing digital financial product advice to retail clients* (RG 255) for more information on how the obligations in Div 2 of Pt 7.7A apply to digital advice.

RG 175.23 Table 2 provides an overview of the best interests duty and related obligations that apply to advice providers when giving personal advice to retail clients.

Table 2: Overview of best interests duty and related obligations

Obligation	Summary	Location of guidance
Best interests duty: s961B(1)	An advice provider must act in the best interests of the client in relation to the advice they provide to the client.	RG 175.242– RG 175.266
Safe harbour for complying with the best interests duty: s961B(2)	Section 961B(2) provides a ‘safe harbour’ that advice providers may rely on to prove they have complied with the best interests duty. If an advice provider shows they have taken the steps in s961B(2), they have met their obligation to act in the best interests of their client.	RG 175.267– RG 175.361
Providing appropriate advice: s961G	Advice providers must only provide advice if it is reasonable to conclude that the advice is appropriate for the client, assuming the best interests duty has been complied with.	RG 175.362– RG 175.385

Obligation	Summary	Location of guidance
Warning the client if advice is based on incomplete or inaccurate information: s961H	Where personal advice is based on incomplete or inaccurate information, an advice provider must warn the client that this is the case.	RG 175.386– RG 175.389
Prioritising the interests of the client: s961J	When providing clients with advice, advice providers must place the interests of the client ahead of any interests they have or those of their related parties. Note: The relevant related parties are listed at RG 175.390.	RG 175.390– RG 175.411

B Providing financial product advice

Key points

This section considers:

- the meaning of ‘financial product advice’ (see RG 175.24–RG 175.27);
- the key obligations that apply to the provision of financial product advice to retail clients (see RG 175.28–RG 175.29 and Table 3);
- the meaning of ‘providing entity’ and ‘advice provider’ (see RG 175.30 and RG 175.33–RG 175.34);
- the meaning of ‘retail client’ (see RG 175.38 and Table 4);
- the difference between personal advice and general advice (see RG 175.39–RG 175.50);
- the general advice warning required under s949A (see RG 175.51–RG 175.59);
- other obligations that may apply to the provision of financial product advice (see RG 175.60–RG 175.90); and
- what can happen if a person fails to comply with their obligations (see RG 175.91–RG 175.93).

What is ‘financial product advice’?

RG 175.24 A recommendation or a statement of opinion, or a report of either of those things, constitutes financial product advice if:

- (a) it is, or could reasonably be regarded as being, intended to influence a person or persons in making a decision about a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products (s766B); and
- (b) it is not exempted from being a financial service (e.g. where reg 7.1.29 of the Corporations Regulations 2001 (Corporations Regulations) applies).

Note: For a discussion of the meaning of financial product advice, see [Regulatory Guide 36](#) *Licensing: Financial product advice and dealing* (RG 36).

RG 175.25 Under the Corporations Act, all financial product advice is either ‘personal advice’ or ‘general advice’.

RG 175.26 Personal advice is financial product advice given or directed to a person (including by electronic means) in circumstances where:

- (a) the person giving or directing the advice has considered one or more of the client’s objectives, financial situation and needs (other than for the purposes of complying with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, or regulations or rules under that Act); or

- (b) a reasonable person might expect the person giving or directing the advice to have considered one or more of these matters (s766B(3)).

RG 175.27 All other financial product advice is general advice: s766B(4). See RG 175.39–RG 175.50 for further explanation about the difference between personal advice and general advice.

What obligations apply to the provision of financial product advice?

RG 175.28 If a person carries on a business of providing financial product advice, they are providing a financial service under the Corporations Act and, unless an exemption applies, they must hold an AFS licence or act as the representative of an AFS licensee: see RG 36. They must also comply with their obligations as a licensee or authorised representative.

RG 175.29 Persons who provide financial product advice to *retail clients* must also comply with certain conduct and disclosure obligations under Pt 7.7 and Div 2 of Pt 7.7A: see Table 3.

Table 3: Conduct and disclosure obligations under Pt 7.7 and Div 2 of Pt 7.7A

Key obligations	What advice do the obligations apply to?	Who needs to comply?
Key obligations under Pt 7.7 of the Corporations Act		
Ensure that a general advice warning is given to the client (s949A): see RG 175.51–RG 175.59	General advice	Providing entities
Prepare and provide an FSG: see Section C	Personal and general advice	Providing entities
Prepare and provide an SOA: see Section D	Personal advice	Providing entities
Key obligations under Div 2 of Pt 7.7A of the Corporations Act		
Act in the client's best interests in relation to the personal advice: see RG 175.242–RG 175.361	Personal advice	Advice providers
Prepare and provide appropriate personal advice: see RG 175.362–RG 175.385	Personal advice	Advice providers
Warn the client if the personal advice is based on incomplete or inaccurate information (s961H): see RG 175.386–RG 175.389	Personal advice	Advice providers
Prioritise the client's interests when giving advice: see RG 175.390–RG 175.411	Personal advice	Advice providers

Note: There are some exemptions from the requirements to provide an FSG (see RG 175.104–RG 175.107), give a general advice warning (see reg 7.7.20 and RG 175.59) and provide an SOA (see RG 175.166).

Who is the ‘providing entity’?

RG 175.30 The disclosure obligations in Pt 7.7 apply to ‘providing entities’. Providing entities may be AFS licensees or authorised representatives. Representatives that are not authorised representatives are not providing entities. Where a licensee provides financial product advice (e.g. through one of its employees), the licensee is the providing entity. Where an authorised representative provides financial product advice, the authorised representative is the providing entity.

Note 1: We maintain a register of authorised representatives of AFS licensees: see the [professional registers](#) on ASIC’s website. We also maintain a register of persons employed or authorised—directly or indirectly—by AFS licensees to provide personal advice to retail clients on relevant financial products: see ASIC’s [financial advisers register](#) on ASIC’s MoneySmart website.

Note 2: ‘Relevant financial products’ are financial products other than basic banking products, general insurance products, consumer credit insurance, or a combination of any of these products: s922C.

RG 175.31 Where an authorised representative is the providing entity, the authorising AFS licensee has an overriding duty to ensure that advice is provided in compliance with the law, including Pt 7.7. This is because the authorising licensee is obliged to take reasonable steps to ensure that its representatives comply with the financial services laws (as defined in s761A), which include the obligation to prepare and provide an FSG and an SOA: see, in particular, s912A, 952H and 953B.

Note: An AFS licensee’s obligation to take reasonable steps to ensure that its representatives comply with the financial services laws would also include complying with the best interests duty and related obligations: s961L.

RG 175.32 An AFS licensee can be subject to potential civil liability for breaches of Pt 7.7 by the authorised representative. Further, it is an offence for an AFS licensee to fail to take reasonable steps to ensure that an authorised representative complies with the representative’s obligations under Pt 7.7. This is in addition to any action that may be taken directly against the authorised representative.

Who is the ‘advice provider’?

RG 175.33 The conduct obligations in Div 2 of Pt 7.7A apply to ‘providers’ who we refer to as ‘advice providers’ in this guide. An advice provider is generally the individual who provides the personal advice. It may be an AFS licensee, authorised representative or other representative of an AFS licensee.

RG 175.34 However, if there is no individual that provides the advice, which may be the case if advice is provided through a computer program, the obligations in

Div 2 of Pt 7.7A apply to the legal person that provides the advice (e.g. a corporate licensee or authorised representative): s961.

Note: See RG 255.88–RG 255.92 for more information on how the obligations in Div 2 of Pt 7.7A apply to digital advice.

RG 175.35 AFS licensees have an obligation to ensure that their representatives provide advice in accordance with the law. A licensee could be liable for a civil penalty if it or its representatives that are not authorised representatives breach the provisions in Div 2 of Pt 7.7A.

Note: An AFS licensee also has a specific obligation to take reasonable steps to ensure that its representatives comply with the best interests duty (s961B), the appropriate advice requirement (s961G), the obligation to warn the client if the advice is based on incomplete or inaccurate information (s961H), and the obligation to prioritise the interests of the client (s961J): s961L. A licensee could be liable for a civil penalty if it does not comply with this obligation.

RG 175.36 An authorised representative could be liable for a civil penalty if it breaches the provisions in Div 2 of Pt 7.7A. In determining whether an authorised representative has engaged in conduct that breaches the provisions in Div 2 of Pt 7.7A, conduct engaged in by persons acting on their behalf may be relevant: s769B.

RG 175.37 Representatives may be subject to administrative sanctions for a breach of the obligations in Div 2 of Pt 7.7A (e.g. being banned from providing financial services for a period of time). Division 2 of Pt 7.7A does not contain criminal sanctions.

Who is a ‘retail client’?

RG 175.38 The meaning of ‘retail client’ depends on:

- (a) the type of financial product the advice relates to; and
- (b) the nature of the client (s761G and 761GA).

Table 4 shows how this works in different situations.

Table 4: The meaning of ‘retail client’

Type of financial product	Who is a retail client?
General insurance	<p>The person to whom the advice is provided is a retail client if the financial product to which the advice relates is prescribed under s761G(5)(b) (including regulations made for the purposes of that paragraph) and:</p> <ul style="list-style-type: none"> • the client is a natural person; or • the product is or would be used in connection with a small business (s761G(5) and 761G(12)). <p>Note: General insurance products prescribed under s761G(5)(b) are motor vehicle, home building, home contents, sickness and accident, consumer credit, travel, personal and domestic property, and medical indemnity insurance.</p>

Type of financial product	Who is a retail client?
Superannuation or retirement savings account (RSA)	<p>The person to whom the advice is provided is generally a retail client unless s761G(6)(c) applies.</p> <p>Note: Advice to an employer about a default fund or other superannuation product is a financial service 'in relation to a superannuation product or an RSA product' under s761G(6)(b) and reg 7.1.28AA and, as such, the service is always provided to the employer as a retail client. This is the case irrespective of the size of the employer or the value of their business assets. It does not apply if the employer is the trustee of a superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme that has net assets of at least \$10 million, or is an RSE provider.</p>
Other products	<p>The person to whom the advice is provided is a retail client unless:</p> <ul style="list-style-type: none"> • the price for the provision of the product or the value of the product is above the prescribed amount (s761G(7)(a) and regs 7.1.18–7.1.26); • the advice is provided for use in connection with a business that is not a small business (s761G(7)(b) and 761G(12)); • the client has net assets or net income in excess of the prescribed amounts (s761G(7)(c) and regs 7.1.28, 7.6.02AB and 7.6.02AC); • the client is a professional investor (e.g. an AFS licensee or body regulated by the Australian Prudential Regulation Authority (s761G(7)(d) and reg 7.6.02AE); or • the advice is provided by an AFS licensee to a client where: <ul style="list-style-type: none"> – the licensee is satisfied on reasonable grounds that the client has previous experience in using financial services and investing in financial products that allows the client to assess the products and services, and the licensee provides a written statement to the client explaining why it is satisfied; and – the client signs a written acknowledgement that the licensee will not be treating the client as a retail client and giving them the retail disclosure documents: s761GA.

What is the difference between personal advice and general advice?

Circumstances that may be relevant to whether advice is personal advice or general advice

- RG 175.39 As noted in RG 175.26, advice given to a person is personal advice where the person giving the advice has considered one or more of the client's objectives, financial situation and needs, or a reasonable person might expect the person giving the advice to have considered these matters. All other financial product advice is general advice.
- RG 175.40 In administering the law, we will take into account all the circumstances when considering whether advice is personal advice or general advice under s766B(3)(b), including all of the following:
- (a) Did the person giving the advice (e.g. the financial product adviser) offer to provide personal advice (e.g. in an FSG or other material given to the client before the advice was provided)?
 - (b) Did the person giving the advice clearly explain whether they were providing personal advice or general advice to the client?
 - (c) Did the client request personal advice (including requesting advice about what decision they should make)?

- (d) Did the person giving the advice request information about the client's relevant circumstances?
- (e) Was the advice directed towards a named client or readily identifiable client or clients?
- (f) Does the advice contain, or was it accompanied by, a general advice warning made for the purposes of s949A?
- (g) Does the advice appear on its face to be tailored to the client's relevant circumstances (e.g. does it refer to information or assumptions specific to the client)?

Note 1: This is not an exhaustive list of all relevant circumstances. None of these circumstances alone determines whether advice is personal advice or general advice. The presence of any one circumstance does not necessarily mean that advice is personal advice or general advice.

Note 2: While giving a general advice warning to the client is a relevant circumstance, it is not determinative and does not necessarily mean that general advice (rather than personal advice) has in fact been given to that client.

Client's relevant circumstances

RG 175.41 A person giving advice need not consider all aspects of the client's relevant circumstances (e.g. the client's objectives, financial situation and needs) for the advice to be personal advice. It is enough that either:

- (a) at least one aspect of the client's relevant circumstances was *actually* considered; or
- (b) regardless of whether they were in fact considered, a reasonable person might *expect* the person giving the advice to have considered at least one aspect of the client's relevant circumstances: s766B(3).

RG 175.42 If the person giving the advice receives or possesses information about the client's relevant circumstances, this does not by itself mean that any advice given to that client is necessarily personal advice. This is because the test for whether financial product advice is personal advice or general advice is not dependent on whether the person giving the advice *merely possesses* information about the client's relevant circumstances.

RG 175.43 Whether such advice is personal advice will generally depend on whether the person giving the advice has considered (or whether a reasonable person might expect them to have considered) that information in providing the advice—for example, whether the person giving the advice has considered one or more of the client's objectives, financial situation and needs, or whether a reasonable person would expect them to have considered these: s766B(3).

Note: For example, if an adviser requests personal information solely for calculating the cost of the product to the client, the subsequent provision of advice to that client will not necessarily be personal advice.

- RG 175.44 Whether the person giving the advice has considered at least one aspect of the client's relevant circumstances depends on what the person giving the advice *actually* considered (i.e. took into account) in the process of preparing and giving the advice.
- RG 175.45 Whether or not a reasonable person might *expect* the person giving the advice to have considered at least one aspect of the client's relevant circumstances looks beyond what the person giving the advice *actually* considered in the process of preparing and giving the advice to what a reasonable person might expect the person giving the advice to have considered. It requires a consideration of all the circumstances around the provision of the advice, including, but not limited to, those set out in RG 175.40.
- RG 175.46 Advice may be personal advice where:
- (a) the advice is not given during a face-to-face meeting (e.g. where advice is given by telephone, in writing or by electronic means);
 - (b) the person giving the advice has not had direct contact with the client (e.g. where the advice is based on information supplied by a third person);
 - (c) the person giving the advice is permitted to give advice on only one financial product or on a very limited range of financial products;
 - (d) the advice is given in a seminar;
 - (e) the person to whom the advice is given or directed is not a natural person (e.g. where the client is a body corporate); or
 - (f) the person giving the advice does not (subjectively) intend to provide personal advice.
- RG 175.47 See Table 7 in Appendix 1 for examples illustrating the differences between personal advice and general advice.
- RG 175.48 [RG 244](#) contains additional guidance on the differences between general advice and personal advice.
- RG 175.49 We will not take action against an AFS licensee, authorised representative or advice provider where personal advice is given merely because general advice is given using personal information about a client's relevant circumstances to choose general advice that is relevant and useful to the client: see Examples A5, A6 and A7 in Table 7 in Appendix 1.
- RG 175.50 This only applies if:
- (a) the client's relevant circumstances are not considered when preparing the advice; and
 - (b) it is unlikely that the client would expect the advice provided to reflect a consideration of their relevant circumstances.

The general advice warning

- RG 175.51 Whenever general advice is provided to a retail client, s949A requires the providing entity to warn the client that:
- (a) the advice has been prepared without taking into account the client's objectives, financial situation or needs;
 - (b) the client should therefore consider the appropriateness of the advice, in light of their own objectives, financial situation or needs, before following the advice; and
 - (c) if the advice relates to the acquisition or possible acquisition of a particular financial product, the client should obtain a copy of, and consider, the PDS for that product before making any decision.

Conveying the substance of the warning

RG 175.52 The Corporations Act does not require providing entities to use the exact wording in s949A(2) when giving general advice. What is required is that retail clients are *warned* about the things highlighted in RG 175.51 and that the warning is given to clients at the same time and by the same means as the advice is provided: s949A(3).

RG 175.53 In our view, providing entities will meet this obligation where they convey the substance of s949A(2) in a way that is likely to result in clients understanding the message. This means that retail clients should understand from the warning that the advice should not be treated as though it were necessarily appropriate for them. Providing entities can develop their own clear wording to meet the warning requirement. For example, the following wording conveys each of the matters highlighted in s949A(2) without using the exact wording:

This brochure doesn't take into account what you currently have, or what you want and need for your financial future. It is important for you to consider these matters and read the Product Disclosure Statement (PDS) before you make an investment decision. You can get a copy of the PDS from our website at [insert URL] or by calling [insert phone number].

- RG 175.54 In our view, it is good practice for providing entities to develop their own wording to make their general advice warnings more meaningful to clients. For example, providing entities could:
- (a) incorporate the warning messages into the substance of their general advice (rather than reciting the words of s949A(2) or including them in fine print at the end of the document); and/or
 - (b) consider any special communication needs of clients (e.g. age, culture, education) and develop general advice warnings that are likely to result in clients understanding the matters they are being warned about.

Simpler warnings for oral general advice

- RG 175.55 We have granted relief to simplify the general advice warning required where oral general advice is provided to a retail client: see [ASIC Corporations \(General Advice Warning\) Instrument 2015/540](#). This relief allows persons who provide general advice to give a shorter, simpler general advice warning when they provide oral general advice.
- RG 175.56 The simplified warning requires that a retail client be orally warned that the advice is general and may not be appropriate for the retail client. Under the relief, a warning only needs to be given once in any telephone conversation or face-to-face meeting where general advice is provided to a retail client.
- RG 175.57 Persons who provide general advice do not have to use the words in the legislative instrument but may develop their own words to convey this simpler warning. We consider it to be good practice for providing entities to consider the needs of their audience when deciding what words to use.
- RG 175.58 Some examples of simplified warnings for oral general advice include:
- ‘This advice is general—it may not be right for you.’
 - ‘This advice is not tailored, so you can’t assume it will be suitable for you.’
 - ‘This advice may not be suitable for you because it is general advice.’
 - ‘You will need to decide whether this advice meets your needs because I haven’t considered this.’

General advice in advertisements

- RG 175.59 Financial product advertisements must identify the issuer of the product and refer potential buyers to the PDS or disclosure document: s1018A or 734. Provided that the advertisement also states that the client should consider whether the financial product is appropriate for them, the advertisement does not need to contain the s949A warning: see [ASIC Corporations \(Advertising by Product Issuers\) Instrument 2015/539](#). The relief in this legislative instrument also conditionally exempts a licensed issuer of securities from giving an FSG.

Note: The relief in ASIC Corporations (Advertising by Product Issuers) Instrument 2015/539 is not limited to advertising through particular media or channels.

Other obligations that apply to the provision of financial product advice

Corporations Act and ASIC Act provisions

- RG 175.60 Other sections of the Corporations Act, apart from Pt 7.7 and Div 2 of Pt 7.7A, may also apply to persons who give financial product advice, including:

- (a) providing entities—that is, the AFS licensee or authorised representative that needs to comply with the requirements in Pt 7.7 (see RG 175.30–RG 175.32);
- (b) advice providers—that is, the AFS licensee, authorised representative or other representative that needs to comply with the requirements in Div 2 of Pt 7.7A (see RG 175.33–RG 175.37); and
- (c) other entities and individuals that give financial product advice and are not a providing entity for the purposes of Pt 7.7, or an advice provider for the purposes of Div 2 of Pt 7.7A (e.g. a person who provides financial product advice but does not hold an AFS licence).

RG 175.61 The other sections of the Corporations Act that may apply are:

- (a) Div 2 of Pt 7.10, which deals with prohibited conduct relating to the provision of financial products and financial services;
- (b) Div 10 of Pt 7.6, which restricts the use of certain words and expressions relating to how persons who give financial product advice represent themselves (see RG 175.64–RG 175.89);
- (c) Pt 7.9, which imposes obligations relating to the provision of PDSs on financial product issuers and other entities, including those who provide personal advice recommending that a client acquire financial products;
- (d) for AFS licensees and representatives that provide personal advice to retail clients and have an ongoing fee arrangement with their client, Div 3 of Pt 7.7A, which deals with giving clients an annual fee disclosure statement and getting them to renew their advice agreements every two years (unless there is an approved code of conduct in place that meets certain requirements: see s962CA); and

Note: See [Regulatory Guide 245](#) *Fee disclosure statements* (RG 245) which explains the fee disclosure statement obligations in Div 3 of Pt 7.7A.

- (e) for AFS licensees and representatives that provide financial product advice to retail clients, Divs 4 and 5 of Pt 7.7A, which prohibit the licensee or representative from accepting and giving conflicted remuneration and other banned forms of remuneration.

Note: See [Regulatory Guide 246](#) *Conflicted remuneration* (RG 246), which explains the obligations under the provisions on conflicted remuneration and other banned forms of remuneration in Divs 4 and 5 of Pt 7.7A.

RG 175.62 Persons who give financial product advice must also avoid contravening the *Australian Securities and Investments Commission Act 2001* (ASIC Act) when providing advice (e.g. s12DA, which prohibits misleading or deceptive conduct).

RG 175.63 When financial services (including financial product advice) are provided to consumers, there is an implied warranty under the ASIC Act that:

- (a) the financial services will be rendered with due care and skill; and

- (b) if the purpose for which the financial services are being obtained is made known, the financial services will be reasonably fit for that purpose (s12ED, ASIC Act).

Use of restricted terms such as ‘independent’

RG 175.64 Section 923A of the Corporations Act restricts a person from using certain words and expressions, such as ‘independent’, ‘impartial’ and ‘unbiased’, in relation to a financial services business or in the provision of a financial service unless the following conditions are met:

- (a) the person (or anyone providing a financial service on their behalf or anyone on whose behalf they are providing a financial service) does not receive:
 - (i) commissions (apart from commissions that are rebated in full);
 - (ii) forms of remuneration calculated on the basis of the volume of business placed by the person with an issuer of a financial product; or
 - (iii) other gifts or benefits from product issuers that may reasonably be expected to influence that person (s923A(2)(a)–(b));
- (b) the person operates free from direct or indirect restrictions relating to the financial products in respect of which they provide financial services (s923A(2)(d)); and
- (c) the person is free from conflicts of interest that might arise from any relationships with product issuers and which might reasonably be expected to influence the person (s923A(2)(e)).

Note 1: For guidance on what words or expressions are restricted (‘restricted terms’), see RG 175.68–RG 175.73.

Note 2: Division 4 of Pt 7.7A generally prohibits an AFS licensee or its representatives that provide financial product advice to retail clients from accepting conflicted remuneration. It also prohibits employers, product issuers and sellers from giving conflicted remuneration: see [RG 246](#).

RG 175.65 The use of a restricted term includes using the word in any publication or advertisement (including on the financial services provider’s website) produced or released by a person that carries on a financial services business or provides a financial service (whether or not on behalf of another person), including AFS licensees, authorised representatives and other representatives of a licensee.

Who cannot use restricted terms?

RG 175.66 Where a person, who is an authorised representative of an AFS licensee, does not receive any commissions, volume-based payments or other gifts or benefits, but the licensee does, the person (who is the authorised representative) cannot use a restricted term under s923A: s923A(2)(b)(ii).

- RG 175.67 Moreover, if that person's AFS licensee does not receive commissions, volume-based payments or other gifts or benefits, but the other authorised representatives of the licensee do, that person (the authorised representative) still cannot use a restricted term: s923A(2)(b)(iii).

Example 1: Who cannot use a restricted term

Scenario

Adviser X is an authorised representative of ABC Financial Advisers, an AFS licensee. Adviser X does not receive any commissions, volume-based payments, or other gifts or benefits. ABC Financial Advisers authorises two other representatives, Adviser Y and Adviser Z, to provide advice on its behalf. ABC Financial Advisers receives commissions, and Adviser Y and Adviser Z also receive commissions.

Commentary

Adviser X cannot use a restricted term under s923A because ABC Financial Advisers (the AFS licensee) receives commissions.

Even if ABC Financial Advisers itself does not receive commissions, Adviser X would still not be permitted to use a restricted term, because Adviser Y and Adviser Z receive commissions.

What terms are restricted under s923A?

- RG 175.68 Section 923A(5)(a) specifies that the words 'independent', 'impartial' and 'unbiased' are restricted terms if a financial services provider does not satisfy the conditions in s923A. It also provides that any other word or expression that is 'of like import' to 'independent', 'impartial' and 'unbiased' is restricted: s923A(5)(a)(iii).
- RG 175.69 Furthermore, using one of these restricted terms as part of another word or an expression, or in combination with other words, is also not permitted if the conditions in s923A are not satisfied: s923A(5)(b). For example, using the term 'independent research' to describe the kind of research a financial adviser does as a basis for making a recommendation to a client is not permitted under s923A if the conditions are not satisfied.
- RG 175.70 Words such as 'independently owned', 'non-aligned' and 'non-institutionally owned', and other similar words or expressions, are also restricted under s923A, and can only be used if the conditions in s923A are satisfied. This is because these words and expressions are 'of like import' to the words specified in s923A(5)(a).
- RG 175.71 We recognise that these terms are often used to convey the ownership and structure of the financial services provider, and may not be intended to assert any independence or absence of conflict or influence from a product issuer. However, the use of these terms could also imply that the financial services provider has an independent decision-making structure, free from conflicts

of interest and influence from a product issuer. It is still open for these terms to mislead or confuse a consumer as to the nature of the financial services provider's connection to the product issuer.

RG 175.72 Words and expressions that refer to ownership but do not imply or suggest whether there is a relationship with a product issuer are more likely to be acceptable, although this will depend on the context in which they are used. Some examples of terms that may be acceptable under s923A, even if the conditions are not satisfied, are:

- (a) 'locally owned';
- (b) 'privately owned'; and
- (c) 'boutique licensee'.

RG 175.73 If a financial services provider that does not satisfy the conditions in s923A wants to indicate its association with a particular industry group that uses a restricted term, the financial services provider must use very clear statements to qualify this association. The qualification should convey information about the financial services provider's remuneration arrangements or relationships with product issuers that may give rise to a conflict of interest (e.g. the financial services provider must specify that they receive commissions) so a consumer would be in no doubt as to the financial services provider's conflicts of interest.

Can a financial services provider that receives asset-based fees use a restricted term?

RG 175.74 Financial services providers that receive asset-based fees are not prevented from using restricted terms such as 'independent' merely because of their receipt of asset-based fees.

RG 175.75 Our position is that asset-based fees are not considered forms of remuneration calculated on the basis of the volume of business placed by the person with the issuer of a financial product: s923A(2)(a)(ii). Asset-based fees are defined in s964F of the Corporations Act as a fee for providing financial product advice to a person as a retail client to the extent that the fee is dependent on the amount of funds used or to be used to acquire financial products by or on behalf of that person. The fee arrangement is between the client and the financial services provider.

RG 175.76 In contrast, remuneration contemplated in s923A(2)(a)(ii) relates to the remuneration received by the financial services provider from the issuer of a financial product, which is calculated on the basis of the volume of business placed by the financial services provider with the product issuer. The arrangement here is between the product issuer and the financial services provider.

Does the use of an approved product list prevent a financial services provider from using a restricted term?

RG 175.77 Approved product lists are commonly used by AFS licensees to provide a list of financial products for their representatives to consider when providing advice to their clients. We recognise that approved product lists are used as a risk management tool to assist a licensee in meeting the legal obligations when it or its representatives provide financial product advice. However, under s923A(2)(d), imposing an approved product list on a financial services provider could constitute a direct or indirect restriction relating to the financial products in respect of which advisers can provide advice, thereby prohibiting use of a restricted term under s923A.

RG 175.78 Whether the use of an approved product list constitutes a direct or indirect restriction for the purposes of s923A(2)(d) will depend on the operation and breadth of the list. Where the approved product list is used as an open list of products, or where there is an easy process to recommend a product that is not on the list, the restriction is less likely to prevent a financial services provider from using a restricted term (assuming all the other conditions in s923A are met). Where the off-approved-product-list process is not easy for advisers to access, the approved product list is more likely to be considered a restriction and, as such, the financial services provider would not be permitted to use a restricted term.

Rebating commissions

RG 175.79 A financial services provider cannot use a restricted term (such as ‘independent’ or any other similar term) under s923A unless any commissions they receive (including ‘trail’ or ‘trailing’ commissions) are rebated in full to their clients: s923A(5)(a)(i) and 923A(2)(a)(i).

RG 175.80 A commission is said to be ‘rebated in full’ if it is rebated to the client as soon as practicable but no later than three months after the commission is received. Commissions may be rebated by:

- (a) rebating an amount equivalent to the commission directly to the client by cash, cheque or other direct means (e.g. by direct credit to a bank account nominated by the client); or
- (b) offsetting any debt owed by the client (i.e. a debt owed before the commission was received by the person that gave the financial product advice) by an amount equivalent to the commission, except in circumstances where the amount of the debt is calculated by reference to commissions expected to be received by the person that gave the financial product advice.

Note: A commission would not be rebated in full if the person that gave the financial product advice credits the client’s account with the amount of the commission, but the

funds may be used to meet future liabilities of the client to the person that gave the financial product advice.

- RG 175.81 As a matter of good practice, we expect the person carrying on the financial services business or providing the financial service (whether or not on behalf of another person) to disclose that the commission will be rebated as soon as practicable but no later than three months after the commission is received. This disclosure should be made in the document that attracts the most notice. Depending on the nature of the advice or service offered, this could be an SOA or an FSG.

Use of restricted terms such as ‘financial adviser’ and ‘financial planner’

- RG 175.82 Section 923C was inserted into the Corporations Act by the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* to restrict the use of the terms ‘financial adviser’ and ‘financial planner’ (and other similar terms) to ‘relevant providers’. A relevant provider is an individual that is authorised to give personal advice to retail clients on relevant financial products.

Note: Section 910A of the Corporations Act defines ‘relevant financial products’ as products other than basic banking, general insurance and consumer credit insurance products. Section 921C provides that only those people who have met the training requirements in s921B(2)–(4) (i.e. those who have completed a bachelor degree or equivalent, passed an exam approved by the standards body, and undertaken a professional year) may be authorised to give personal advice to retail clients on relevant financial products.

- RG 175.83 The restriction on the use of the words ‘financial adviser’ and ‘financial planner’ commences on 1 January 2019.

Who can use restricted terms such as ‘financial adviser’ and ‘financial planner’?

- RG 175.84 A relevant provider can use restricted terms such as ‘financial adviser’ and ‘financial planner’.
- RG 175.85 An existing provider can use the restricted terms ‘financial adviser’ and ‘financial planner’ provided they satisfy the relevant training requirements that apply at any given time.

Note: An ‘existing provider’ is a person who is a relevant provider any time between 1 January 2016 and 1 January 2019 and is not banned, disqualified or suspended on 1 January 2019: s1546A.

- RG 175.86 That is, an existing provider is a relevant provider, and therefore can use the terms ‘financial adviser’ and ‘financial planner’, unless:
- (a) by 1 January 2021, they have failed to pass an exam approved by the standards body—in this case the adviser ceases to be a relevant provider from this date and cannot use the restricted terms; or

- (b) by 1 January 2024, they have failed to attain a bachelor degree or equivalent—in this case the adviser ceases to be a relevant provider from this date and cannot use the restricted terms (s1546B(4) and (5)).

RG 175.87 An existing adviser who does not pass the exam and/or attain a bachelor degree (or equivalent) by the above dates, but does so at a later date, could be authorised to give personal advice to retail clients on relevant financial products (thereby becoming a relevant provider again) after the exam and/or bachelor degree (or equivalent) is attained: s1546B(6), 1546C(2) and (3).

RG 175.88 Persons who give advice to wholesale clients, or who give in-house advice as an employee or director, can also use restricted terms such as ‘financial adviser’ and ‘financial planner’. However, they can only use these restricted terms when giving advice in these capacities: s923C(3)–(6). For example, an individual who is authorised to give personal advice to wholesale clients but only general advice to retail clients (i.e. they are not a relevant provider) may use the restricted terms when advising wholesale clients, but not retail clients.

Who cannot use restricted terms such as ‘financial adviser’ and ‘financial planner’?

RG 175.89 A person who is not a relevant provider cannot use restricted terms such as ‘financial adviser’ and ‘financial planner’. Section 923C specifically provides that the following persons cannot use restricted terms such as ‘financial adviser’ and ‘financial planner’:

- (a) provisional relevant providers (i.e. those undertaking their professional year); and
- (b) limited-service time-sharing advisers (i.e. time-share advisers that have not met the training requirements).

Common law obligations

RG 175.90 Persons who give financial product advice should be aware that common law obligations also apply to the provision of advice. Depending on the context in which the advice is given, these obligations may include:

- (a) a duty to disclose any conflicts of interest that may affect the advice they provide;

Note: AFS licensees are subject to a statutory obligation to manage conflicts of interest under s912A(1)(aa). For guidance on complying with this obligation, see [Regulatory Guide 181](#) *Licensing: Managing conflicts of interest* (RG 181).

- (b) a duty to adopt due care, diligence and competence in preparing the advice; and
- (c) fiduciary duties.

Failure to comply with obligations

RG 175.91 A failure by the providing entity or advice provider to comply with any of the obligations relating to the provision of advice (including common law obligations) may mean, among other things, that the AFS licensee (or the authorising licensee if the providing entity or advice provider is an authorised representative, or the advice provider is a representative) has failed to comply with the general licensee obligation to do all things necessary to ensure that it acts ‘efficiently, honestly and fairly’: s912A(1)(a).

Note: For guidance on the general obligations of AFS licensees, see [Regulatory Guide 104](#) *Licensing: Meeting the general obligations* (RG 104).

RG 175.92 An AFS licensee’s failure to comply with any of its obligations may give us grounds for exercising our administrative powers to revoke or suspend an AFS licence after a hearing: s915C.

Note: For guidance on our administrative powers, see [Regulatory Guide 98](#) *Licensing: Administrative action against financial services providers* (RG 98).

RG 175.93 We may issue a banning order against a person (whether or not they are an AFS licensee), including when the person has contravened a financial services law (as defined in s761A), which includes (but is not limited to) Pt 7.7 and Div 2 of Pt 7.7A and the ASIC Act.

C Preparing and providing a Financial Services Guide

Key points

Part 7.7 generally requires providing entities to give their clients an FSG where financial product advice (i.e. personal advice or general advice) is provided.

An FSG must include various information, including how the providing entity and its associates will be paid for the advice: see RG 175.108–RG 175.124.

We have given relief from the FSG obligations to certain providing entities that provide secondary financial services to retail clients: see RG 175.137.

There are record-keeping obligations that apply to FSGs: see RG 175.145–RG 175.148.

The obligation to prepare and provide an FSG

- RG 175.94 The obligation to prepare and provide a Financial Services Guide (FSG) applies to providing entities—that is, AFS licensees and authorised representatives that give personal advice and/or general advice—as well as providers of other financial services.
- RG 175.95 The FSG provisions are designed to ensure that retail clients are given sufficient information to enable them to decide whether to obtain financial services from the providing entity.
- RG 175.96 This section considers:
- (a) when an FSG must be provided (see RG 175.97–RG 175.107);
 - (b) what must be included in an FSG (see RG 175.108–RG 175.126);
 - (c) how an FSG must be provided (RG 175.127–RG 175.128);
 - (d) how the FSG obligations apply to secondary services (see RG 175.129–RG 175.140);
 - (e) when an FSG can be combined with a PDS (see RG 175.141–RG 175.144);
 - (f) the record-keeping obligations that apply to FSGs (see RG 175.145–RG 175.148); and
 - (g) other requirements that apply to FSGs (see RG 175.149–RG 175.155).

When must an FSG be provided?

RG 175.97 Generally, providing entities must give an FSG to a client as soon as practicable after it becomes apparent to the providing entity that a financial service will be, or is likely to be, provided to that client and, in any event, they must give an FSG to the client before a financial service is provided: s941A, 941B and 941D(1). However, in some cases an FSG may be given after a financial service has been provided (see RG 175.100–RG 175.103), and in other cases an FSG does not need to be given at all (see RG 175.104–RG 175.107).

Note: See s941B, which requires an authorised representative to provide an FSG covering each of its authorising AFS licensees. See also regs 7.7.10AB and 7.7.10AC, which allow an FSG to be tailored to the services that a providing entity will or is likely to provide to the retail client.

The importance of timely provision of FSGs

RG 175.98 An FSG contains important information a retail client should read and understand before deciding whether to obtain financial services from a providing entity. Where an FSG is required, we encourage providing entities to:

- (a) provide the FSG in enough time to give retail clients an adequate opportunity to consider the information it contains before deciding whether to obtain financial services from the providing entity; and
- (b) make the FSG available to potential clients through their publicly available website (if any) and at their offices or branches.

RG 175.99 As a matter of good practice, an FSG should be provided to a client on request (e.g. if the client has lost their FSG). An FSG must be up-to-date at the time it is given to the client: s941E.

Delayed provision of FSGs in time-critical cases

RG 175.100 An FSG may be given *after* a financial service has been provided in ‘time-critical’ cases—that is, where:

- (a) the client expressly instructs or requests that the financial service be provided immediately, or by a specified time; and
- (b) it is not reasonably practicable to provide the client with an FSG before that financial service is provided as instructed (s941D(2)).

RG 175.101 In such cases, the FSG must be provided as soon as practicable after that financial service has been provided and, at the latest (but subject to s940B), within five days of providing that service: s941D(4). However, the information in s941D(3) must be provided before the financial service is provided.

Note: Section 941D(3) requires a statement to be given about certain matters, including remuneration, commission and other benefits, as well as associations.

- RG 175.102 For example, where the client expressly instructs the providing entity over the telephone to provide advice immediately, the providing entity may be able to rely on the ‘time critical’ exception and provide advice to the client without first giving the client an FSG, but only if:
- (a) an FSG is given to the client as soon as practicable but no later than five days after the advice is provided; and
 - (b) the information mentioned in s941D(3) is given to the client before the advice is provided.

Note: The client does not need to actually state that the service is time critical from their perspective. It is enough that the client requests or instructs the service to be provided immediately or by a specified time.

- RG 175.103 We have granted relief in [Class Order \[CO 12/417\]](#) *Information in a Financial Services Guide given in a time critical situation* so that information in an FSG given in a time-critical situation need only be up-to-date at the time the earlier statement is given to the retail client. The class order means that an FSG given after the provision of a financial service in a time-critical case is the same as an FSG that is given before the provision of a financial service in normal cases.

Where an FSG does not need to be provided

- RG 175.104 An FSG is not required to be given to a client in certain circumstances, including where:
- (a) the client is not a retail client;
 - (b) the financial service is a recommendation, sale or issue situation and the providing entity gives the client a PDS and a ‘statement’ that together contain all of the information that an FSG would be required to contain (reg 7.7.02A);
 - (c) the financial service relates to:
 - (i) an interest in a cash management trust;
 - (ii) a basic deposit product;
 - (iii) a non-cash payment facility related to a basic deposit product;
 - (iv) a deposit product that is a facility in relation to which:
 - (A) there is no minimum period before which funds cannot be withdrawn or transferred from the facility without a reduction in the return generated for the depositor; or
 - (B) if there is such a period, it expires on or before the end of the period of two years starting on the day on which funds were first deposited in the facility; or
 - (v) traveller’s cheques (but only if the information mentioned in s941C(7) is provided) (s941C(6) and reg 7.7.02(1));

- (d) the financial service is general advice provided in a public forum (but only if the information mentioned in s941C(5) is given to the client before the advice is provided) (s941C(4) and reg 7.7.02(2));
- (e) the financial service is general advice about the issue or distribution of financial products that is not provided in a meeting and where certain other requirements are satisfied (which vary depending on whether or not the advice is provided during a telephone call) (reg 7.7.02(4));
- (f) the financial service is general advice about the issue or distribution of financial products that is provided in a telephone call to an existing client and where certain other requirements are satisfied (regs 7.7.02(4) and 7.7.02(4A)); or
- (g) no financial service is provided to the person.

Note: Where an FSG is issued about a range of financial services, certain information about financial services in relation to basic deposit products, non-cash payment products related to a basic deposit product or traveller's cheques does not have to be included: reg 7.7.05C.

RG 175.105 An FSG does not need to be given to a client if the client has already received an FSG that contains all the information that would be required to be included in an FSG if one were given for that advice: s941C(1). This means, for example, that an FSG does not need to be given to a client each time advice is provided to that client where the FSG information remains unchanged. If the FSG information changes, a new FSG or a Supplementary FSG (see Subdiv C, Div 2) must generally be given to the client before further financial services can be provided: s941F.

RG 175.106 A providing entity will not contravene the Corporations Act by failing to give an FSG where there is 'no reasonable opportunity' to do so: s940B. For example, failure to provide an FSG is unlikely to contravene the Corporations Act where:

- (a) it becomes apparent to a providing entity that general advice is likely to be provided to a retail client; and
- (b) the providing entity then asks the client for their postal or electronic address and the client refuses to provide their address to the providing entity.

RG 175.107 Further, where general advice is broadly distributed (e.g. by media release), there may be no reasonable opportunity to provide an FSG. We do not expect that s940B would be relevant to the provision of personal advice.

What must be included in an FSG?

RG 175.108 An FSG must comply with the requirements set out in the Corporations Act and Corporations Regulations, and must include all of the following:

- (a) the title ‘Financial Services Guide’ on the cover, or at or near the front, of the document (s942A);
- (b) the date of the FSG (s942B(5) and 942C(5));
- (c) the name and contact details of the providing entity (s942B(2)(a) and 942C(2)(a)) and, if the providing entity is an AFS licensee, its AFS licence number (s912F and reg 7.6.01C(1)(a));

Note: In certain circumstances, the name and contact details of the providing entity do not need to be provided: reg 7.7.05B.

- (d) where the providing entity is an authorised representative—the name, contact details and AFS licence number of the authorising AFS licensee(s) and a statement that the providing entity is the authorised representative of that licensee or those licensees (s942C(2)(c) and reg 7.7.06A);
- (e) where the providing entity is an authorised representative (and where reg 7.7.05B does not apply to the FSG)—the authorised representative number of the providing entity (reg 7.7.05A);
- (f) a statement of the purpose of the FSG and, if appropriate, information about other disclosure documents that the client may receive (i.e. an SOA or PDS), together with a description of the purpose of those documents (regs 7.7.03 and 7.7.06);
- (g) information about the kinds of financial services that the providing entity:
 - (i) is authorised to provide (s942B(2)(c) and 942C(2)(d)); or
 - (ii) will be or is likely to be providing to the client (regs 7.7.10AB and 7.7.10AC). Under this option, an FSG does not have to include information about *all* of the financial services that the providing entity is authorised to provide;
- (h) information about the amount of all the remuneration, commission and other benefits that the providing entity (and other persons specified in s942B(2)(e) or 942C(2)(f)) will receive, or reasonably expects to receive, in respect of, or that is attributable to, the advice to be provided where this amount can be ascertained at the time the FSG is provided to the client (s942B(2)(e) and 942C(2)(f), and regs 7.7.04(3) and 7.7.07(3));
- (i) where the providing entity reasonably believes that personal advice will be or is likely to be provided *and* the amount of the remuneration, commission or other benefits cannot be ascertained at the time the FSG is provided—either particulars or general information about the benefit (including ranges or rates of amounts) and a statement that the method of calculating the amount of the benefit will be disclosed at the time the advice is provided or as soon as practicable after that time (regs 7.7.04(4)(c), 7.7.04(4)(d), 7.7.07(4)(c) and 7.7.07(4)(d));

- (j) where the providing entity reasonably believes that personal advice will not be provided *and* the amount of the remuneration, commission or other benefits cannot be ascertained at the time the FSG is provided—particulars of the remuneration, commission and other benefits (including ranges or rates of amounts) or general information about the remuneration, commission and other benefits with a statement that the client can request further particulars (regs 7.7.04(5)(c), 7.7.04(5)(d), 7.7.07(5)(c) and 7.7.07(5)(d));
- (k) details of any associations or relationships that might reasonably be expected to be capable of influencing the providing entity in providing the advice (s942B(2)(f) and 942C(2)(g));
- (l) where the providing entity provides further advice or advice to which s946B(7) applies—certain information about obtaining a record of the advice (s942B(2)(g) and 942C(2)(h), and regs 7.7.05, 7.7.08, 7.7.09 and 7.7.10AC–7.7.10AE);

Note: For more detailed guidance, see RG 175.170–RG 175.172.

- (m) where the providing entity (or authorising AFS licensee) is a participant in a licensed market or clearing and settlement facility—a statement to that effect (s942B(2)(j) and 942C(2)(k));
 - (n) where the providing entity is acting under a binder—certain information about the binder and its significance (s942B(2)(i) and 942C(2)(j));
- Note: This would generally include an explanation of the circumstances in which the providing entity will be acting under a binder.
- (o) details of the dispute resolution procedures that the AFS licensee has in place (s942B(2)(h) and 942C(2)(i)); and
 - (p) details about the kind of compensation arrangements the providing entity (or authorising AFS licensee) has in place (i.e. whether through professional indemnity insurance or otherwise) and whether these arrangements comply with s912B: see reg 7.7.03A and [Regulatory Guide 126](#) *Compensation and insurance arrangements for AFS licensees* (RG 126).

RG 175.109 The level of detail about a matter that needs to be included is generally what a person would reasonably require to make a decision about whether to acquire financial services from the providing entity as a retail client: s942B(3) and 942C(3).

RG 175.110 The information contained in an FSG must be worded and presented in a clear, concise and effective manner: s942B(6A) and 942C(6A). An FSG must not include material that is misleading or deceptive. The disclosure of information about remuneration, commission or other benefits to a client in response to a request for more detailed information (e.g. a request for particulars) must be presented in a manner that is easy for the client to understand: regs 7.7.04A(4) and 7.7.07A(4).

RG 175.111 The information contained in an FSG must be up-to-date at the time it is given: s941E.

Note: We have provided relief in [\[CO 12/417\]](#) so that information in an FSG given in a time-critical situation need only be up-to-date at the time the verbal statement of information in s941D(3) was given to a retail client: see RG 175.103.

Remuneration, commission and other benefits

RG 175.112 The requirements for the disclosure of remuneration, commission and other benefits in the FSG are set out in s942B(2)(e) and 942C(2)(f), and in regs 7.7.04(2)–7.7.04(5), 7.7.07(2)–7.7.07(5), 7.7.04A, 7.7.07A, 7.7.04AA and 7.7.04AB.

Note: The provisions on conflicted remuneration and other banned remuneration in Divs 4 and 5 of Pt 7.7A affect what benefits a providing entity can accept under the Corporations Act: see RG 175.61(e).

RG 175.113 ‘Remuneration, commission and other benefits’ include, for example, fees payable by the client for the advice, commissions received from product issuers and AFS licensees (including upfront and trailing commissions), and ‘soft’ dollar commissions or benefits.

RG 175.114 Where disclosure is required under s942B(2)(e) or 942C(2)(f), the level of detail about a matter that needs to be included is generally what a person would reasonably require to make a decision about whether to acquire financial services from the providing entity as a retail client: s942B(3) and 942C(3).

RG 175.115 In addition to complying with this general disclosure standard, it is also necessary for the FSG to comply with the more detailed requirements under the Corporations Regulations. (The Corporations Regulations are not qualified by the standard about what clients would reasonably require. This is because s942B(3) and 942C(3) are expressed to operate subject to s942B(4) and 942C(4) respectively.)

Note: For example, in appropriate circumstances, an FSG could include the following, for personal risk insurance products:

‘I will receive an upfront commission from the product issuer if you decide to buy a life risk insurance product I recommend to you. I will receive an upfront commission of between 0% and 60% of the first year’s annual premium, and then an annual ongoing commission of between 0% and 20% of the annual premium. For example, for an insurance product with an annual premium of \$2,000, where the issuer pays me an upfront commission of 60%, I will receive \$1,200. The issuer will pay me 10% of the annual premium as ongoing commission for as long as you hold the product. Assuming an annual premium of \$2,000, this equates to \$200 per year.’

RG 175.116 Subject to RG 175.120, the amount of remuneration, commission or other benefits attributable to the financial services provided by the providing entity that is to be paid to the providing entity and other persons specified in s942B(2)(e) or 942C(2)(f) must be stated in the FSG where this can be ascertained at the time the FSG is given to the client: regs 7.7.04(3) and 7.7.07(3). Whether this can be ascertained depends on the circumstances.

- RG 175.117 Where it is not possible to ascertain an amount of remuneration, commission or other benefits payable to a particular person that is attributable to the financial services provided by the providing entity, then the information required to be stated in the FSG will depend on whether the providing entity reasonably believes that personal advice will be or is likely to be provided to the client: regs 7.7.04(3)–7.7.04(4) and 7.7.07(3)–7.7.07(4).
- RG 175.118 Ranges, rates, comparisons, simple tables and formulas should normally be included in the FSG to ensure that the information about remuneration, commission and other benefits is presented in a clear, concise and effective manner. To comply with the law, it is insufficient to merely state in the FSG that a benefit will or may be received and that clients can ask for further details to be provided.
- RG 175.119 The requirement for clear, concise and effective disclosure (s942B(6A) and 942C(6A)) means that all the information about remuneration, commissions and other benefits should be presented in one place in the FSG. The information must be presented in a way that is easy for the client to understand: regs 7.7.04(4) and 7.7.07(4).
- RG 175.120 We will not administer the law as if it generally requires disclosure in the FSG of the actual amount, range or rate of the annual salary of the providing entity (or other persons specified in s942B(2)(e) or 942C(2)(f)). It will generally be sufficient if the FSG discloses the fact that an annual salary is paid, together with a general description of the factors (if any) that will influence the amount.
- RG 175.121 We consider that, in practice, it will often be very difficult or impossible to ascertain, at the time the FSG is provided, the actual amount, range or rate of a person's salary that is attributable to all the financial services that the person will provide in the future. Further, we do not consider that knowing the actual amount, range or rate of a person's annual salary helps the client decide whether to obtain advice from that person. (In contrast, the amount, range or rate of a fee payable by the client, or a commission payable by a product issuer, is relevant to the client's decision.)
- RG 175.122 Benefits that are excluded from the conflicted remuneration provisions in Divs 4 and 5 of Pt 7.7A still need to be disclosed in an FSG if this is required by s942B and 942C. This includes benefits that are 'grandfathered'. However, this does not include non-monetary benefits that are less than \$300, provided that identical or similar benefits are not given on a frequent or regular basis: regs 7.7.04AA and 7.7.04AB.
- RG 175.123 Remuneration, commission or other benefits do not need to be disclosed in the FSG under s942B(2)(e) or 942C(2)(f) where they are not attributable to the financial services provided by the providing entity (i.e. where there is no

causal connection between the provision of the financial product advice, or other financial service, and the payment of the benefit).

Note: For example, payments by product issuers to an AFS licensee to perform claims-handling services may not need to be disclosed in the FSG (whether such payments need to be disclosed in the SOA is a separate matter): regs 7.7.04(3)–7.7.04(5) and 7.7.07(3)–7.7.07(5).

RG 175.124 In addition to s942B(2)(e) and 942C(2)(f), regs 7.7.04 and 7.7.07 require the FSG to include information about the remuneration, commission and other benefits that a person has received or is to receive for referring another person to the AFS licensee or providing entity.

Consumer testing

RG 175.125 We encourage AFS licensees and industry associations to develop guidelines and conduct consumer testing of FSGs. This may help providing entities to identify whether:

- (a) the FSG is presented in a clear, concise and effective manner;
- (b) the FSG is potentially misleading or deceptive; and
- (c) there is additional information that investors need.

Good Disclosure Principles

RG 175.126 We consider that, when preparing FSGs, providing entities should take into account the Good Disclosure Principles in [RG 168](#).

How must an FSG be provided?

RG 175.127 Where an FSG is required, it must be provided in printed or electronic form to the client in one of the following ways:

- (a) by personally giving it to the client or the client's agent (s940C(1)(a)(i));
- (b) by sending it to the client, or the client's agent, at an address (including an electronic address) or fax number nominated by the client or the client's agent (s940C(1)(a)(ii));
- (c) by otherwise making it available to the client, or the client's agent, in a manner agreed between the client, or the client's agent, and the providing entity (s940C(1)(a)(iii)); or
- (d) by publishing it digitally and notifying the client that the disclosure is available, provided that the client is first given the opportunity to opt out of this method of delivery ([ASIC Corporations \(Facilitating Electronic Delivery of Financial Services Disclosure\) Instrument 2015/647](#)).

Note 1: As a matter of good practice, the providing entity should also clearly inform the client of the options available for receiving an FSG (e.g. by post, fax or email).

Note 2: Regulation 7.7.01(3) adds that, where a document is provided in electronic form, it must as far as practicable be presented in a way that allows the person to keep a copy or have ready access to the document in the future. For more information on how an FSG can be provided online—including in accordance with ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647—see [Regulatory Guide 221](#) *Facilitating digital financial services disclosures* (RG 221).

- RG 175.128 The client’s agent cannot be a person who is acting in a capacity mentioned in s940C(6). This includes a person who is acting as an AFS licensee or authorised representative of a licensee. Therefore, a providing entity cannot meet the requirements of the law, for example, by providing an FSG to a licensee who is also the client’s agent.

How the FSG obligations apply to secondary services

- RG 175.129 Under the Corporations Act, an FSG may be required for a financial service that is provided as a secondary service—that is, a financial service provided to a retail client via an intermediary. A secondary service provider is an AFS licensee or authorised representative who provides a financial service to a retail client via an intermediary.
- RG 175.130 Financial product advice may be provided as a secondary service where an AFS licensee (or authorised representative) causes or authorises financial product advice to be given or directed to a retail client (within the meaning of s52). ‘Causing’ or ‘authorising’ does not always need to be express. In our view, the licensee (or authorised representative) is likely to be providing a secondary service if:
- (a) it knows (or should know) that the advice or any part of it will be passed on to a third party (the recipient); and
 - (b) the advice is passed on and attributed to the licensee (or authorised representative).
- RG 175.131 The AFS licensee (or authorised representative) does not authorise the provision of advice by mere inactivity if it did not know or have reason to suspect that the advice might be passed on and attributed to it (*University of New South Wales v Moorhouse & Angus & Robertson (Publishers) Pty Ltd* (1975) 133 CLR 1 at 12–14 per Gibbs J).
- RG 175.132 If the intermediary provides financial product advice to the retail client as its own, without attributing it to the AFS licensee (or authorised representative), it will not be financial product advice provided by the licensee (or authorised representative) to the retail client. This is the case even if the advice provided by the licensee (or authorised representative) to the intermediary helped that intermediary to formulate its own advice.

Note 1: [Information Sheet 99](#) *Disclosure of credit ratings in Australia* (INFO 99) discusses disclosure requirements for credit rating agencies that may be involved in providing secondary services, particularly when providing financial product advice.

Note 2: [Information Sheet 141](#) *Dealing and providing a custodial or depository service as a secondary service* (INFO 141) contains further information about providing secondary services, including when dealing or providing a custodial or depository service is a secondary service.

Note 3: [Regulatory Guide 79](#) *Research report providers: Improving the quality of investment research* (RG 79) contains further guidance for research report providers, including about managing conflicts of interest where research is prepared by one AFS licensee and distributed by another.

When is financial product advice not a secondary service?

RG 175.133 If all of the following three requirements are met, we would ordinarily expect that a person (the adviser) would not be providing financial product advice to a retail client, even if their advice is later passed on to a retail client and attributed to the adviser:

- (a) *Requirement 1*: the adviser expressly prohibits the intermediary (i.e. the adviser's wholesale client) from passing on the adviser's advice to any retail client;
- (b) *Requirement 2*: the adviser includes a prominent statement in the adviser's advice to the intermediary that the advice is only intended for use by wholesale clients and must not be made available to any retail client; and
- (c) *Requirement 3*: there is no reasonable basis to believe that the intermediary will fail to comply with the adviser's express prohibition in Requirement 1.

RG 175.134 Meeting these three requirements should amount to reasonable steps to prevent the secondary service from occurring. As a result, it is our view that an adviser ordinarily would not be considered to be causing or authorising, either directly or implicitly, the giving or directing (dissemination) of the adviser's advice to retail clients via the intermediary.

RG 175.135 See Table 8 in Appendix 2 for examples of financial advice that are secondary services and how meeting the three requirements in RG 175.133 may prevent the provision of those services.

The requirement to give an FSG

RG 175.136 We recognise that there may be practical difficulties in providing an FSG in cases where the providing entity does not have a direct relationship with the retail client. There are a number of ways in which the secondary service provider can overcome this practical difficulty—that is, by:

- (a) relying on ASIC relief (see RG 175.137);

- (b) arranging for the intermediary to give its secondary service provider's FSG to the retail client. In this case, the intermediary would be acting on the secondary service provider's behalf. It would be up to the secondary service provider to structure its arrangements in a way that would give it sufficient certainty that the intermediary actually provides the FSG to the retail clients in a way that satisfies the secondary service provider's legal obligations. If the FSG is not provided, the secondary service provider will have breached the law (unless it is under a mistake of fact: see s952C(2) and s6.1 and 9.2 of the Criminal Code);
- (c) entering into a written agreement with the intermediary (see RG 175.138);
- (d) structuring its relationship with the intermediary in such a way that it avoids providing a secondary service to the retail client (see Table 8 in Appendix 2 for examples);
- (e) including requirements in its agreement with the intermediary for the intermediary to provide the secondary service provider with address details of the retail client—the secondary service provider could then provide its FSG to that retail client; or
- (f) preparing a combined FSG with the intermediary incorporating information about the financial service that each provides to the retail client. The secondary service provider remains responsible for ensuring that the FSG is actually provided to retail clients in a way that satisfies the secondary service provider's legal obligations.

RG 175.137 We have given relief under [ASIC Corporations \(Financial Services Guides\) Instrument 2015/541](#) to secondary service providers in the following two areas:

- (a) we have granted facilitative relief to allow the author of an 'expert's report' to include its FSG as a separate and clearly identifiable part of the expert's report that is prepared for inclusion in a third party's disclosure document (e.g. a prospectus or PDS), provided that certain conditions are met; and
- (b) we have granted relief to allow an FSG for a person arranging for the issue of a financial product by a product provider under an intermediary authorisation (s911A(2)(b)) to be included as a separate and clearly identifiable part of the product provider's PDS, provided that certain conditions are met.

RG 175.138 A secondary service provider is also exempt under reg 7.7.02(7) from the obligation to give an FSG where it enters into a written agreement with another person (the intermediary), under which the intermediary agrees to:

- (a) give the secondary service provider's FSG to the client; or
- (b) inform the client how to obtain the secondary service provider's FSG.

What obligations does the intermediary have?

- RG 175.139 If the intermediary is also providing a financial service to a retail client to whom it passes on a secondary service, it will also need to meet the relevant requirements in the Corporations Act that apply when financial services are provided to retail clients.
- RG 175.140 In addition, because the intermediary bundles its financial service with the secondary service provider's financial service, and then makes the bundle of services available to the retail client, we would expect that, in meeting its obligations under the law and its AFS licence, the intermediary would explain what services are being provided, who is responsible for each service and how the retail client could contact the responsible service provider if the client has any questions or complaints.

When can an FSG be combined with a PDS?

- RG 175.141 Regulation 7.7.08A prescribes the circumstances in which a PDS and an FSG can be combined under s942DA.
- (a) If the providing entity for the financial service and the product issuer are the same person, the document must be:
 - (i) divided into two separate parts—identifiable as a fully compliant FSG and a fully compliant PDS;
 - (ii) titled 'Combined Financial Services Guide and Product Disclosure Statement' at or near the front; and
 - (iii) provided to a client at the earlier of the required time for an FSG or PDS.
 - (b) If the providing entity is an authorised representative or a related body corporate of the product issuer, the document must (among other requirements) prominently disclose:
 - (i) the identity of the providing entity and the product issuer;
 - (ii) the relationship between them; and
 - (iii) their respective liabilities.

Note 1: An FSG may not be combined with a PDS for a superannuation product, simple managed investment product or standard margin lending facility: reg 7.7.08A.

Note 2: Section 1017K applies s942DA, 1013M and reg 7.7.08A to the Short-Form PDS (Sch 10BA) so that an FSG can be combined with a Short-Form PDS.

- RG 175.142 Within the combined document, the individual FSG and PDS parts of the document can make cross-references to each other. However, cross-references within the combined document must:
- (a) be clear, concise and effective; and
 - (b) not make the overall document misleading or deceptive.

RG 175.143 Where the providing entity is an authorised representative or related body corporate of the product issuer, a combined FSG and PDS can only be used for a basic deposit product, non-cash payment facility related to a basic deposit product, general insurance product or life risk product.

RG 175.144 If an FSG has already been provided to the client, the providing entity can instead give the client a PDS together with a statement containing any specified FSG information that is not included in the PDS: reg 7.7.02A.

Note: A PDS and Short-Form PDS cannot be combined with an SOA: s947E and 1017K, which applies s947E to the Short-Form PDS (Sch 10BA).

Record-keeping obligations that apply to FSGs

RG 175.145 In our view, the duties imposed by the Corporations Act on AFS licensees require licensees to keep adequate records about their financial services business, and this includes an obligation to keep copies of FSGs. The relevant duties of a licensee that imply such a record-keeping obligation include:

- (a) the duty to ‘do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly’ (s912A(1)(a)); and
- (b) the duty to have an adequate dispute resolution system (s912A(1)(g)).

RG 175.146 We have imposed an AFS licence condition under s914A requiring AFS licensees to:

- (a) keep (or cause to be kept) a copy of any FSG (including any Supplementary FSG) provided by the licensee (or by any authorised representative of the licensee) for the period commencing on the date of the FSG and finishing no earlier than seven years after the date a copy of that FSG is last provided to a retail client; and
- (b) establish and maintain measures that ensure, as far as is reasonably practicable, that the licensee and its representatives comply with their obligation to give clients an FSG as and when required. AFS licensees must keep records about how these measures are implemented and monitored.

Note: Records may be kept electronically: see [Pro Forma 209](#) *Australian financial services licence conditions* (PF 209), condition 57.

RG 175.147 This AFS licence condition is designed to clarify that the AFS licensee must keep a copy of an FSG (including any Supplementary FSG) for the period commencing on the date of the FSG and finishing no earlier than seven years after the date a copy of that FSG is last provided to a retail client. It is not necessary to keep a separate copy of the FSG on each client file.

- RG 175.148 Where the same FSG is given numerous times by or on behalf of the licensee, the licensee should keep at least one copy of the FSG used, together with a record of the period of time during which the FSG was being used. After a new FSG or a Supplementary FSG is used, a copy of that new FSG or Supplementary FSG must also be retained and appropriate records kept.

Other key aspects of the FSG regime

Can an FSG cover more than one providing entity?

- RG 175.149 In our view, the Corporations Act does not prevent a single FSG from covering more than one providing entity. For example, a conglomerate group containing several providing entities can prepare a single FSG, provided that the Corporations Act and Corporations Regulations are satisfied, including the requirements that the information is presented in a clear, concise and effective manner, and is not misleading or deceptive.
- RG 175.150 Likewise, a single FSG may be prepared covering a corporate authorised representative as well as all the individual representatives appointed by the authorised representative, provided that the Corporations Act and Corporations Regulations are satisfied, including the requirements that the information is presented in a clear, concise and effective manner, and is not misleading or deceptive.

Note: See also reg 7.7.05B.

Can a providing entity have more than one FSG?

- RG 175.151 In our view, the Corporations Act does not prevent a providing entity from having more than one FSG on issue at any one time, provided that each such FSG complies fully with Pt 7.7.

Note: Under regs 7.7.10AB and 7.7.10AC, an FSG need only include information about the authorised services that the providing entity will be, or is likely to be, providing to the client. For further details, see RG 175.108(g)(ii).

Liability and offences

- RG 175.152 An FSG must not describe a person as ‘independent’ unless the requirements of s923A are satisfied. Section 923A restricts the use of certain terms, such as ‘independent’, ‘impartial’ and ‘unbiased’: see RG 175.64–RG 175.81.
- RG 175.153 It is an offence to provide a defective FSG: s952D and 952E. If an FSG is defective:
- (a) the providing entity (and the authorising AFS licensee) may have committed an offence; and

- (b) an affected person (e.g. a retail client) may take civil action for any loss or damages.

RG 175.154 An FSG may be defective where it:

- (a) contains a misleading or deceptive statement; or
- (b) omits material required by the Corporations Act or Corporations Regulations (s952B).

RG 175.155 It is an offence to fail to provide an FSG when one is required: s952C.

D Preparing and providing a Statement of Advice

Key points

Part 7.7 generally requires providing entities to give their clients an SOA where personal advice is being provided: see RG 175.163–RG 175.169.

There are many content requirements for an SOA: see RG 175.173–RG 175.180.

In summary, all SOAs must set out, in a clear, concise and effective manner:

- the advice and the reasoning that led to the advice;
- information about remuneration and benefits;
- all conflicts of interest that may affect the advice; and
- the costs, loss of benefits and other significant consequences when recommending switching between financial products.

There are also record-keeping obligations that apply to SOAs: see RG 175.208–RG 175.213.

The obligation to prepare and provide an SOA

RG 175.156 The obligation to prepare and provide an SOA applies to most personal advice, but does not apply to general advice. For a discussion of the difference between personal and general advice, see RG 175.39–RG 175.50.

RG 175.157 An SOA is a document that helps a retail client understand, and decide whether to rely on, personal advice.

RG 175.158 An SOA may be the means by which personal advice is provided to a client or, alternatively, it may be a separate record of advice that has been previously provided (e.g. by telephone).

RG 175.159 This section considers:

- (a) when an SOA must be provided (see RG 175.163–RG 175.169);
- (b) the obligations that apply to further advice (see RG 175.170–RG 175.172);
- (c) what must be included in an SOA (see RG 175.173–RG 175.180);
- (d) what an SOA must disclose about the advice and the basis for the advice (see RG 175.181–RG 175.184);
- (e) the information about remuneration, commission and other benefits that must be included in an SOA (see RG 175.185–RG 175.202);
- (f) how to present an SOA clearly, concisely and effectively (see RG 175.203–RG 175.207);

- (g) the record-keeping obligations that apply to SOAs (see RG 175.208–RG 175.213); and
- (h) other requirements that apply to SOAs (see RG 175.214–RG 175.218).

SOAs and the best interests duty and related obligations

RG 175.160 The obligations in Pt 7.7, including the obligation to prepare and provide an SOA, apply to the ‘providing entity’—that is, the AFS licensee or authorised representative that provides financial product advice.

RG 175.161 While the obligations relating to preparing and providing an SOA are imposed on the providing entity, there are conduct obligations in Div 2 of Pt 7.7A that apply to the advice provider. These are the obligations to:

- (a) act in the best interests of the client;
- (b) provide appropriate advice;
- (c) warn the client if advice is based on incomplete or inaccurate information; and
- (d) prioritise the interests of the client: see Section E.

Note: See RG 175.33 for a definition of ‘advice provider’.

RG 175.162 The obligations in Div 2 of Pt 7.7A determine what advice is provided. The SOA documents this advice, and (among other things) contains information about the reasoning that led to the advice and all conflicts of interest that may affect the advice.

When must an SOA be provided?

RG 175.163 Generally, when personal advice is provided to a retail client, other than in an SOA, an SOA must be provided to the client at the same time as, or as soon as practicable after, the advice is provided. In any event, the SOA must be given to the client before the providing entity provides another financial service to the client that arises out of, or is connected with, the advice, such as arranging for a financial product to be issued to the client: s946C(1).

Delayed provision of SOAs in time-critical cases

RG 175.164 In time-critical cases, a further financial service can be provided to the client before an SOA is provided (s946C(3))—that is, where:

- (a) the client expressly instructs that the further financial service is provided immediately or by a specified time; and

- (b) it is not reasonably practicable to provide the client with an SOA before that further financial service is provided as instructed.

RG 175.165 In such cases, the SOA must be provided as soon as practicable after the further financial service has been provided and, at the latest (but subject to s940B), within five days of providing that service: s946C(3). However, the information in s946C(2) must be provided when the advice is provided.

Note 1: Section 940B provides that no breach occurs where there is ‘no reasonable opportunity’ to provide retail clients with an SOA.

Note 2: The information in s946C(2) includes information about potential conflicts of interest and, if applicable, information about significant consequences that may ensue from replacing an existing financial product if a change of product is recommended: s946C(2).

Where an SOA is not required

RG 175.166 An SOA is not required where the advice:

- (a) is provided to a client who is not a retail client;
- (b) relates to any of the following (but only if the information mentioned in s946B(6) is provided):
 - (i) a basic deposit product (reg 7.7.10AE);
 - (ii) a facility for making non-cash payments that is related to a basic deposit product (reg 7.7.10AE);
 - (iii) a deposit product that is a facility in relation to which:
 - (A) there is no minimum period before which funds cannot be withdrawn or transferred from the facility without a reduction in the return generated for the depositor; or
 - (B) if there is such a period, it expires on or before the end of the period of two years starting on the day on which funds were first deposited in the facility (reg 7.7.10);
 - (iv) traveller’s cheques (reg 7.7.10);
 - (v) a cash management trust interest (reg 7.7.10);
 - (vi) a motor vehicle insurance product (reg 7.7.10);
 - (vii) a home building insurance product (reg 7.7.10);
 - (viii) a home contents insurance product (reg 7.7.10);
 - (ix) a personal and domestic property insurance product (reg 7.7.10); or
 - (x) a medical indemnity insurance product (reg 7.7.10);

Note: The information in s946B(6) includes information about potential conflicts of interest: s946B(6).

- (c) is further advice (reg 7.7.10AE): see RG 175.170–RG 175.172;

- (d) does not recommend or state an opinion about the acquisition or disposal of a financial product, and where the providing entity and certain associates do not receive any remuneration or benefit in relation to the advice (but only if the information mentioned in s946B(8) is provided) (s946B(7)); or

Note 1: The information in s946B(8) includes information about potential conflicts of interest: s946B(8).

Note 2: When relying on this exemption, the providing entity must keep a record of the advice provided: s946B(9) and reg 7.7.10AAA. This record of advice must be provided to the client on request: s942B(8) and 942C(8).

- (e) relates to financial investments whose value does not exceed \$15,000 (s946AA and reg 7.7.09A).

Note: This exemption does not generally apply to advice about derivatives, general insurance products or life insurance products. When relying on this exemption, the providing entity must keep a record of the advice provided: s946AA(4) and reg 7.7.08C. This record of advice (including the information about potential conflicts of interest mentioned in s947B(2)(d) and 947B(2)(e), or s947C(2)(e) and 947C(2)(f)) must be given to the client: s946AA(5).

Does an SOA need to be given to a client whenever a fact-finding consultation occurs?

RG 175.167 Personal advice is typically provided to a client as part of a process that includes one or more consultations with the client to make inquiries about the client's relevant circumstances. These consultations are usually necessary in order to comply with Div 2 of Pt 7.7A: see Section E.

RG 175.168 During these fact-finding consultations, providing entities and their representatives may respond to client queries or express preliminary views on various matters. We consider that an SOA does not need to be given to a client at the time of the fact-finding consultations, provided that:

- (a) the consultations have a genuine purpose of identifying the subject matter of advice sought by the client or of making inquiries about the client's relevant circumstances relating to the future provision of personal advice that will be contained or recorded in an SOA (and each consultation is limited to this purpose); and
- (b) the client is clearly informed at the outset of each fact-finding consultation that:
- (i) the purpose of the consultation is to enable the providing entity to find out about the client's relevant circumstances so that personal advice can be provided;
 - (ii) the personal advice will be set out or recorded in an SOA; and
 - (iii) the client should not act on any representations made during the consultations.

The importance of timely provision of SOAs

RG 175.169 An SOA contains important information a retail client should read and understand before deciding whether to follow the advice. Where an SOA is required, we encourage providing entities to provide the SOA in enough time to give clients an adequate opportunity to consider the information it contains: see also the exception for time-critical cases in s946C described in RG 175.164.

Obligations that apply to further advice

RG 175.170 An SOA does not need to be given in the case of further advice, provided that the following requirements are met (reg 7.7.10AE):

- (a) the providing entity has previously given the client an SOA setting out the client's relevant circumstances in relation to the advice (the 'previous advice');
- (b) the client's relevant circumstances in relation to the further advice (taking into account the client's objectives, financial situation and needs) are not significantly different from the client's relevant circumstances in relation to the previous advice; and
- (c) the basis on which the further advice is given is not significantly different from the basis on which the previous advice was given.

RG 175.171 Where the providing entity is not required to (and does not) provide an SOA for further advice, the providing entity must:

- (a) at the time (or as soon as practicable after) the further advice is provided to the client, give the client the information that would be required in an SOA about potential conflicts of interest under s947B(2)(d) and 947B(2)(e), or s947C(2)(e) and 947C(2)(f), as the case requires (s946B(3)); and
- (b) keep a record of the advice (s946B(3A)).

Note: The record of advice may be kept in any form: reg 7.7.09(2). It must be kept for seven years after the day on which the further advice is provided: reg 7.7.09(3). The client may request a copy of the record of advice during this time: regs 7.7.05 and 7.7.08.

RG 175.172 The record of advice required by s946B(3A) must comply with either of the following:

- (a) it must set out the advice given to the client by the providing entity and any information disclosed to the client under s947D(2) and 947D(3) (reg 7.7.09(1)(a)). We consider that one way of satisfying reg 7.7.09(1)(a) is for the providing entity to keep a full record of the conversation during which the advice was provided (e.g. a recording) in accordance with the relevant legislation; or

- (b) it must set out brief particulars of the recommendations made to the client by the providing entity, including the basis on which the recommendations were made and brief particulars of information disclosed to the client under s947D(2) and 947D(3) (reg 7.7.09(1)(b)). We consider that reg 7.7.09(1)(b) will normally be satisfied if the providing entity keeps a record that clearly and unambiguously sets out the advice provided to the client (e.g. that the client buy a certain quantity of a certain listed security) and also includes either:
 - (i) a summary of the client’s relevant circumstances, as ascertained after making the inquiries required by s961B; or
 - (ii) a clear statement that information about the client’s relevant circumstances is set out in a previous record of advice or SOA provided to the client (the record or SOA should be identified by date)—this option is available only if the providing entity has conducted reasonable inquiries that confirm that the client’s relevant circumstances, as set out in the previous record of advice or SOA, have not changed.

What must be included in an SOA?

RG 175.173 An SOA must comply with the Corporations Act and Corporations Regulations, and must include all of the following:

- (a) the title ‘Statement of Advice’ on the cover, or at or near the front, of the document (s947A);
- (b) the name and contact details of the providing entity (s947B(2)(c) and 947C(2)(c)) and, if the providing entity is an AFS licensee, its AFS licence number (s912F and reg 7.6.01C(1)(e));
- (c) where the providing entity is providing the advice as an authorised representative—the name, contact details and AFS licence number of the authorising licensee(s), and a statement that the providing entity is the authorised representative of that licensee or those licensees (s947C(2)(d) and reg 7.7.11A);
- (d) a statement setting out the advice (s947B(2)(a) and 947C(2)(a));
- (e) information about the basis on which the advice is or was given (s947B(2)(b) and 947C(2)(b)): see RG 175.181–RG 175.184;
- (f) information about the remuneration, commission and other benefits that the providing entity (and the other related or associated persons specified in s947B(2)(d) or 947C(2)(e)) will receive, or reasonably expects to receive, that might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice (s947B(2)(d) and 947C(2)(e), and regs 7.7.09BC, 7.7.09BD, 7.7.11 and 7.7.12): see RG 175.185–RG 175.202;

- (g) information about the remuneration, commissions and other benefits that a person has received or is to receive for referring another person to the AFS licensee or providing entity (regs 7.7.11 and 7.7.12);
- (h) details of any interests, associations or relationships that might reasonably be expected to be, or to have been capable of, influencing the providing entity in providing the advice (s947B(2)(e) and 947C(2)(f)); and

Note: A providing entity (or the authorising AFS licensee) may be affiliated with a product issuer or an underwriter. For example, a member of a corporate group that includes a product issuer may employ the providing entity. Also, a member of a corporate group may act as an underwriter of a share issue. Where such affiliations might reasonably be expected to be capable of influencing the providing entity to provide favourable advice about the financial products of the affiliated party, the affiliations must be disclosed to the client in the SOA.

- (i) if s961H requires a warning to be given to the client because the advice is based on incomplete or inaccurate information—a statement setting out or recording the required warning (s947B(2)(f) and 947C(2)(g)): see RG 175.386–RG 175.389.

Note: The SOA should be dated and should normally set out the period of time during which the recommended course of action remains current.

- RG 175.174 The level of detail about a matter that needs to be included is generally what a person would reasonably require to make a decision about whether to follow the advice as a retail client: s947B(3) and 947C(3).
- RG 175.175 The information contained in an SOA must be worded and presented in a clear, concise and effective manner (s947B(6) and 947C(6)): see RG 175.203–RG 175.207. An SOA must not include material that is misleading or deceptive.

Switching advice

- RG 175.176 Additional information is required in an SOA where personal advice recommends the replacement (in full or in part) of:
- (a) one financial product with another financial product; or
 - (b) a client's interest in a MySuper product with an interest in another MySuper product or a choice superannuation product offered by the superannuation fund: s947D(1).
- RG 175.177 The SOA should state that the client's existing product has been considered, and should include information about:
- (a) the cost of the recommended action (i.e. the disposal of the existing product and acquisition of the replacement product);
 - (b) the potential benefits (pecuniary or otherwise) that may be lost; and
 - (c) any other significant consequences of the switch for the client: s947D(2).

Note: The SOA should include information about:

- the exit fees applying to the withdrawal;
- the loss of access to rights (e.g. insurance cover) or other opportunities, including incidental opportunities (e.g. access to product discounts) associated with the existing product (also including rights or opportunities not presently available to the client but which may become available in the future); and
- the entry and ongoing fees applying to the replacement product.

For general information and compliance tips about what you need to consider when providing superannuation switching advice, see [Information Sheet 182](#) *Super switching advice: Complying with your obligations* (INFO 182).

Consumer testing

- RG 175.178 We encourage AFS licensees and industry associations to develop guidelines and conduct consumer testing. This may help licensees to identify whether:
- (a) the SOA is presented in a clear, concise and effective manner;
 - (b) the SOA is potentially misleading or deceptive; or
 - (c) there is additional information that investors need.

Good Disclosure Principles

- RG 175.179 We consider that providing entities should take into account the Good Disclosure Principles in [RG 168](#) in preparing SOAs.

Note: For guidance on clear, concise and effective disclosure, see RG 175.203–RG 175.207.

Incorporation by reference

- RG 175.180 There is no requirement to include a statement or information—other than a statement or information required by s947D or 961H—in an SOA provided to a client if:
- (a) the SOA refers to the statement or information;
 - (b) the SOA provides *sufficient details* about the statement or information to enable the client to:
 - (i) identify by a unique identifier the document, or part of the document, that contains the statement or information; and
 - (ii) decide whether or not to read the statement or information or obtain a copy of the statement or information;
 - (c) the document containing the statement or information has already been given to the client, or is given at the same time as the SOA; and
 - (d) the SOA states that a copy of the statement or information may be obtained from the providing entity on request, at no charge: reg 7.7.09B.

Note 1: Section 947D requires certain information to be included in the SOA about the costs and benefits of switching (in full or in part) between one financial product and

another. Section 961H requires a warning to be given to the client if the advice is based on incomplete or inaccurate information.

Note 2: Providing entities must keep any SOA (together with any document, or part of a document, mentioned in the SOA) for seven years from the date on which the SOA was provided to the client.

Information about the advice and the basis for the advice

RG 175.181 An SOA must:

- (a) disclose the advice (s947B(2)(a) and 947C(2)(a));
- (b) disclose the basis for the advice (s947B(2)(b) and 947C(2)(b)); and
- (c) include as much detail about a matter as a person would reasonably require to make a decision about whether to follow the advice as a retail client (s947B(3) and 947C(3)).

RG 175.182 In administering the law, we will take the view that an SOA should:

- (a) clearly and unambiguously set out the providing entity's personal advice;
- (b) in the case of advice to replace (in full or in part) one product with another (or to switch between investment options within a product), include a concise summary of the costs and benefits of making the switch; and

Note: This applies to personal advice even if only one of the products is a financial product under Ch 7. This obligation is additional to the more specific obligations imposed by s947D in certain circumstances.

- (c) set out in language that is easy to understand, the reasoning that led to the advice, including:
 - (i) the subject matter of the advice that has been sought by the client;
 - (ii) the scope of the advice;
 - (iii) a concise summary of the client's relevant circumstances, as ascertained after making the inquiries required by s961B;
 - (iv) a generic description of the range of financial products, classes of financial product or strategies considered and investigated for the purposes of s961B;
 - (v) a concise statement of the reasons why the advice and recommendation were considered appropriate, including in light of the alternative options considered, and the advantages and disadvantages for the client if the client follows the advice; and
 - (vi) a concise statement of how the advice provider has acted in the client's best interests. We consider that it is good practice to set out the basis on which a reasonable advice provider would believe that the advice is likely to leave the client in a better position if the client follows the advice. For more information, see RG 175.244–RG 175.251.

Note 1: The SOA should set out the main risks if the advice is followed and does not satisfy critical aspects of the client's relevant circumstances. Advice that, if implemented, is not likely to satisfy critical aspects of the client's relevant circumstances will be a breach of the best interests duty in s961B, if it applies, and is likely to be inappropriate advice in breach of s961G.

Note 2: Where the providing entity or advice provider gives a warning to the client about the advice under s961H, as a matter of good practice (and irrespective of any current legal requirement), the SOA should contain a general indication of which aspects of the client's relevant circumstances the providing entity or advice provider believes are incomplete or inaccurate.

RG 175.183 The SOA should clearly disclose if a providing entity's recommendations are restricted to products from an approved product list.

Note: Complying with the best interests duty, where the advice provider's AFS licensee has an approved product list, is discussed at RG 175.344–RG 175.352.

RG 175.184 The basis for the advice should also set out the following:

- (a) *Tax considerations*: Where tax considerations are taken into account in providing the advice, these should be stated.
- (b) *Risk*: Disclosure about risk should describe the significant risks that the client will bear in relation to acquiring any recommended:
 - (i) financial product specifically; and
 - (ii) class of products generally.

Information about remuneration, commission and other benefits

When is disclosure of remuneration, commission and other benefits required?

RG 175.185 The requirements for the disclosure of remuneration, commission and other benefits in the SOA are set out in s947B(2)(d), 947B(2)(h), 947C(2)(e), 947C(2)(i) and 947D(2)(d); and regs 7.7.10A–7.7.11, 7.7.11B–7.7.13B, 7.7.09BC and 7.7.09BD.

Note: The conflicted remuneration and other banned remuneration provisions in Divs 4 and 5 of Pt 7.7A affect what benefits a providing entity can accept under the Corporations Act: see RG 175.61(e).

RG 175.186 'Remuneration, commission and other benefits' includes, for example, all upfront commissions, trailing commissions and 'soft' dollar commissions or benefits.

RG 175.187 Even where a providing entity (or other persons referred to in s947B(2)(d) or 947C(2)(e)) receives the same level of commission for all the financial products it recommends, the commission received should normally be disclosed in the SOA if the advice includes a recommendation to acquire a financial product. This is because the receipt of the commission might reasonably be expected to be, or have been, capable of influencing the

providing entity in deciding whether to recommend that the client acquire any financial product.

- RG 175.188 The fact that a benefit is difficult, or even impossible, to rebate to clients does not preclude it from being capable of influencing the providing entity and therefore from needing to be disclosed in the SOA.
- RG 175.189 In administering the law (and subject to RG 175.191–RG 175.192), we will take the view that the SOA should normally include information about *all* the remuneration, commission and other benefits that the providing entity (and other persons specified in s947B(2)(d) or 947C(2)(e)) will receive, or reasonably expects to receive, for the advice—except where:
- (a) the payment of, or the amount of, the remuneration, commission or other benefit does not depend in any way on whether the client follows the advice (e.g. an hourly fee paid by the client that is payable irrespective of whether the client follows the advice);
 - (b) the remuneration, commission or other benefit is rebated in full to the client (see RG 175.79 for information on when a commission can be said to be rebated in full); or
 - (c) the providing entity was not, and could not reasonably be expected to have been, aware of the remuneration, commission or other benefit.
- RG 175.190 Benefits that are excluded from the conflicted remuneration provisions in Divs 4 and 5 of Pt 7.7A still need to be disclosed in an SOA if this is required by s947B and 947C. This includes benefits that are ‘grandfathered’. However, this does not include non-monetary benefits that are less than \$300, provided that identical or similar benefits are not given on a frequent or regular basis: regs 7.7.09BC and 7.7.09BD.

When is disclosure of ‘back office’ payments required?

- RG 175.191 ‘Back office’ payments need to be disclosed in the SOA where these might reasonably be expected to be, or have been, capable of influencing the providing entity in providing the advice. A back office payment is a payment for services provided to a product issuer, such as claims-handling services and other administrative services, that would otherwise be performed by the issuer itself.
- RG 175.192 We expect that back office payments will normally need to be disclosed, particularly where they are not provided under an arm’s length agreement between the issuer and the providing entity. Providing entities who form the view that a back office payment does not need to be disclosed in the SOA should maintain records to enable them to demonstrate why they have formed that view. We consider that these records should show, for each back office payment not disclosed in the SOA:
- (a) who made the payment;
 - (b) who received the payment;
 - (c) the date of the payment; and

- (d) the amount of the payment.

Note: For more information on record keeping when personal advice is provided to a retail client, see RG 175.208–RG 175.213 and RG 175.417–RG 175.432.

- RG 175.193 For ‘back office’ payments, as described in RG 175.191, the Explanatory Statement to the Corporations Amendment Regulations 2001 (No. 4) states that:

... [reg 7.7.11] makes no specific reference to ‘back office’ functions. However, this should not be taken to imply that remuneration, commission or other benefits received for the performance of such functions is not required to be disclosed. It is recognised that the concept of ‘back office’ functions varies depending on the nature of the financial services business. Nevertheless, remuneration received for performing such functions should be treated the same as any other remuneration received, and should be disclosed if it might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice (see paragraph 947B(2)(d) relating to a Statement of Advice given by a financial services licensee, and paragraph 947C(2)(e) relating to a Statement of Advice given by an authorised representative).

- RG 175.194 Payments for office fitouts or equipment, or for conference attendances, are not back office payments. These also need to be disclosed in an SOA if they might reasonably be expected to be, or have been, capable of influencing the providing entity in providing the advice.

How should remuneration, commission and other benefits be disclosed?

- RG 175.195 The dollar disclosure provisions require that various costs, fees, charges, expenses, benefits and interests must be stated as amounts in dollars in an SOA: regs 7.7.11B and 7.7.13–7.7.13B.

- RG 175.196 The following information about various costs, fees, charges, expenses, benefits and interests must be disclosed as amounts in dollars in an SOA (except where we have provided relief):

- (a) for SOAs prepared by AFS licensees—the information required by s947B(2)(d), 947B(2)(e)(i), and 947D(2)(a); and
- (b) for SOAs prepared by authorised representatives—the information required by s947C(2)(e), 947C(2)(f)(i) and 947D(2)(a).

Note 1: The information required under s947B(2)(d), 947B(2)(e)(i), 947C(2)(e) and 947C(2)(f)(i) includes information about potential conflicts of interest. The information required under s947D(2)(a) includes information about the cost of the switching (i.e. the disposal of the existing product and acquisition of the replacement product) and the potential benefits (pecuniary or otherwise) that may be lost.

Note 2: For further guidance on the dollar disclosure provisions and ASIC relief, see [Regulatory Guide 182 Dollar disclosure](#) (RG 182).

- RG 175.197 The requirement for clear, concise and effective disclosure (s947B(6) and 947C(6)) means that all the information about remuneration,

commissions and other benefits should be presented in one place in the SOA. The information must be presented in a way that is easy for the client to understand.

- RG 175.198 In administering the law, we will take the view that the SOA should set out, in easy-to-understand language, the circumstances in which the remuneration, commission and benefits (benefits) required to be disclosed are expected to be received, the person(s) who would pay such benefits, the person(s) expected to receive such benefits and the source(s) of such benefits.
- RG 175.199 Subject to the requirements of the dollar disclosure provisions, ranges, rates, comparisons, simple tables and formulas should normally be included in the SOA to ensure that the information is presented in a clear, concise and effective manner. It is insufficient to merely state in the SOA that a benefit will or may be received and that clients can ask for further details to be provided.
- RG 175.200 Where disclosure of a commission is required, the SOA should generally include, among other things, a clear statement of the method of calculating the commission. Where the advice relates to a financial product with an investment component, the SOA should clarify whether the commission is (or is not) related to or dependent on the performance of the product. This should be disclosed as a matter of good practice, whether or not it is required by law.

The importance of conflicts disclosure

- RG 175.201 The importance of disclosing conflicts of interest in the SOA has been explained as follows:

The disclosure of benefits received by an intermediary and any conflicts of interest assists clients in assessing the merits of a product recommendation and reduces the opportunity for advisers to act in self interest to the disadvantage of the client.

(From Treasury, *Financial markets and investment products: Promoting competition, financial innovation and investment*, Corporate Law Economic Reform Program 1997, Proposals for reform: Paper No. 6, p. 102.)

Note 1: Section 912A(1)(aa) imposes a specific duty on AFS licensees to manage conflicts of interest. This general obligation is in addition to the specific conflict disclosure requirements for an SOA. For guidance about compliance with the general obligation to manage conflicts, see [RG 181](#) and [RG 79](#).

Note 2: Section 961J imposes an obligation to prioritise the client's interests where there is a conflict between the interests of the client and the interests of the adviser or one of their related parties: see RG 175.390–RG 175.411. This general obligation is in addition to the specific conflict disclosure requirements for an SOA.

Disclosure of referral payments

- RG 175.202 In addition to s947B(2)(d) and 947C(2)(e), regs 7.7.11 and 7.7.12 require the SOA to include information about the remuneration, commission and other benefits that a person has received or is to receive for referring another person to the AFS licensee or providing entity.

Clear, concise and effective presentation

RG 175.203 Clear, concise and effective presentation of SOAs promotes understanding of advice by retail investors. We consider that the presentation requirements are as important as the content requirements in preparing an SOA.

Note: We have published an example SOA to illustrate our interpretation of clear, concise and effective disclosure in a specific financial advice scenario: see [Regulatory Guide 90 Example Statement of Advice: Scaled advice for a new client](#) (RG 90). [RG 244](#) also contains some examples of SOAs illustrating our interpretation of clear, concise and effective disclosure.

RG 175.204 An SOA should:

- (a) contain all key information in the body of the document instead of relegating some key information to an appendix;
- (b) be tailored to the client and not contain any irrelevant information such as generic research or educational materials that are not relevant to the SOA (this information can be made separately available to retail investors on request); and
- (c) avoid unnecessary repetition of content where it would not enhance consumer understanding.

Note: Some consumers may not read the example SOA from cover to cover. Therefore, some repetition of content may be used to ensure that important sections of the SOA can be read on their own without referring to other sections.

RG 175.205 Useful presentation tools include:

- (a) headings, irrespective of the length of the document;
- (b) a table of contents;
- (c) a description of the purpose of the document;
- (d) an executive summary to highlight the most important information;
- (e) logical sequencing of information and grouping of related information; and
- (f) tables and graphs that are clearly explained.

RG 175.206 Language should be used accurately and consistently throughout the SOA.

RG 175.207 In particular, when preparing an SOA, providing entities should keep the following in mind:

- (a) the existing SOA provisions are very flexible, and providing entities should take a flexible approach to their SOAs (e.g. we expect providing entities to generally provide a short and simple SOA for short and simple advice);
- (b) extraneous information (i.e. information that the law does not actually require to be included in the SOA, such as detailed research) should not be included if it results in the SOA not being clear, concise and

- effective. If extraneous information is included, it should be clearly distinguishable from the mandatory information;
- (c) the clear, concise and effective obligation does not mean that information required by the SOA provisions can be left out. Rather, the clear, concise and effective obligation affects the way that a providing entity presents the required information. This includes trying to present the information in as brief a manner as reasonably possible, without compromising its accuracy;
 - (d) the most important information in an SOA should be highlighted—for example, in an executive summary that summarises the key information and indicates where more detail can be obtained. This is especially important where the SOA is long (e.g. more than 10 pages);
 - (e) the longer the SOA, the more important it will be to include navigational aids such as a table of contents;
 - (f) legal, industry or technical jargon should be avoided where possible, especially where advice is provided to relatively unsophisticated clients;
 - (g) where the use of legal, industry or technical terms is unavoidable, the meaning of these terms should be explained in simple, plain English; and
 - (h) there is no one ‘correct’ or ‘ideal’ format for an SOA—the law provides flexibility in tailoring the format and presentation to the particular information needs of retail investors. Consumer testing can help a providing entity to assess the effectiveness of various disclosure formats.

Note: When an SOA is required, it must be provided in printed or electronic form to the client. See [RG 221](#) for information on how an SOA can be delivered digitally.

Record-keeping obligations that apply to SOAs

- RG 175.208 [Class Order \[CO 14/923\]](#) *Record-keeping obligations for Australian financial services licensees when giving personal advice* modifies Div 3 of Pt 7.6 of the Corporations Act, as it applies to all AFS licensees, to insert a new section—s912G—which sets out the record-keeping requirements for AFS licensees when the licensee or its representative (including an advice provider) gives personal advice to retail clients.
- RG 175.209 Section 912G(2)(c) requires that, when an AFS licensee or its representative provides personal advice to retail clients, the licensee must ensure that records are kept of the advice given. This includes an obligation to keep copies of SOAs.
- RG 175.210 An AFS licensee must ensure that records of advice are kept for a period of at least seven years after the day the personal advice is provided to the client. The licensee should have access to these records during this period in a way

that enables the licensee to produce the records. This obligation continues to apply even if the licensee ceases to be a licensee, or the advice provider ceases to be a representative of the licensee, during the period that the records are required to be kept and accessible: s912G(3).

- RG 175.211 An authorised representative who provides personal advice must keep records of the advice given, including copies of SOAs, for a period of at least seven years after the day the personal advice is provided to the client, unless the records have been given by the authorised representative to their authorising AFS licensee. The authorised representative must give the advice records to the licensee if the licensee requests the records, provided that the request is made:
- (a) in connection with the obligations imposed on the licensee under Ch 7 of the Corporations Act; and
 - (b) within seven years after the day on which the personal advice is given to the client: s912G(4).
- RG 175.212 The obligation in s912G(4) continues to apply even if the authorised representative ceases to be an authorised representative of the AFS licensee during the period that the records are required to be given or kept.
- RG 175.213 The record-keeping obligations that apply to authorised representatives are in addition to the record-keeping obligations that apply to AFS licensees: s912G(5).

Note 1: See also RG 175.417–RG 175.432 for further information about record-keeping obligations that apply to personal advice.

Note 2: [\[CO 14/923\]](#) was amended by ASIC Corporations (Amendment) Instrument 2016/1006, which commenced on 27 October 2016. Among other things, this placed beyond doubt that AFS licensees must have access to records of advice for the period of time in which the records are required to be kept (s912G(3)), and made explicit that authorised representatives who are advice providers must keep advice records, and give these records to their authorising AFS licensee if the licensee requests the records for the purposes of complying with financial services laws (s912G(4)). The obligation in s912G(4) continues to apply even if the authorised representative ceases to be an authorised representative of the AFS licensee during the period that the records are required to be given or kept.

Note 3: Where personal advice has been provided to retail clients on or before 30 June 2013, the requirements of the AFS licence condition—‘Retention of Financial Services Guides, Statements of Advice and material relating to personal advice’—that were in effect at the time the advice was provided remain applicable.

Other requirements that apply to SOAs

- RG 175.214 An SOA must not describe a person as ‘independent’ unless the requirements of s923A are satisfied: see RG 175.64–RG 175.81.

- RG 175.215 It is an offence to provide a defective SOA: s952D and 952E. An SOA may be defective where:
- (a) it contains a misleading or deceptive statement; or
 - (b) it omits material required by the Corporations Act or Corporations Regulations: s952B.
- RG 175.216 If an SOA is defective, an affected person (e.g. a retail client) may take civil action against the providing entity (and the authorising AFS licensee) for any loss or damages.
- RG 175.217 It is an offence to fail to provide an SOA when one is required: s952C.
- RG 175.218 The Corporations Act prohibits the combination of an FSG or PDS with an SOA: s947E.

E Acting in the client’s best interests and related obligations

Key points

The best interests duty and related obligations in Div 2 of Pt 7.7A require advice providers, when providing personal advice to retail clients, to:

- act in the best interests of their clients (see RG 175.242–RG 175.361);
- provide appropriate advice (see RG 175.362–RG 175.385);
- warn the client if advice is based on incomplete or inaccurate information (see RG 175.386–RG 175.389); and
- prioritise the client’s interests (see RG 175.390–RG 175.411).

This section sets out what we consider advice providers must do to meet these obligations.

We consider that what is needed to comply with the best interests duty can be ‘scaled up’ or ‘scaled down’, depending on a number of factors: see RG 175.412–RG 175.416.

There are record-keeping obligations that require advice providers to demonstrate that they have complied with the best interests duty and related obligations: see RG 175.417–RG 175.432.

Overview

- RG 175.219 Retail clients who rely on personal advice may suffer significant loss if the advice is conflicted or is not of good quality. For this reason, the law imposes specific obligations on persons who provide personal advice to retail clients. This section sets out what is required under Div 2 of Pt 7.7A when a person provides personal advice to retail clients: see Table 5.
- RG 175.220 The guidance in this section applies to all forms of personal advice, including advice that is comprehensive in its scope and advice that is limited in scope—that is, ‘scaled advice’.
- Note: Practical guidance on providing scaled advice is contained in Section D of [RG 244](#).
- RG 175.221 The obligations in Div 2 of Pt 7.7A applied from 1 July 2013, or from an earlier date that an AFS licensee elected to comply with Pt 7.7A by lodging a notice with ASIC.
- RG 175.222 The best interests duty and related obligations in Div 2 of Pt 7.7A generally apply to the individual providing the personal advice. This is in contrast with the obligations in Pt 7.7, which apply to the ‘providing entity’—that is, the AFS licensee or authorised representative that provides financial product advice.

RG 175.223 If there is no individual that provides the advice for the purposes of Div 2 of Pt 7.7A, which may be the case if advice is provided through a computer program, it is the legal person that provides the advice that must comply with the obligations in Div 2 of Pt 7.7A (e.g. a corporate licensee or authorised representative): s961.

Note: See [RG 255](#) for more information on how the obligations in Div 2 of Pt 7.7A apply to digital advice.

RG 175.224 A number of financial services businesses outsource their personal advice functions to financial advisory firms (e.g. trustees of superannuation funds). Where this occurs, it is the individual advice provider of the outsourced entity that has a duty to act in the best interests of their client and comply with the other obligations in Div 2 of Pt 7.7A (assuming it is an individual who provides the advice).

RG 175.225 In this section, we will refer to the person to whom the best interests duty and related obligations apply as the ‘advice provider’.

RG 175.226 AFS licensees also have an obligation to take reasonable steps to ensure that their representatives comply with:

- (a) the best interests duty in s961B;
- (b) the appropriate advice requirement in s961G;
- (c) the obligation to warn the client if advice is based on incomplete or inaccurate information in s961H; and
- (d) the obligation to prioritise the client’s interest in s961J: s961L.

RG 175.227 The importance of the obligations in Div 2 of Pt 7.7A is highlighted by the fact that a failure to comply with them may result in a civil penalty against an authorised representative or AFS licensee: s961K and 961Q. An advice provider and their licensee and authorised representative may also be subject to administrative sanctions for a breach of the obligations in Div 2 of Pt 7.7A—for example, being banned from providing financial services for a period of time.

RG 175.228 A client, or ASIC, may take civil action for any loss or damage suffered as a result of a failure to comply with the best interests duty and related obligations: s961M.

RG 175.229 Div 2 of Pt 7.7A does not contain criminal sanctions.

RG 175.230 The best interests duty and related obligations apply to all personal advice, but not to general advice. For a discussion of the difference between personal advice and general advice, see Section B and [RG 244](#).

Note: In some circumstances, a modified form of the best interests duty applies: see RG 175.263–RG 175.266.

- RG 175.231 A condition of a contract, or other arrangement, is void if it seeks to waive any of the obligations in Pt 7.7A. Disclosure, including notices and disclaimers, cannot be used by an advice provider to avoid their obligations in Div 2 of Pt 7.7A.
- RG 175.232 Table 5 provides an overview of the best interests duty and related obligations that apply to advice providers when giving personal advice to retail clients.

Table 5: Overview of best interests duty and related obligations

Topic	Location of guidance	Provisions of Corporations Act
Acting in the best interests of the client (best interests duty)	RG 175.242–RG 175.266	s961B(1)
Safe harbour for complying with the best interests duty	RG 175.267–RG 175.361	s961B(2)
Providing appropriate advice	RG 175.362–RG 175.385	s961G
Warning the client if advice is based on incomplete or inaccurate information	RG 175.386–RG 175.389	s961H
Prioritising the interests of the client	RG 175.390–RG 175.411	s961J
Modified best interests duty and related obligations, including: <ul style="list-style-type: none"> • acting in the best interests of the client; • providing appropriate personal advice; • warning the client if advice is based on incomplete or inaccurate information; and • prioritising the interests of the client 	RG 175.263–RG 175.266, RG 175.370–RG 175.373 and RG 175.405–RG 175.407	s961B(3), 961B(4), 961G, 961H, 961J(2) and 961J(3)
Giving scaled advice	RG 175.412–RG 175.416 and Section D of RG 244	Div 2 of Pt 7.7A
Personal advice record-keeping obligations	RG 175.417–RG 175.432	s912A(1) and 912G

Note: Other obligations apply to the provision of personal advice: see Sections A–B and D.

- RG 175.233 In this section, we have used a number of examples. These examples are for illustration and are confined to their particular facts. Different facts may produce different results in terms of whether the advice provider has complied with the best interests duty and related obligations.

Our approach to administering the best interests duty and related obligations

- RG 175.234 In his second reading speech to the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011, the Minister for Financial Services and Superannuation stated:

The best interests duty is a legislative requirement to ensure the processes and motivations of financial advisers are focused on what is best for their clients.

- RG 175.235 The following basic policy principles will guide our administration of the best interests duty and related obligations in Div 2 of Pt 7.7A:
- (a) the provisions are intended to enhance trust and confidence in the financial advice industry;
 - (b) increased trust and confidence in the financial advice industry should lead to more consumers accessing financial advice;
 - (c) the provisions should lead to a higher quality of advice being provided compared to the general standard of advice previously being provided under s945A and 945B;
 - (d) a reasonable advice provider should believe that the client is likely to be in a better position if the client follows the advice. For more information, see RG 175.244–RG 175.251; and
 - (e) the best interests duty in s961B, the appropriate advice requirement in s961G and the conflicts priority rule in s961J are separate obligations that operate alongside each other and apply every time personal advice is provided.

Note: Despite RG 175.235(e), the conflicts priority rule does not apply:

- if the subject matter of the advice sought by the client relates only to a basic banking product, general insurance product, consumer credit product, or a combination of any of these products; and the advice provider is an agent or employee of an Australian authorised deposit-taking institution (ADI), or is otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI (s961J(2)); or
- to the extent that the subject matter of the advice sought by the client is a general insurance product (s961J(3)).

- RG 175.236 We will also administer the best interests duty and related obligations in light of the other obligations that apply to AFS licensees and their representatives (including authorised representatives): see RG 175.60–RG 175.90.

Quality of financial advice

- RG 175.237 Complying with the best interests duty and related obligations is important in helping to ensure that clients are provided with good quality financial advice.

- RG 175.238 We consider that any process of giving good quality financial advice has some or all of the following features:

- (a) a clearly defined scope that is appropriate to the subject matter of advice sought by the client and the client's relevant circumstances;
- (b) an investigation of the client's relevant circumstances;
- (c) assistance given by the advice provider to the client, if required, to set prioritised, specific and measurable goals and objectives;

- (d) where relevant, consideration of potential strategies and options that are available to the client to meet their objectives and needs;
- (e) where relevant, consideration of all aspects of the impact of the advice—for example, tax or social security consequences;
- (f) good communication with the client. This includes:
 - (i) providing an SOA that is logically structured and easy to understand, if one is required; and
 - (ii) if appropriate, depending on how the advice is provided, verbal interactions that aim to ensure that the advice and recommendations are understood; and
- (g) where relevant, strategic and product recommendations that are appropriate for the client's relevant circumstances.

RG 175.239 If an advice provider makes a product recommendation, we consider it is good practice to articulate clearly how the strategy of the advice is linked to, or might be achieved by, the recommendation.

RG 175.240 ASIC's [Report 279](#) *Shadow shopping study of retirement advice* (REP 279) considers the features of good quality financial advice. While it is based on a review of retirement advice that was provided under the legal requirements existing in 2011, before the best interests duty applied, the principles that underpin good quality advice, as set out in REP 279, indicate what we consider to be good practice.

RG 175.241 In Section C of [REP 279](#), we identified the following principles that underpin good quality advice:

- (a) good quality advice meets the client's needs, as well as satisfying the requirements of the law;
- (b) good quality advice refines and clarifies a client's objectives, and helps the client, as much as possible, to achieve those objectives;
- (c) good quality advice can be comprehensive or limited in scope, depending on the client's needs and circumstances;
- (d) good quality advice educates and equips clients to make informed decisions about their finances, including whether to accept and implement the strategies and products recommended to them;
- (e) sound strategic advice is a key component of good quality advice. Product recommendations should follow, rather than direct, the suggested strategies; and
- (f) good quality advice involves good communication—including SOAs and verbal communication.

Acting in the best interests of the client

RG 175.242 When providing personal advice to a client, an advice provider must act in the best interests of the client in relation to that advice: s961B(1). We refer to this as the ‘best interests duty’. In this section, we provide guidance on how advice providers can comply with the best interests duty.

RG 175.243 In his second reading speech to the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011, the Minister for Financial Services and Superannuation stated:

Financial planners and those who work in the financial services industry implicitly understand that the brand of financial advice needs renewal following a string of collapses including Storm, Trio and Westpoint. I believe that the vast majority of financial planners do see their role as making their dealings with customers such that, after having dealt with the planner, the customer is better off than if the customer had never sought financial advice to begin with ... The best interests duty is a legislative requirement to ensure the processes and motivations of financial advisers are focused on what is best for their clients. It is true that this will ultimately lead to better advice in many cases, but first and foremost it is about regulating conflicts, not the intrinsic quality of the advice provided.

Advice that is likely to leave the client in a better position

RG 175.244 Consumers who seek financial advice expect that their adviser will act in their best interests and that, as a result, the advice provided will leave them in a better position.

RG 175.245 When assessing whether an advice provider has complied with the best interests duty, we will consider whether a reasonable advice provider would believe that the client is likely to be in a better position if the client follows the advice.

RG 175.246 This depends on the circumstances and includes the following factors:

- (a) the position the client would have been in if they did not follow the advice, which is to be assessed at the time the advice is provided;
- (b) the facts at the time the advice is provided that the advice provider had, or should have had, if they followed their obligations. In particular, we will not examine investment performance retrospectively, with the benefit of hindsight (see Example 2 in this guide and paragraph 1.23 of the Revised Explanatory Memorandum to the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012 (Revised Explanatory Memorandum));
- (c) the subject matter of the advice sought by the client;
- (d) the client’s objectives, financial situation and needs. Many clients seek advice with the objective of improving their financial position. However, a client’s objectives, financial situation and needs may also encompass other things, such as:
 - (i) improving a client’s understanding of their financial position;

- (ii) aligning their financial position with their appetite for risk;
- (iii) reassuring them that they do not need to change their strategy or product holdings as a result of a review; or
- (iv) increasing their confidence to spend or donate their money: see Example 3 to Example 5;
- (e) where relevant, product features that the client particularly values, provided that the client understands the cost of, and is prepared to pay for, those features. For example, a client may particularly value online access to information about their investment holdings as well as understanding and being prepared to pay for the cost of this feature (see Example 6); and
- (f) that the client receives a benefit that is more than trivial (see Example 7).

RG 175.247 We do not expect an advice provider to give ‘perfect advice’ to establish that the client is likely to be in a better position if the client follows the advice.

RG 175.248 Advice providers also have an obligation to:

- (a) only provide appropriate advice (s961G); and
- (b) prioritise the interests of the client where there is a conflict with their own interests, or those of one of their related parties (s961J).

This may impose additional requirements or limitations on an advice provider: see RG 175.362–RG 175.385 and RG 175.390–RG 175.411, respectively.

RG 175.249 We do not consider that the best interests duty and related obligations are intended to prohibit advice providers from charging fees and costs for their services.

RG 175.250 Whether a reasonable advice provider would believe that the client is likely to be in a better position if the client follows the advice is relevant:

- (a) when assessing potential breaches of the best interests duty in s961B(1) (see RG 175.242–RG 175.266);
- (b) for satisfying the safe harbour in s961B(2) for complying with the best interests duty. In particular, an advice provider must show they have:
 - (i) based all judgements in advising the client on the client’s relevant circumstances (see s961B(2)(f) and RG 175.353–RG 175.355); and
 - (ii) taken any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client’s relevant circumstances (see s961B(2)(g) and RG 175.356–RG 175.361); and
- (c) when assessing potential breaches of the appropriate advice requirement in s961G, including where the modified best interests duty applies (see RG 175.365 and RG 175.373).

RG 175.251 Example 2 to Example 7 illustrate the concept of what a reasonable advice provider would believe is likely to leave the client in a better position if the client follows the advice.

Example 2: No 'retrospective testing'

Scenario

An advice provider gives advice recommending that a client invest in an Australian equities fund. This advice is appropriate for the client. The client invests in the fund and loses money because of a fall in unit prices for the fund caused by a downturn in the performance of equity markets.

Commentary

Losses caused by a downturn in financial markets are irrelevant in considering whether the best interests duty has been complied with. The best interests duty is concerned with what occurred at the time the advice was provided—not the performance of the client's investment.

Example 3: A 'health check' on a client's financial affairs

Scenario

A client seeks personal advice to get a 'health check' on the state of their financial affairs in light of their long-term financial goals.

The advice provider reviews the client's financial situation and provides them with advice that they are on track to meet these goals. The advice provider does not recommend that the client acquire or dispose of any financial products, and the client does not do so.

Commentary

In this situation, a reasonable advice provider would believe that the client is likely to be in a better position if the client follows the advice (i.e. by taking the advice into account). This is because the client has received reassurance that they are on track to meet their goals, is better informed and is less likely to make a change that would be adverse to their interests.

The advice provider has complied with the best interests duty.

Example 4: Advice to a client on providing for a relative

Scenario

A client seeks and obtains personal advice from an advice provider on how to restructure their financial arrangements so that they can pay for the medical expenses of a sick relative.

Commentary

This advice does not involve any ongoing improvement in the client's financial situation. However, a reasonable advice provider would believe that the client is likely to be in a better position if the client follows the advice. This is because following the advice would result in meeting the client's objective to pay for their relative's medical expenses.

The advice provider has complied with the best interests duty.

Example 5: Advice that the client's expectations are unrealistic**Scenario**

A 60-year-old asks an advice provider for advice on whether they will have enough money to retire at age 65. They give the advice provider details on the lifestyle they expect to have in retirement.

Based on the client's finances and their expected lifestyle in retirement, the advice provider tells the client that they will not have enough money to provide the income they expect for their planned retirement at age 65. The advice provider gives the client advice that is not product specific on:

- the advantages and disadvantages of different options for saving for and living in retirement, such as working for longer, increasing superannuation contributions, downsizing to a smaller property or travelling less after retirement; and
- how much superannuation income the client can afford in retirement, given the size of their superannuation balance.

Commentary

In this situation, a reasonable advice provider would believe that the client is likely to be in a better position if the client follows the advice. This is despite the fact that the advice provider has advised the client that their financial circumstances will not allow them to achieve their goals or meet their needs. Instead, the advice provider has advised the client on how to change their goals and needs in retirement so that these are more realistic.

The advice provider has complied with the best interests duty.

Example 6: Advice that is likely to leave the client in a better position**Scenario**

A client holds a portfolio of products through a platform. They have told their advice provider that they find the consolidated reporting generated by the platform difficult to understand and they want to be able to understand these reports. They would be prepared to pay more for better quality reporting if they feel the increase in fees is commensurate with the value they place on receiving better quality reporting.

The advice provider recommends that the client switch to another platform because the format of its consolidated reports on the client's holdings will be easier for the client to follow. Compared with the fees the client is currently paying, the fees for this other platform are higher by 0.1% of the value of the client's assets administered by the platform.

The client views a sample consolidated report from the other platform, says that they find this format of reporting easier to understand and indicates that they are prepared to pay the higher fees for this better quality reporting.

Commentary

In this scenario, we would consider that a reasonable advice provider would believe that the client is likely to be in a better position if the client follows the advice.

The advice provider has complied with the best interests duty.

Example 7: Advice that is unlikely to leave the client in a better position**Scenario**

A client holds a portfolio of products through a platform. They have told their advice provider that they believe their current platform is providing an acceptable service and they can understand the reporting provided but they are concerned about the fees they are paying for using the platform.

The advice provider discusses the reports with the client and believes that the client understands them, even though they are presented in a complex manner.

The advice provider recommends that the client switch to another platform because the format of its consolidated reports on the client's holdings will be easier for the client to follow. Compared with the fees the client is currently paying, the fees for this other platform are higher by 0.1% of the value of the client's assets administered by the platform.

Commentary

In this scenario, we would not consider that a reasonable advice provider would believe that the client is likely to be in a better position if the client follows the advice. This is because the client was concerned about costs but was switched to a platform with higher costs.

The advice provider has not complied with the best interests duty.

Processes used when providing advice

- RG 175.252 We expect that advice providers will follow processes to ensure that they act in the best interests of their clients.
- RG 175.253 AFS licensees must take reasonable steps to ensure that their representatives comply with the best interests duty (and the other obligations in Div 2 of Pt 7.7A): s961L. This obligation extends to any processes that a licensee develops to assist advice providers to comply with the best interests duty.
- RG 175.254 We expect that processes for complying with the best interests duty will ensure that, within the subject matter of the advice sought by the client:
- (a) the scope of the advice includes all the issues that must be considered for the advice to meet the client's objectives, financial situation and needs (including the client's tolerance for risk);
 - (b) if the scope of the advice changes, the change is consistent with the client's objectives, financial situation and needs;
 - (c) the client's objectives, financial situation and needs are identified through inquiries or otherwise; and
 - (d) the advice provider focuses on providing advice that is not product specific, or on a combination of advice that is both product specific and non-product specific, where this would better suit the client's objectives, financial situation and needs. Advice that is not product specific may include advice to do nothing.

Example 8: Providing advice that is not product specific**Scenario**

A client who is 33 years old approaches an advice provider for advice on wealth accumulation strategies. The client has recently received a promotion and has considerable surplus income. On assessment, the advice provider establishes that, because of the high level of income the client receives, they have limited ability to add more funds to superannuation through ‘salary sacrifice’ concessional contributions. The client’s mortgage is significant, but manageable, given their current income and personal circumstances.

The advice provider provides recommendations to salary sacrifice up to the maximum limit for concessional contributions, and to use the surplus funds to repay the mortgage.

Commentary

The subject matter of advice sought by the client is wealth accumulation strategies. The advice provider has complied with the best interests duty because they have provided the client with advice that is not product specific and is consistent with the subject matter of the advice sought by the client.

- RG 175.255 We are more likely to take the view that processes for complying with the best interests duty are not effective, and that the best interests duty in s961B(1) is not being complied with, if an advice model typically leads to a one-size-fits-all outcome—that is, the processes do not allow each client’s relevant circumstances to be taken into account, or result in advice that does not reflect the client’s relevant circumstances.
- RG 175.256 What is needed to comply with s961B(1) varies depending on the circumstances of each case. We expect advice providers to exercise judgement in acting in the best interests of the client.
- RG 175.257 If an advice provider cannot act in the client’s best interests in providing them with advice, the provider must not provide the advice—otherwise they will be in breach of s961B. In declining to advise the client, it may be helpful for the advice provider to refer the client to another advice provider who would be better placed to act in the client’s best interests.

Interaction between the best interests duty in s961B(1) and the ‘safe harbour’ in s961B(2)

- RG 175.258 Section 961B(2) sets out a ‘safe harbour’ for complying with the best interests duty in s961B(1). The elements of the safe harbour are discussed at RG 175.267–RG 175.361.
- RG 175.259 Showing that all of the elements in s961B(2) have been met is one way for an advice provider to satisfy the duty in s961B(1). However, it is not the only way.

RG 175.260 The Revised Explanatory Memorandum states that:

It is expected that the interpretation of the general obligation in subsection (1) will be informed by the steps set out in subsection (2). Those steps provide an indication of what, as a minimum, is expected of [advice] providers in order to be considered to have acted in the best interests of the client (paragraph 1.25).

RG 175.261 Consistent with these statements, advice providers must carry out the steps in s961B(2)(a)–(g)—or other steps that would, at a minimum, produce at least the same standard of advice for the client as if s961B(2) had been complied with—whenever they provide personal advice to a client.

RG 175.262 We expect that these processes will result in a reasonable advice provider believing that the client is likely to be in a better position if the client follows the advice: see RG 175.244–RG 175.251.

The modified best interests duty

RG 175.263 In some circumstances, a modified form of best interests duty applies. Table 6 sets out these circumstances and how the best interests duty has been modified.

Note: The *Corporations Amendment (Financial Advice Measures) Act 2016* amended the modified best interests duty in s961B(3) and (4) of the Corporations Act and applies to personal advice given to retail clients on or after 19 March 2016: s1531A and 1531B. Where personal advice has been given to retail clients before 19 March 2016, the requirements in the modified best interests duty in s961B(3) and (4) that were in effect at the time the advice was provided remain applicable.

Table 6: The modified best interests duty

Application	Acting in the best interests of the client	Complying with the modified best interests duty
The subject matter of the advice sought by the client relates only to a basic banking product, general insurance product, consumer credit insurance, or a combination of any of these products, and the advice provider is an agent or employee of an Australian ADI, or is otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI: s961B(3) and 961B(5), and reg 7.7A.05.	<p>The advice provider satisfies the best interests duty in s961B(1) in relation to the basic banking product and the general insurance product if the advice provider takes the steps in s961B(2)(a)–(c).</p> <p>The advice provider is not required to prove that they have taken the steps in s961B(2)(d)–(g) in relation to advice on the basic banking or general insurance products.</p> <p>Note: Advice on consumer credit insurance continues to be subject to the full best interests duty.</p>	<p>Our guidance on s961B(2)(a)–(c) also applies when the modified best interests duty applies: see RG 175.272–RG 175.315.</p> <p>RG 244 contains examples on the practical application of the modified best interests duty.</p>
The subject matter of the advice sought by the client is a general insurance product: s961B(4) and 961B(5), and reg 7.7A.06.	<p>The advice provider satisfies the best interests duty in s961B(1) if the advice provider takes the steps in s961B(2)(a)–(c).</p> <p>The advice provider is not required to prove that they have taken the steps in s961B(2)(d)–(g).</p>	<p>Our guidance on s961B(2)(a)–(c) also applies when the modified best interests duty applies: see RG 175.272–RG 175.315.</p> <p>RG 244 contains examples on the practical application of the modified best interests duty.</p>

RG 175.264 Advice providers can provide scaled advice when the modified best interests duty applies. For additional guidance on how advice providers can provide scaled advice when the modified best interests duty applies, see Section D of [RG 244](#).

RG 175.265 For the modified best interests duty that applies when the subject matter of the advice sought by the client is a basic banking product, general insurance product, consumer credit insurance, or a combination of any of these products, the types of arrangement where a person is acting by arrangement with an Australian ADI under the name of the Australian ADI include:

- (a) contractors;
- (b) employees of employment agencies who may be temporarily working for the Australian ADI;
- (c) employees of a body corporate related to the Australian ADI; and
- (d) employees of another company who work exclusively for the Australian ADI.

Note 1: This is not intended to be an exhaustive list.

Note 2: Advice on consumer credit insurance continues to be subject to the full best interests duty.

RG 175.266 There is nothing in s961B(3) that prohibits a contractor from being a contractor for more than one Australian ADI, or from being a contractor to one ADI and an employee to another ADI.

Safe harbour for complying with the best interests duty

RG 175.267 Section 961B(2) provides a ‘safe harbour’ for advice providers. If an advice provider can show that they have taken the steps in s961B(2), they are considered to have complied with the best interests duty.

RG 175.268 The safe harbour requires an advice provider to:

- (a) identify the objectives, financial situation and needs of the client that were disclosed by the client through instructions;
- (b) identify:
 - (i) the subject matter of the advice sought by the client (whether explicitly or implicitly); and
 - (ii) the objectives, financial situation and needs of the client that would reasonably be considered relevant to advice sought on that subject matter (client’s relevant circumstances);
- (c) if it is reasonably apparent that information relating to the client’s relevant circumstances is incomplete or inaccurate, make reasonable inquiries to obtain complete and accurate information;

- (d) assess whether the advice provider has the expertise required to provide the client with advice on the subject matter sought and, if not, decline to provide the advice;
- (e) if it would be reasonable to consider recommending a financial product:
 - (i) conduct a reasonable investigation into the financial products that might achieve the objectives and meet the needs of the client that would reasonably be considered relevant to advice on that subject matter; and
 - (ii) assess the information gathered in the investigation;
- (f) base all judgements in advising the client on the client's relevant circumstances; and
- (g) take any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances: s961B(2).

RG 175.269 In RG 175.272–RG 175.361, we set out our expectations for complying with each of these steps.

RG 175.270 Where an advice provider cannot show that all elements of the safe harbour have been met, the advice provider cannot rely on the safe harbour.

RG 175.271 In Appendix 3, we provide two examples of the process we apply when reviewing personal advice to determine whether the advice provider has demonstrated compliance with the best interests duty in s961B. See also Appendix 3 of [Report 515](#) *Financial advice: Review of how large institutions oversee their advisers* (REP 515) for a checklist of issues to consider when reviewing personal advice.

The client's relevant circumstances disclosed through instructions

RG 175.272 This first element in the safe harbour requires an advice provider to determine what the client's objectives, financial situation and needs are, based on the information that has been disclosed to the advice provider when they received instructions from the client to provide them with advice: s961B(2)(a).

RG 175.273 A client may communicate their instructions in a number of different ways. For example, instructions may be provided through a face-to-face meeting, by telephone or email, or by entering information into an online form or program.

RG 175.274 For an existing client, the client's instructions could include confirming that the information previously provided remains relevant.

- RG 175.275 Many clients do not know or fully understand what their objectives, financial situation or needs are. Clients may also provide instructions that are unclear or seem inconsistent with their circumstances. In these situations, the advice provider may need to make further inquiries of the client to identify their objectives, financial situation and needs from the information disclosed through the client's instructions.
- RG 175.276 We do not interpret the reference to 'instructions' in s961B(2)(a) as always applying to the first communication a client makes with an advice provider when requesting advice. Instructions may be given over a number of communications.
- RG 175.277 Depending on what a client's instructions are and how they have been provided, advice providers may need to exercise their judgement in determining what the client's objectives, financial situation and needs are from the instructions.
- RG 175.278 For example, many clients ask a financial adviser for advice in response to a life event, such as divorce, redundancy or receiving an inheritance, rather than on a specific product. In this situation, an advice provider will need to exercise their judgement in identifying what the client's objectives, financial situation and needs are based on the information disclosed by the client about the life event: see Example 11.

The subject matter of the advice sought by the client

- RG 175.279 The next element of the safe harbour requires an advice provider to identify the subject matter of the advice sought by the client (whether explicitly or implicitly): s961B(2)(b)(i). This is relevant to determining the scope of the advice.
- RG 175.280 The subject matter of the advice could be a goal the client is seeking to achieve and a strategy for reaching their goal, as well as, or instead of, a recommendation about specific financial products or classes of financial product. The request for advice could also be triggered by an event or situation (e.g. divorce, redundancy or receiving an inheritance).
- RG 175.281 Either an advice provider or the client may suggest limiting or revising the subject matter of advice sought by the client. If a client seeks advice on a revised subject matter, the advice provider must comply with the best interests duty and related obligations in Div 2 of Pt 7.7A in relation to the revised subject matter.

Scope of the advice

- RG 175.282 An advice provider can determine the scope of the advice only after identifying the subject matter of the advice sought by the client.
- RG 175.283 An advice provider needs to use their judgement in deciding on the scope of the advice. An advice provider must determine the scope of the advice in a way that is consistent with the client's relevant circumstances and the subject matter of the advice they are seeking.
- RG 175.284 It is possible to limit the scope of advice to a single issue if this is consistent with the subject matter of advice sought by the client: see Section D of [RG 244](#).

Range of financial products, classes of financial product and strategies

- RG 175.285 In determining the scope of the advice, an advice provider will need to use their knowledge about a range of strategies, classes of financial product and specific financial products commonly available and which are relevant considering the subject matter of the advice sought by the client.
- RG 175.286 This is also necessary to comply with the requirement to give appropriate advice under s961G: see RG 175.362–RG 175.385.

Explicit and implicit subject matter

- RG 175.287 The subject matter of advice sought by a client may be explicit from the client's request for advice. Example 9 and Example 10 are examples of when the subject matter of advice sought by a client is explicit.

Example 9: Explicit advice—Advice on nominating beneficiaries

A client asks the trustee of their superannuation fund for advice only on nominating beneficiaries for their superannuation account with the trustee.

Example 10: Explicit advice—Motor vehicle insurance

A client contacts an insurance broker and asks for advice on what insurance they require to cover potential damage to their motor vehicle or property damage caused by the use of their motor vehicle.

- RG 175.288 The subject matter of advice sought by a client may also be implicit—for example, when a client requests advice in response to a life event: see Example 11.

Example 11: Implicit advice—Receiving a windfall**Scenario**

A client has received a substantial inheritance from a recently deceased aunt. The client is in their early 20s and completing their final year of university. They have no knowledge of financial matters and are seeking advice about how the inheritance should be applied to improve their financial position. The client has a small credit card debt and a HECS-HELP university fees debt, wants to upgrade their car and would like to buy a house in the next three to five years.

Commentary

It is implicit that the client is seeking advice about managing and repaying debt, managing expenses and how to save for future goals based on their circumstances.

Example 12: Implicit advice—Business insurance**Scenario**

A client is starting a new business and visits an insurance broker and asks for advice on what insurance they will need for their new business.

Commentary

It is implicit that the client is seeking advice about what business risks need to be insured.

RG 175.289 When the subject matter of advice sought by a client may be implicit, advice providers will need to discuss with their client the subject matter of the advice they are seeking.

RG 175.290 Often, advice providers may refine their understanding of the subject matter of advice sought as they discover more information about their client. See Example 14 below and Section D of [RG 244](#).

How to identify the subject matter of the advice

RG 175.291 Some factors that may be relevant in identifying the subject matter of the advice sought by the client include:

- (a) what the client's instructions are;
- (b) why the client is seeking financial advice;
- (c) the outcomes the client wants to achieve if they follow the advice (i.e. their goal in seeking advice); and
- (d) how much the client is willing to pay for the advice, if this amount is reasonable. Clients will not always understand how much it costs to provide advice on the subject matter they are seeking.

RG 175.292 These factors need to be considered, where relevant, and weighed against each other in determining the subject matter of the advice being sought by the client.

- RG 175.293 As a matter of good practice, if it is not self-evident, advice providers should tell their clients what they think the subject matter of advice is that the client is seeking and test with the client whether this is correct. If this is not done, there is a much greater risk that an advice provider will not correctly identify the subject matter of the advice sought by the client.
- RG 175.294 As mentioned at RG 175.291(d), how much the client is willing to pay for the advice can be a relevant factor in determining the subject matter of the advice the client is seeking. However, it does not mean that advice providers can necessarily interpret the subject matter of advice sought according to what can be provided at the price the client is willing to pay.
- RG 175.295 For example, an advice provider cannot exclude consideration of important issues based on the cost the client is willing to pay, nor can the advice provider use the client's willingness to pay in determining the scope of the advice in a way that is inconsistent with the client's relevant circumstances. More information on determining the scope of the advice is discussed in Section D of [RG 244](#) and RG 175.282–RG 175.286. See also Example 13.

Example 13: Assessing the scope of advice inappropriately

Scenario

A client engages the services of an advice provider to provide them with advice to address three objectives:

- to pay off their home loan;
- to obtain education funding strategies for the expected education expenses of two children; and
- to increase their superannuation balance.

The client is quoted and accepts a fee of \$880 (GST inclusive) for the advice. In the SOA, the scope of advice is stated to be 'advice focusing on superannuation only'. The client is advised to consolidate their superannuation funds.

The advice does not consider debt management, superannuation contribution strategies or education funding. The SOA lists these areas as the areas of advice sought by the client, and states that advice will be provided on these issues separately for an additional fee, if the client wishes.

Commentary

The advice provider has inappropriately determined the scope of the advice based on what the client has agreed to pay. The scope of advice is inconsistent with the subject matter of advice sought by the client. If the advice provider did not plan on providing advice based on the subject matter sought by the client, they should have discussed revising the subject matter with the client: see RG 175.296–RG 175.298 and Example 14.

- RG 175.296 If a client requests advice on a number of topics but is not willing to pay for advice on all of these topics, the advice provider must discuss with the client what advice they can provide based on the amount the client is willing to

pay. It is up to the client to determine whether or not they will continue to seek advice on a revised subject matter.

RG 175.297 In discussing the subject matter of advice with the client, the advice provider must not engage in conduct that will mislead or deceive, or is likely to mislead or deceive—for example, by engaging in conduct, including by omission, that will lead, or is likely to lead, the client to think that the advice provider believes that any revised subject matter is better for the client, if the advice provider does not believe this.

RG 175.298 As a matter of good practice, if a client is not willing to obtain personal advice because of the cost involved, an advice provider may consider providing the client with other solutions, such as:

- (a) giving the client factual information;
- (b) giving the client general advice;
- (c) offering to provide personal advice on another subject matter; or
- (d) recommending that the client see a financial counsellor or contact the Department of Human Services' Financial Information Service.

Note: For more information, see the Department of Human Services' [Financial Information Service](#).

Example 14: Revising the scope based on a client's ability to pay

Scenario

A client in their early 40s asks an advice provider to review every aspect of their financial situation to determine how the advice provider can maximise the client's savings over the medium and long term. The advice provider gives the client an estimate of the cost to prepare the requested advice. This amount is more than the client is willing to pay for the advice.

The advice provider then identifies the key areas that they think the client should receive advice on, based on the objectives, financial situation and needs that the client disclosed to the advice provider in their instructions.

The advice provider suggests that the client could seek advice on a more limited subject matter. The advice provider also explains the risks of not receiving advice on the other areas that are not covered in the revised subject matter of the advice. They then give the client a revised estimate.

The client agrees to receive advice on the revised subject matter, and acknowledges that they understand the risks of receiving advice that is not as comprehensive as their initial request for advice.

The advice provider gives advice on the revised subject matter of advice sought by the client. The advice provider also provides the client with some factual information and resources for the areas of advice that are not relevant to the client right now, but may be in the future.

Commentary

This example illustrates how an advice provider may work together with the client to revise the subject matter of advice the client is seeking, where the client is not willing to pay for the cost of advice they initially requested.

Identifying the client's relevant circumstances

- RG 175.299 If an advice provider wishes to rely on the safe harbour for complying with the best interests duty, they must identify the client's relevant circumstances: s961B(2)(b)(ii).
- RG 175.300 The client's relevant circumstances may include a life event they have experienced and/or a goal the client is seeking to achieve.
- RG 175.301 Identifying the client's relevant circumstances requires an advice provider to use their judgement and complete reasonable inquiries into the client's relevant circumstances.

Making inquiries

- RG 175.302 Advice providers must first consider whether the information initially disclosed to them by the client is sufficient to identify the client's relevant circumstances. We expect that, often, it will not be sufficient. In this situation, advice providers will need to make further inquiries to identify the client's relevant circumstances.
- RG 175.303 An advice provider can make inquiries about whether the information already held about an existing client's relevant circumstances is up-to-date and complete, instead of asking the client to resupply information the advice provider already holds. If the client is seeking advice on a subject matter they have not received advice on before, it is likely that the advice provider will need to make additional inquiries to identify the client's relevant circumstances.
- RG 175.304 To satisfy the requirement in s961B(2)(b)(ii), an advice provider may need to make inquiries additional to those that they normally make. This is particularly important where the advice is relatively complex or where it is reasonably apparent that the client has a low level of financial literacy.
- RG 175.305 The inquiries an advice provider makes as part of their client fact-finding process can be 'scaled up' or 'scaled down', depending on the nature of the advice being sought: see Section D of [RG 244](#).

Revising the subject matter of advice

- RG 175.306 When making inquiries into the client's relevant circumstances, an advice provider may discover that a subject matter of advice different from the one sought by the client would better suit the client's objectives, financial situation and needs. The advice provider may discuss this with the client and the client may decide to revise the subject matter of the advice they are seeking to the more suitable subject matter identified by the advice provider.
- RG 175.307 If the advice provider considers that another subject matter would be more suitable, and does not advise the client, this may be conduct that would

mislead or deceive the client, or would be likely to mislead or deceive. This would be the case if the client expects, or would be likely to expect, the advice provider to tell the client that the advice provider considers another subject matter more suitable.

RG 175.308 It is also possible that additional information about the client's relevant circumstances may lead to a change or uncertainty in what the advice provider identifies as the subject matter of the advice that the client has sought. If this occurs, the advice provider must clarify this with the client. This does not mean that a full 'fact find' or detailed investigation into financial products is needed in all cases.

Advice on financial products with an investment component

RG 175.309 Where advice relates to financial product(s) with an investment component, we consider that—depending on the subject matter of advice sought by the client—the client's relevant circumstances may include the client's:

- (a) need for regular income (e.g. retirement income);
- (b) need for capital growth;
- (c) desire to minimise fees and costs;
- (d) tolerance for the risk of capital loss, especially where this is a significant possibility if the advice is followed;
- (e) tolerance for the risk that the advice (if followed) will not produce the expected benefits. For example, in the context of retirement advice, this may include considering longevity risk, market risk and inflation risk;
- (f) existing investment portfolio;
- (g) existing debts;
- (h) investment horizon;
- (i) need to be able to readily 'cash in' the investment;
- (j) capacity to service any loan used to acquire a financial product, including the client's ability to respond to any margin call or make good any losses sustained while investing in leveraged products; and
- (k) tax position, social security entitlements, family commitments, employment security and expected retirement age.

Note: This is not an exhaustive list.

RG 175.310 The client's relevant circumstances include any other matter that would reasonably be considered relevant to the advice, based on the advice provider's obligations in s961B. This would normally encompass any matter that the client indicates is important.

Labour standards and environmental, social or ethical considerations

- RG 175.311 Advice providers must form their own view about how far s961B requires inquiries to be made into the client's attitude to environmental, social or ethical considerations. Advice providers may need to ascertain whether environmental, social or ethical considerations are important to the client and, if they are, conduct inquiries about them.

Inquiries where information is incomplete or inaccurate

- RG 175.312 If it is reasonably apparent that information about a client's relevant circumstances is incomplete or inaccurate, an advice provider must make reasonable inquiries to obtain complete and accurate information: s961B(2)(c). What is needed to comply with this requirement will vary depending on the circumstances, including the nature of the advice.
- RG 175.313 An objective standard exists for the obligation to identify whether the information the advice provider has obtained on the client's relevant circumstances is incomplete or inaccurate. Advice providers need to exercise judgement in doing this. The relevant standard of conduct required depends on whether something is 'reasonably apparent'.
- RG 175.314 Whether something is 'reasonably apparent' will be judged by reference to what would be apparent to someone with a reasonable level of expertise in the subject matter of the advice sought by the client, and that person exercised care and objectively assessed the information given to the advice provider by the client: s961C.
- RG 175.315 An objective standard also applies to the obligation to make inquiries to obtain complete and accurate information. The relevant standard is making 'reasonable inquiries'.

Example 15: Advice on investing \$5,000 in a basic deposit product**Scenario**

A customer approaches a bank teller, asking them for advice about which of the bank's deposit accounts they should invest \$5,000 in.

Commentary

If personal advice is provided, the bank teller would not be expected to conduct a full 'fact find' in relation to the customer's circumstances. The bank teller would need to ask the customer some questions about areas where the bank has incomplete information about the customer's relevant circumstances. For example, the bank teller may ask further questions to help them determine when the customer would need to access the \$5,000 and whether they have any existing debts, such as credit card debt.

If personal advice is provided, the teller would not be expected to consider products offered by competitors.

Alternatively, the teller could give the customer general advice. We will not take action against an AFS licensee, authorised representative or advice provider where personal advice is given merely because general advice is given using personal information about a client's relevant circumstances to choose general advice that is relevant and useful to the client. This only applies if the client's relevant circumstances are not considered when preparing the advice, and it is unlikely that the client would expect the advice provided to reflect a consideration of their relevant circumstances: see Section B and [RG 244](#).

Assessing the expertise of the advice provider

- RG 175.316 If an advice provider chooses to rely on the safe harbour for complying with the best interests duty, they must assess whether they have the expertise to provide advice on the subject matter of the advice sought by the client. If, as a result of making this assessment, they determine that they do not have this expertise, they must not provide advice on that subject matter: s961B(2)(d).
- RG 175.317 If the advice provider does not have the necessary expertise, they may communicate their inability to provide advice on the subject matter sought to the client. The client may then agree to revise the subject matter of advice they are seeking. For example, the client may agree to seek advice from another advice provider on the area that the advice provider does not have expertise in. It is up to the client to determine whether they will continue to seek advice on a revised subject matter.
- RG 175.318 In all cases, an advice provider needs to use their judgement in deciding on the scope of the advice. An advice provider must not determine the scope of the advice in a way that is inconsistent with the client's relevant circumstances or the subject matter of the advice they are seeking: see RG 175.282–RG 175.286.
- RG 175.319 In assessing whether they have the necessary expertise, an advice provider must consider the following:
- (a) for individual advice providers, any specific requirements for, or limitations on, providing advice that are imposed on them by their AFS licensee or authorised representative and the basis for these requirements or limitations;
 - (b) for individual advice providers, their professional qualifications and training. This includes the extent to which their qualifications and training cover determining the strategy the advice is based on;
 - (c) for individual advice providers, their knowledge and skills in relation to the strategy and financial product(s) they are advising the client on (as relevant). This includes understanding the features of any financial products they recommend to clients; and

- (d) the AFS licence authorisations of their licensee, or of the advice provider if the advice provider is the licensee. The AFS licence authorisations are relevant because AFS licensees have an obligation to:
 - (i) ensure that they are competent to provide the financial services they are authorised to provide;
 - (ii) maintain the competence to provide those financial services; and
 - (iii) ensure that their representatives are adequately trained, and are competent, to provide those financial services: s912A(1).

Note: For more information, see [RG 104, Regulatory Guide 105 Licensing: Organisational competence](#) (RG 105) and [Regulatory Guide 146 Licensing: Training of financial product advisers](#) (RG 146).

RG 175.320 The Revised Explanatory Memorandum states that:

In most cases, as long as the provider is competent for the purposes of the Corporations Act to provide advice for that class of financial product, the [advice] provider would satisfy this requirement [i.e. s961B(2)(d)]. However, in the situation where the client requests advice on a particularly technical or complex aspect of the financial product, the [advice] provider may not have the expertise to provide this advice even though they are generally competent to provide advice about that class of product. In this situation, in order to act in the client's best interests, the [advice] provider should decline to provide the advice (paragraph 1.39).

RG 175.321 If an advice provider does decline to provide the advice, they may refer the client to another advice provider who has the expertise to provide the advice—as long as this referral is not, in itself, personal advice. A referral will be personal advice if it is financial product advice and the advice provider has considered one or more of the client's objectives, financial situation and needs, or a reasonable person might expect the advice provider to have considered one or more of these matters: s766B(3).

RG 175.322 In some circumstances, a referral that is financial product advice may be exempt from the requirement to be covered by an AFS licence under regs 7.6.01(e) and 7.6.01(ea).

RG 175.323 The referee advice provider will also need to comply with the best interests duty and related obligations in relation to any personal advice they provide.

When it is reasonable to recommend a financial product

RG 175.324 If, in considering the subject matter of the advice sought, it would be reasonable to consider recommending a financial product, an advice provider must:

- (a) conduct a reasonable investigation into the financial products that might achieve the objectives and meet the needs of the client that would reasonably be considered relevant to the subject matter of the advice (s961B(2)(e)(i)); and
- (b) assess the information gathered in the investigation (s961B(2)(e)(ii)).

RG 175.325 A reasonable investigation conducted under s961B(2)(e) does not require an investigation into every product available: s961D. However, if a client requests that an advice provider consider a specific financial product, the advice provider must investigate that financial product.

RG 175.326 Before recommending that a client acquire a financial product, we expect advice providers to formulate the strategy they are basing the advice on, taking into account the advice provider's obligations under s961B.

RG 175.327 We believe that an advice provider would need to do this before determining whether it is reasonable to consider recommending a financial product.

RG 175.328 In some cases, it is not reasonable to recommend a financial product, given the subject matter of advice sought by the client. Instead, s961B might require an advice provider to:

- (a) provide the client with advice that is not product specific—this may include the advice to do nothing;
- (b) advise the client to dispose of a financial product; or
- (c) advise the client to make an increased investment without any new acquisition of a financial product.

Note: Example 8 is an example of providing advice that is not product specific.

RG 175.329 This element of the safe harbour applies to situations where an advice provider recommends that a client use a platform to acquire financial products, where the rights of the client in the platform are a type of financial product. This means that an advice provider needs to consider whether it would be reasonable to recommend that a client use a platform to acquire financial products or whether they should acquire products directly.

Conducting a reasonable investigation

RG 175.330 The requirement to conduct a reasonable investigation under s961B(2)(e)(i) is scalable. Less extensive inquiries are likely to be necessary when the advice is for a relatively simple purpose. More extensive inquiries are likely to be necessary when the advice involves complex financial products or strategies: see Section D of [RG 244](#) for additional guidance on giving scaled advice.

RG 175.331 Advice providers may rely on investigations conducted by their AFS licensees. While they may also rely, to some extent, on various service providers (e.g. research houses), the advice provider remains responsible to the client for the advice that they give.

Research reports

RG 175.332 Advice providers often use research produced by external research report providers to identify products that may be suitable for their clients. This research may assist in the development of approved product lists or in the

preparation of SOAs. Advice providers are expected to make inquiries and research the products that they give advice on.

RG 175.333 Not all research is the same. We expect advice providers to conduct due diligence on a research report provider that they intend to use.

Note: Advice providers should refer to [RG 79](#) for guidance on choosing a research report provider and determining the extent to which they can rely on the quality and integrity of the research that the provider produces.

RG 175.334 In conducting due diligence, we expect advice providers to consider the business model and conflicts of interest associated with each potential service provider. This includes the advice provider ensuring that they understand and consider the disclosures each service provider makes about:

- (a) its business model;
- (b) its product selection processes;
- (c) the methodology it employs; and
- (d) its ratings spread—that is, what percentage of products received each type of rating, such as ‘recommended’, ‘neutral’ or ‘not recommended’, over a period of time.

RG 175.335 The advice provider can then form a view about the service provider and the extent to which the advice provider can rely on the research.

Market benchmarking

RG 175.336 One way an advice provider can conduct a reasonable investigation into financial products, for the purposes of s961B(2)(e)(i), is by benchmarking the product at appropriate intervals against the market for similar products to establish its competitiveness on key criteria, such as:

- (a) performance history over an appropriate period;
- (b) features;
- (c) fees; and
- (d) risk.

RG 175.337 The benchmarking must be reasonably representative of the market for products offered by a variety of different issuers that are similar to the product being investigated.

RG 175.338 If an advice provider relies on benchmarking to satisfy s961B(2)(e)(i), they still need to understand the features of the product they are investigating. This includes the nature of the product and any underlying assets.

Switching advice

RG 175.339 Switching advice is personal advice that recommends a client replace (in full or in part):

- (a) one financial product with another financial product; or
- (b) the client's interest in a MySuper product with an interest in another MySuper product or a Choice superannuation product offered by the superannuation fund: s947D(1) (see RG 175.176–RG 175.177).

This includes where the client's existing holding is money in a bank account.

RG 175.340 We consider that, when giving switching advice, s961B(2)(e) requires an advice provider to consider and investigate:

- (a) the existing product (and, if applicable, the relevant option) to see if it is a financial product that might meet the client's relevant circumstances;
- (b) the new financial product(s) (and, if applicable, the options available under the financial product(s)) that the client could potentially acquire or invest in; and
- (c) the new product(s) (or option(s)) recommended to the client.

Example 16: A reasonable investigation

Scenario

An advice provider is considering recommending that their client redirect their superannuation contributions to a self-managed superannuation fund (SMSF) that the advice provider will help the client set up.

Commentary

In conducting a reasonable investigation for the purposes of s961B(2)(e)(i), the advice provider would need to investigate both the existing superannuation fund and the SMSF.

RG 175.341 An advice provider's assessment of the results of their investigation under s961B(2)(e)(i) must be informed by the other requirements in s961B(2). This includes basing all judgements on the client's relevant circumstances: s961B(2)(f).

Interaction with s947D

RG 175.342 Section 947D requires an advice provider to disclose certain information in the SOA about any costs to the client—or benefits the clients may lose—as a result of switching (in full or in part) from one financial product to another. There may be some overlap in the investigations an advice provider makes in satisfying s961B(2)(e) and complying with s947D.

RG 175.343 There are also some things an advice provider needs to do under s961B(2)(e) that are not required by s947D, such as:

- (a) determining whether it is reasonable to recommend financial products; and
- (b) finding out information about financial products, beyond the product(s) the advice provider recommends and the existing product, to determine which product(s) they recommend (see RG 175.340(b)).

Note: See also RG 175.374–RG 175.378.

Approved product lists

- RG 175.344 Many AFS licensees restrict the range of products their advice providers can advise on through an approved product list.
- RG 175.345 Approved product lists are often used by AFS licensees as a risk management tool to assist:
- (a) in meeting their legal obligations when providing financial product advice; and
 - (b) their representatives in complying with their legal obligations.
- RG 175.346 The best interests duty does not prevent or require the use of approved product lists.
- RG 175.347 In some cases, an advice provider can conduct a reasonable investigation into financial products under s961B(2)(e) by investigating the products on their AFS licensee's approved product list.
- RG 175.348 In other cases, an advice provider will need to investigate and consider a product that is not on their AFS licensee's approved product list to show that they have acted in the best interests of the client when providing them with personal advice—for example:
- (a) if the client's existing products are not on the approved product list of the advice provider's licensee and these products might be able to meet the client's relevant circumstances;
 - (b) if an approved product list used by an advice provider is restricted to one class of product and there are products that are not in that class that would better meet the client's relevant circumstances, considering the subject matter of the advice sought by the client; or
 - (c) if the client requests the advice provider to consider a specified financial product that is not on the approved product list of the advice provider's licensee.
- RG 175.349 Advice providers are expected to exercise judgement in determining whether s961B(2)(e) requires them to consider products that are not on their AFS licensee's approved product list.
- RG 175.350 If an advice provider recommends a product that is not on their AFS licensee's approved product list, they must ensure that they have the appropriate authorisations and approvals from their licensee to provide the advice. Their AFS licensee must ensure that the advice is provided in a way that complies with the relevant legal and regulatory requirements (e.g. the requirement for AFS licensees to have adequate professional indemnity insurance).

Note: Our policy on what we consider to be adequate professional insurance cover is set out in [RG 126](#).

- RG 175.351 If an advice provider is unable to recommend products outside their AFS licensee's approved product list, and they need to do this to meet their obligations in Div 2 of Pt 7.7A, the advice provider must not provide the advice.
- RG 175.352 AFS licensees have an obligation to take reasonable steps to ensure that their representatives comply with the best interests duty and related obligations: s961L. Among other things, this requires licensees to consider whether any approved product list, or model portfolio within such a list, is supporting their representatives in complying with these obligations.

All judgements made by the advice provider are based on the client's relevant circumstances

- RG 175.353 To rely on the safe harbour for the best interests duty, an advice provider must base *all* judgements they make in advising the client on the client's relevant circumstances: s961B(2)(f). This includes the judgements that the advice provider makes about:
- (a) the scope of the advice;
 - (b) the extent of the inquiries they make into the client's relevant circumstances;
 - (c) the strategies, and types of financial product and specific financial products they investigate;
 - (d) the strategies, types of financial product and specific financial products the advice provider makes recommendations about; and
 - (e) how the client should acquire financial products, where relevant—for example, whether the client should acquire products directly or through a platform.
- RG 175.354 Recommendations about a financial product may not fully meet the client's relevant circumstances in all cases. In some cases, complying with the best interests duty will require an advice provider to give the client advice that is not product specific—for example, advice on debt levels, estate planning or Centrelink benefits: see Example 8.
- RG 175.355 We consider that, for an advice provider to satisfy s961B(2)(f), a reasonable advice provider would believe that the client is likely to be in a better position if the client follows the advice. For more information, see RG 175.244–RG 175.251.

Other reasonable steps

- RG 175.356 Section 961B(2)(g) of the safe harbour for the best interests duty provides that an advice provider needs to take 'any other step that, at the time the

advice is provided, would reasonably be regarded as being in the best interests of the client, given the client’s relevant circumstances’.

RG 175.357 The words ‘at the time the advice is provided’ mean that this provision does not consider what may have been in the client’s best interests in hindsight. The Revised Explanatory Memorandum states that:

In satisfying this final step [s961b(2)(g)], [an advice] a provider will need to go further than in the previous more specific steps [s961b(2)(a)–(f)], and will have to take any step necessary to demonstrate that it has acted in the best interests of the client (paragraph 1.43).

RG 175.358 What advice providers need to do to show that they have satisfied s961B(2)(g) varies depending on the surrounding circumstances. Advice providers may need to undertake the following steps, if they have not already done so, to satisfy s961B(2)(g):

- (a) explain clearly to the client the advice service that *is* and *is not* being provided (see Section E of [RG 244](#));
- (b) if the advice includes a product recommendation, provide related strategic recommendations that benefit the client (see Example 17);
- (c) depending on the subject matter of the advice, specify in the advice that the client should review any decision made about financial products on the basis of the advice provided:
 - (i) once after a period of time;
 - (ii) regularly (e.g. every one or two years); or
 - (iii) if the client’s circumstances change.

The review period will depend on the circumstances, including the recommendation that the advice provider is making, the volatility of any investment returns and the likelihood of a change in the client’s circumstances; and

- (d) offer to provide advice (or refer the client to someone who can provide advice) on any other key issues identified by the advice provider within the subject matter of the advice sought by the client. For example, if the advice provider has identified that it is important for the client to consider whether to consolidate their superannuation accounts, and this is within the subject matter of the advice sought by the client, they may need to offer to assist them (or refer the client to someone who can assist them) in providing advice on that topic.

RG 175.359 There is no absolute requirement to take the steps in RG 175.358. As mentioned above, whether they are required will vary depending on the surrounding circumstances.

RG 175.360 We expect advice providers to exercise their judgement in considering whether any of these additional steps need to be taken to satisfy s961B(2)(g).

Example 17: Advice with strategic recommendations**Scenario**

A retired client, aged 66, meets with an advice provider because they are confused about why they are not receiving as much of the age pension as they think they are entitled to. The client retired at 65.

The client was unsure about what to do with their superannuation when they retired. They have left their superannuation benefits in the accumulation phase and have made lump sum withdrawals every three months to meet their living expenses.

The advice provider recommends that the client adopt a strategy that will:

- allow the client to take advantage of improved age pension benefits by changing from the accumulation to pension phase of superannuation;
- give the client a regular monthly payment to make it easier to manage their cash flow; and
- place the client in a more tax-effective position by moving their retirement wealth from the accumulation phase, where the maximum tax rate is 15%, to the pension phase, where the tax rate is 0%.

As part of the same piece of advice, the advice provider recommends that the client switches to an account-based income stream product to give effect to this strategy.

Commentary

In addition to providing a product recommendation, the advice provider has made strategic recommendations that benefit the client.

- RG 175.361 As with the other obligations imposed on advice providers in Div 2 of Pt 7.7A, an advice provider cannot contract out of s961B(2)(g) or limit the steps they need to take by disclosing that they will not take those steps. However, being clear on the scope of the advice provided, or the inquiries an advice provider has made into the client's relevant circumstances under s961B(2)(b), is not contracting out. For more information, see Section D of [RG 244](#).

Providing appropriate personal advice

- RG 175.362 Personal advice must only be provided if it would be reasonable to conclude that the advice is appropriate to the client, assuming that the best interests duty—or modified best interests duty, where applicable—has been complied with: s961G. This means that an advice provider is assumed to know all the information about the client, strategy and product (if any) that they would know if they have properly complied with s961B.
- RG 175.363 The appropriate advice requirement is directly concerned with the quality of advice resulting from the actions the advice provider has taken in light of the best interests duty: see paragraph 1.24 of the Revised Explanatory Memorandum.

- RG 175.364 For this reason, advice that does not meet the best interests duty is unlikely to be appropriate.
- RG 175.365 We consider that advice is appropriate if it would be reasonable to conclude, at the time the advice is provided, that:
- (a) it is fit for its purpose—that is, following the advice is likely to satisfy the client’s relevant circumstances; and
 - (b) the client is likely to be in a better position if they follow the advice (see RG 175.244–RG 175.251).
- RG 175.366 We consider that s961G imposes a higher standard of advice than the previous obligation under s945A.
- RG 175.367 This is because the inquiries an advice provider needs to make are more extensive under the obligations in Div 2 of Pt 7.7A. If the safe harbour for the best interests duty is being relied on, advice providers must also:
- (a) base all judgements in advising the client on the client’s relevant circumstances; and
 - (b) take any other steps that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client’s relevant circumstances.
- RG 175.368 In administering the appropriate advice requirement, we will take into account the circumstances existing at the time the advice is provided, including but not limited to:
- (a) what is required of the advice provider under s961B, including whether a modified best interests duty applies (see RG 175.263–RG 175.266 and RG 175.371–RG 175.373); and
 - (b) whether the advice, if followed by the client, would be reasonably likely to meet the client’s relevant circumstances.
- RG 175.369 If none of the financial products the advice provider is authorised to advise on are appropriate for the client, the advice provider must not recommend that a client take any action in relation to a financial product.

The modified best interests duty

- RG 175.370 The requirement to provide appropriate advice also applies when the modified best interests duty applies.
- RG 175.371 When the modified best interests duty applies, an advice provider only needs to take the steps in s961B(2)(a)–(c) to comply with the best interests duty in s961B(1): see Table 6. This means that whether the advice is appropriate is judged by reference to the information and knowledge the advice provider would have acquired as a result of:

- (a) identifying the objectives, financial situation and needs of the client that were disclosed by the client through instructions;
- (b) identifying:
 - (i) the subject matter of the advice sought by the client (whether explicitly or implicitly); and
 - (ii) the client's relevant circumstances; and
- (c) if it was reasonably apparent that information relating to the client's relevant circumstances was incomplete or inaccurate, making reasonable inquiries to obtain complete and accurate information: s961B(2)(a)–(c).

RG 175.372 An advice provider is not expected to have any information and knowledge that would have been acquired as a result of taking the steps in s961B(2)(d)–(g).

RG 175.373 When assessing whether an advice provider has complied with the appropriate advice requirement, where the modified best interests duty applies, we will consider whether it would be reasonable to conclude, at the time the advice is provided, that:

- (a) the advice is fit for its purpose—that is, following the advice is likely to satisfy the client's relevant circumstances; and
- (b) the client is likely to be in a better position if they follow the advice (see RG 175.244–RG 175.251).

Example 18: Appropriateness of advice and the modified best interests duty

Scenario

A customer approaches a bank branch employee and explains that they have an online savings account that earns 5% interest per year. The customer would like advice about whether there is a deposit account offered by the bank that offers a higher rate of interest than they are currently earning.

The advice provider recommends an incentives account, under which a base interest rate of 0.5% is paid, plus an additional 5% if the customer makes a minimum deposit of \$40 per month and makes only one withdrawal a month (bonus interest). This means an interest rate of 5.5% is potentially available.

The advice provider does not make any inquiries into how often the customer would like to access their money, or whether the customer would have money each month to deposit into the account. If they had asked the customer a few basic questions about this, they would have discovered that the customer would not satisfy the criteria each month to qualify for the bonus interest.

This means that, if the customer were to change accounts, they would be earning interest at a rate of 0.5%.

Commentary

We expect that, in complying with the modified best interests duty, the advice provider would have discovered that the customer would not meet the monthly withdrawal criteria to receive the bonus interest. This means that it would be inappropriate for the advice provider to recommend that the customer change to the account with the bonus interest.

If personal advice is provided, the advice provider would not be expected to consider products offered by competitors.

Alternatively, the advice provider could give the customer general advice. We will not take action against an AFS licensee, authorised representative or advice provider where personal advice is given merely because general advice is given using personal information about a client's relevant circumstances to choose general advice that is relevant and useful to the client. This only applies if the client's relevant circumstances are not considered when preparing the advice, and it is unlikely that the client would expect the advice provided to reflect a consideration of their relevant circumstances: see Section B and [RG 244](#).

Switching advice

- RG 175.374 When giving switching advice, advice providers must consider the benefits and disadvantages, including the costs and risks, of both the existing and new products or investment options.
- RG 175.375 For example, where an advice provider recommends the client redirect their superannuation contributions into a new superannuation fund, including an SMSF, or other product, the advice provider must consider the benefits and disadvantages of their existing superannuation fund (if it is possible to retain membership) and the new product.
- RG 175.376 We consider that the advice will generally only be appropriate if it would be reasonable to conclude that the net benefits that are likely to result from the product (or investment option) to be acquired, or into which further investment is to be made, are better than under the existing product (or investment option) which is to be disposed of or reduced. This applies even if only one of the products is a financial product under Ch 7 of the Corporations Act.
- RG 175.377 Advice will often be appropriate under s961G if there are overall cost savings for the client and it would be reasonable to conclude these are likely to override the loss of benefits that are of value to the client.
- RG 175.378 The determination of whether there are overall cost savings for the client must take into account all the circumstances, including the cost of the replacement (i.e. making the switch) and the advice provider's fees, if they are payable only if the switch is made.

Example 19: Inappropriate superannuation switching advice**Scenario**

A client has three different superannuation accounts with three different trustees. They approach an advice provider for advice about how best to consolidate their superannuation.

The advice provider recommends that the client consolidate all of their superannuation accounts into a new fund, which will have higher ongoing fees than the combined fees of their old superannuation accounts. The new fund would confer certain additional benefits on the client including:

- the ability to switch between options daily;
- a more varied menu of options; and
- reports and educational material that are easier to understand.

There is nothing in the client's relevant circumstances to indicate that these benefits would be of particular relevance to the client.

Commentary

This advice would be inappropriate. It is not fit for purpose and a reasonable advice provider would not conclude that it is likely that the client will be in a better position if the client follows the advice.

Tax implications outside the advice provider's competence

RG 175.379 A client's tax position may be relevant to the assessment of the client's relevant circumstances. Advice involving complex tax strategies is likely to involve more inquiries about the client's tax position than relatively simple advice.

RG 175.380 When there are material tax implications that the client should consider that go beyond an advice provider's competence, two ways that the advice provider can act in the best interests of their client and give appropriate advice are:

- (a) the advice can be based on advice given to the client by someone with appropriate expertise, such as a registered tax agent. In this case, the advice provider must make clear in the SOA and in discussions with the client that they are assuming the tax advice given by that other person is appropriate, rather than endorsing it; or
- (b) the advice can be limited to matters on which the advice provider is competent to advise—in which case, the advice provider must take steps so that it is reasonable to believe the client understands that they should seek tax advice from a person with appropriate expertise (or form their own view if they have appropriate expertise) before following the advice provider's advice.

Note: There may be other ways an advice provider can give appropriate advice when there are material tax implications that the client should consider that go beyond the advice provider's competence.

Example 20: Seeking tax advice**Scenario**

An advice provider is providing personal advice to a client who wishes to sell their personally held investments which consist of property and shares. The client will contribute the proceeds to their superannuation. The client has held some assets for more than 20 years.

Commentary

In this situation, we would expect a capital gains tax assessment to be obtained from someone with the appropriate expertise, such as a registered tax agent, if the advice provider does not have the competence to provide the advice.

Financial advisers who provide tax (financial) advice services

- RG 175.381 From 1 July 2014, financial advisers who provide tax (financial) advice services as defined in s90–15 of the *Tax Agent Services Act 2009* (TASA) have been regulated by the Tax Practitioners Board (TPB).
- RG 175.382 Under the TASA, financial advisers who provide tax (financial) advice services for a fee or reward can register with the TPB as an individual, company or partnership. However, individual advisers do not have to register with the TPB to provide tax (financial) advice services, provided that:
- (a) they are not doing so for a fee or reward; and

Note: For further information, see information sheet [TPB\(I\) 22/2014 Fee or other reward for tax \(financial\) advisers](#).
 - (b) the entity by whom they are employed or authorised is itself registered and has a sufficient number of individual registered tax agents or tax (financial) advisers.
- RG 175.383 Financial advisers who provide tax (financial) advice services and who are employed by an entity registered as a tax (financial) adviser can satisfy the safe harbour for complying with the best interests duty (including the requirement in s961B(2)(d) of the Corporations Act) even if they are not personally registered with the TPB.
- Note: Section 961B(2)(d) requires an advice provider to assess whether they have the expertise required to provide the client with advice on the subject matter sought and, if not, to decline to provide the advice.
- RG 175.384 The requirement in s961B(2)(d) will generally be satisfied if the entity by whom they are employed or authorised has a sufficient number of individual registered tax agents or registered tax (financial) advisers to provide tax (financial) advice services to a competent standard, and to carry out supervisory arrangements, under s20–5(2)(c)(ii) and 20–5(3)(d)(ii) of the TASA.
- RG 175.385 When determining whether an entity has a sufficient number of individual registered tax agents or tax (financial) advisers, the TPB will take into account

the general obligations imposed on AFS licensees in s912A(1)(d)–(f) in addition to other factors, including:

- (a) the size of the business;
- (b) the types of tax (financial) advice services being offered;
- (c) the number of qualified and experienced staff;
- (d) the frequency of appropriate training and development activities;
- (e) the level of technology used; and
- (f) the supervisory arrangements in place.

Note: For further information, see the [TPB website](#) and [TPB information sheets](#).

Giving a warning for advice based on incomplete or inaccurate information

RG 175.386 Advice providers must make reasonable inquiries to obtain complete and accurate information about the client’s relevant circumstances. Personal advice may be provided if an advice provider makes reasonable inquiries into the client’s relevant circumstances, even if the client has not, in fact, provided all the information that the advice provider has sought.

Note: See RG 175.312–RG 175.315 for more information on making reasonable inquiries to obtain complete and accurate information about the client’s relevant circumstances under s961B(2)(c).

RG 175.387 If it is reasonably apparent, after reasonable inquiries have been made, that information about the client’s objectives, financial situation and needs on which the advice is based is incomplete or inaccurate, an advice provider must warn the client that:

- (a) the advice is, or may be, based on incomplete or inaccurate information relating to the client’s relevant circumstances; and
- (b) because of this, the client should, before acting on the advice, consider the appropriateness of the advice, taking into account their objectives, financial situation and needs: s961H.

Note: Something will be ‘reasonably apparent’ if it would be apparent to a person with a reasonable level of expertise in the subject matter of the advice sought by the client, and that person exercised care and objectively assessed the information given to the advice provider by the client: s961C.

RG 175.388 This warning must also be given if the modified best interests duty applies. For more information on when the modified best interests duty applies, see RG 175.263–RG 175.266.

RG 175.389 Giving a warning does not relieve an advice provider from the obligation to make reasonable inquiries, act in the best interests of the client or provide advice that is appropriate.

Prioritising the client's interests

- RG 175.390 An advice provider must prioritise the interests of the client if the advice provider knows, or reasonably ought to know, when they give the advice that there is a conflict between the interests of the client and the interests of:
- (a) the advice provider;
 - (b) an associate of the advice provider;
 - (c) the advice provider's AFS licensee;
 - (d) an associate of the advice provider's AFS licensee;
 - (e) an authorised representative who has authorised the advice provider to provide financial services (or a financial service) on behalf of an AFS licensee; or
 - (f) an associate of an authorised representative who has authorised the advice provider to provide financial services (or a financial service) on behalf of an AFS licensee: s961J(1).
- RG 175.391 The parties listed at RG 175.390(b)–RG 175.390(f) are referred to as 'related parties' in this regulatory guide. We refer to s961J(1) as the 'conflicts priority rule'.
- RG 175.392 We do not expect an advice provider to make inquiries to determine what conflicting interests their related parties have. An advice provider can comply with s961J without making inquiries by simply acting as an advice provider without a conflict would act in the circumstances.
- RG 175.393 We consider that advice providers will be aware of conflicts of interest disclosed in FSGs that are issued by related parties, and conflicts that are disclosed in SOAs that the advice provider helps to prepare for their AFS licensee or authorised representative.
- RG 175.394 An advice provider cannot comply with the conflicts priority rule merely by disclosing a conflict of interest or getting the client to consent to a conflict.

Note: A condition of a contract (or other arrangement) is void if it seeks to waive any of the obligations in s961J: s960A. Additionally, these obligations cannot be avoided by any notice or disclaimer provided to the client: see RG 175.231.

Identifying the conflict

- RG 175.395 To comply with s961J, an advice provider must first identify what interests they or their related parties have.
- RG 175.396 Considering what benefits (if any) an advice provider or their related parties will receive if the client adopts the advice will help an advice provider determine if a conflict exists.

Giving the client's interests priority

- RG 175.397 Section 961J(1) requires that an advice provider should not act to further their interests or those of one of their related parties over those of the client when giving the client advice.
- RG 175.398 In complying with this obligation, advice providers should consider what a reasonable advice provider without a conflict of interest would do.
- RG 175.399 In administering the conflicts priority rule, our expectation is that the more material the conflict of interest between the client and the advice provider or their related party, the more the advice provider will need to do to prioritise the client's interests.
- RG 175.400 The conflicts priority rule will not always prohibit an advice provider from recommending the client acquire interests in a product issued by a related party.
- RG 175.401 The conflicts priority rule does not prohibit an advice provider from accepting remuneration from a source other than the client (e.g. a fee from a product issuer). However, Div 4 of Pt 7.7A prohibits advice providers from accepting certain types of remuneration that could reasonably be expected to influence the financial product advice they give or the financial products they recommend to clients: see [RG 246](#).
- RG 175.402 If an advice provider gives priority to maximising or receiving the non-client source of remuneration over the interests of the client, the advice provider will be in breach of the conflicts priority rule (see paragraph 1.68 of the Revised Explanatory Memorandum)—for example, if the advice provider prioritises maximising or receiving the commissions that they will receive from a product issuer that are not covered by the conflicted remuneration provisions in Div 4 of Pt 7.7A, such as 'grandfathered' commissions.

Example 21: Remuneration conflicts—Life insurance commissions

Scenario

An advice provider is providing a client with a review of their life insurance policy, which currently sets a death benefit of \$300,000. The advice provider advises the client that they require additional cover of \$100,000.

The advice provider recommends that the client obtain a new policy for \$400,000 and then cancel the existing policy, rather than apply for additional cover within the existing policy. The terms of the life insurance policies and the annual premiums are the same.

The advice entitles the advice provider to a commission of 60% of the annual premium of the whole insured amount (i.e. \$400,000), rather than just the increased amount (i.e. \$100,000).

The client follows the advice. As a result, they need to have medical checks, which they would not have needed if their level of cover was increased.

The client was nearing the four year anniversary of their existing policy. If they had continued to hold their existing policy, including if they increased their level of coverage, they would have been entitled to a 5% increase in the level of cover at no extra cost.

Commentary

In this situation, we consider that s961J has been breached. The advice provider has given priority to maximising the non-client source of remuneration over the interests of the client.

RG 175.403 The conflicts priority rule means that:

- (a) an advice provider must not recommend a product or service of a related party to create extra revenue for themselves, their AFS licensee or another related party, where additional benefits for the client cannot be demonstrated;
- (b) where an advice provider uses an approved product list that only has products issued by a related party on it, the advice provider must not recommend a product on the approved product list, unless a reasonable advice provider would be satisfied that it is in the client's interests to recommend a related party product rather than another product with similar features and costs;

Note: One way that an advice provider may be able to do this is by benchmarking the product against the market for similar products to establish its competitiveness on key criteria such as performance history, features, fees and risk. The benchmarking must be reasonably representative of the market for similar products that are offered by a variety of different issuers.

- (c) an advice provider must not 'over-service' the client to generate more remuneration for themselves or one of their related parties. This means that the advice provider must provide a level of service commensurate with the client's needs. For example, they must not recommend an unduly complex strategy if the client is unlikely to seek ongoing advice; and
- (d) an advice provider must recommend non-financial product solutions relevant to the client's situation, where appropriate, even if this means the client is less likely to need financial advice in the future (e.g. advice on debt reduction, estate planning and/or Centrelink benefits).

Example 22: Over-servicing a client when advising on an SMSF

Scenario

A client approaching retirement meets with an advice provider to seek advice on what to do with their superannuation when they retire. They have been told that SMSFs are an easy way to maximise the value of their superannuation. The client has a healthy superannuation balance because they have been contributing to their superannuation for the past 35 years. They have no experience with investing.

The client's existing employer sponsored superannuation fund has no pension option. The client understands that they need to start making some decisions about their superannuation but, because they have no previous investment experience, they are nervous about this process. They want a simple, cost-effective solution that they can easily understand and does not require too much of their time. They are looking forward to retirement and do not want the burden of watching the market every day, as they have seen some of their colleagues do.

The advice provider recommends an SMSF and reassures the client that they do not need to be too involved because the advice provider will look after it for them.

Commentary

The recommendation to set up an SMSF to a client with no interest or expertise in investment means that the client will always need the assistance of the advice provider. This creates ongoing remuneration for the advice provider and some of the advice provider's related parties at a level of service that exceeds the simple solution the client was seeking. The client's interests have not been prioritised when giving the advice.

RG 175.404 If an advice provider with a conflict is unable to prioritise the client's interests, they must not provide the advice.

The modified best interests duty

RG 175.405 The conflicts priority rule does not apply:

- (a) if the subject matter of the advice sought by the client relates only to a basic banking product, a general insurance product, consumer credit insurance, or a combination of any of these products; and the advice provider is an agent or employee of an Australian ADI, or otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI (s961J(2) and RG 175.265); or
- (b) to the extent that the subject matter of the advice sought by the client is a general insurance product only (s961J(3)).

RG 175.406 These are both cases where the modified best interests duty applies.

RG 175.407 Other than in these circumstances, the conflicts priority rule applies to the advice provided.

Interaction with other obligations

RG 175.408 In some circumstances, depending on the relationship between a client and their advice provider, an advice provider may owe fiduciary duties to their client. If this is the case, they may be precluded from acting if there is a conflict between:

- (a) their personal interest and their duty to act in the interests of their client; or
- (b) their duty to another person and their duty to act in the interests of their client.

RG 175.409 The conflicts priority rule applies in conjunction with the general obligation in s912A(1)(aa) imposed on all AFS licensees to manage conflicts of interest.

RG 175.410 If there is a conflict of interest and the conflicts priority rule also applies, the AFS licensee must ensure that their arrangements for managing the conflict of interest facilitates their advice providers complying with the conflicts priority rule.

RG 175.411 If there is a conflict, we expect advice providers to keep records of the reasoning behind any recommendation that the client acquire new financial products or increase their interest in an existing product, where this advice would benefit the related party: see RG 175.425(d).

Giving scaled advice

RG 175.412 One of the key objectives of the FOFA reforms is to increase access to good quality advice: see *Future of financial advice: Information pack*, 28 April 2011. The importance of facilitating increased access to advice through scaled advice that is limited in scope is also acknowledged in the note to s961B(2), which states that:

The matters that must be proved under subsection (2) relate to the subject matter of the advice sought by the client and the circumstances of the client relevant to that subject matter (the client's relevant circumstances). That subject matter and the client's relevant circumstances may be broad or narrow, and so the subsection anticipates that a client may seek scaled advice and that the inquiries made by the provider will be tailored to the advice sought.

RG 175.413 One way in which ASIC can assist the financial advice industry to increase access to good quality advice is to explain how the requirements of the best interests duty can be 'scaled up' or 'scaled down', depending on a number of factors.

RG 175.414 When considering how the requirements of the best interests duty can be applied flexibly, it is important to note that the same rules apply to all personal advice on a particular topic. There are *not* two sets of rules—one for 'comprehensive' advice and one for 'scaled' advice that is more limited in scope.

RG 175.415 This means that the guidance in this regulatory guide about complying with the best interests duty and related obligations remains equally relevant for persons who are providing, or are considering providing, 'scaled' advice.

RG 175.416 For further guidance, focusing on the practical aspects of giving scaled advice, see Section D of [RG 244](#).

Record-keeping obligations that apply to personal advice

RG 175.417 We expect AFS licensees to keep records of how their advice providers have acted in relation to providing advice. This includes the inquiries an advice provider makes into the client's relevant circumstances, and the consideration and investigation of the financial products they are advising on, if relevant.

RG 175.418 In our view, the duties imposed by the Corporations Act require AFS licensees to keep adequate records about their financial services business, and this includes an obligation to keep records of personal advice and the steps an advice provider takes in providing their client with personal advice.

RG 175.419 The relevant duties of an AFS licensee that we consider require such a record-keeping obligation include:

- (a) the duty to 'do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly' (s912A(1)(a));
- (b) the duty to have an adequate dispute resolution system (s912A(1)(g));
and
- (c) the duty to take reasonable steps to ensure that its representatives comply with:
 - (i) the best interests duty in s961B;
 - (ii) the appropriate advice requirement in s961G;
 - (iii) the obligation in s961H to warn the client if advice is based on incomplete or inaccurate information; and
 - (iv) the conflicts priority rule in s961J: s961L.

RG 175.420 We expect that the types of records that are kept will vary depending on the advice that is provided, including its scope, and the obligations that apply when providing the advice—for example, if there is no requirement to give an SOA.

RG 175.421 Records may take various forms, and do not have to be paper based. For example, they may include:

- (a) the advice document;
- (b) file notes, including records of conversations;
- (c) correspondence;
- (d) working papers;

- (e) fact-finding documents used when making inquiries into the client's relevant circumstances;
- (f) audio recordings; and
- (g) evidence of what compliance systems are used by the advice provider's AFS licensee or authorised representative. This includes:
 - (i) training materials;
 - (ii) records of who is attending the training; and
 - (iii) call scripts; and
- (h) evidence of how the advice provider has complied with these systems.

Note: This list is not intended to be exhaustive.

RG 175.422 Keeping records will be necessary for an advice provider to show they have satisfied the safe harbour for complying with the best interests duty, if this is being relied on. Good records will also assist an advice provider in defending a claim that they have breached their obligations under Div 2 of Pt 7.7A.

Best interests duty and related obligations

RG 175.423 As mentioned at RG 175.208, [\[CO 14/923\]](#) modifies Div 3 of Pt 7.6 of the Corporations Act, as it applies to all AFS licensees, to insert a new section—s912G—which sets out the record-keeping requirements for AFS licensees when the licensee or its representative (including an advice provider) gives personal advice to retail clients.

RG 175.424 Section 912G requires AFS licensees to ensure that, in relation to the provision of personal advice, certain records are kept that demonstrate compliance with the best interests duty and related obligations in Div 2 of Pt 7.7A of the Corporations Act.

RG 175.425 Section 912G(2) provides that, when an AFS licensee or its representatives provide personal advice to retail clients, the licensee must ensure that records are kept of the following matters:

- (a) the information relied on and the action taken by the provider that proves they have acted in the best interests of the client in relation to the advice given, in accordance with the best interests duty in s961B(1) (s912G(2)(a));
- (b) if the safe harbour is being relied on to prove that the best interests duty has been satisfied—the information relied on and the action taken by the provider that satisfies the steps in s961B(2) (s912G(2)(b));

Note: The keeping of records that satisfy the record-keeping obligation in RG 175.425(b) will satisfy the record-keeping obligation in RG 175.425(a).

- (c) the advice given, including the reasons why, in accordance with s961G, it would be reasonable to conclude that the advice is appropriate for the

client, assuming that the provider has satisfied the best interests duty (s912G(2)(c)); and

Note: In our view, advice is appropriate if it would be reasonable to conclude that, at the time the advice is provided, it is fit for purpose and the client is likely to be in a better position if they follow the advice. For more information, see RG 175.244–RG 175.251.

- (d) where the provider knows, or reasonably ought to know, that there is a conflict between the interests of the client and the interests of any person mentioned in s961J(1)—the information relied on and the action taken by the provider to indicate that the provider has given priority to the client’s interests when giving the advice (s912G(2)(d)).

Note: Where there is a conflict between the client’s interests and those of the advice provider or one of their related parties under s961J, we consider that more detailed records should be kept. These records should cover the reasoning behind any recommendation that the client acquire new financial products or increase their interest in an existing product where this benefits the advice provider or the related party.

- RG 175.426 An AFS licensee must ensure that records of advice are kept for a period of at least seven years after the day the personal advice is provided to the client. The AFS licensee should have access to these records during this period in a way that enables the licensee to produce the records. This obligation continues to apply even if the AFS licensee ceases to be a licensee, or the advice provider ceases to be a representative of the AFS licensee, during the period that the records are required to be kept and accessible: s912G(3).
- RG 175.427 Under s912G(4), an authorised representative who provides personal advice must keep records of the advice given, including copies of SOAs, for a period of at least seven years after the day the personal advice is provided to the client, unless the records have been given by the authorised representative to their authorising licensee. The authorised representative must give the advice records to the licensee if the licensee requests the records, provided that the request is made:
- (a) in connection with the obligations imposed on the licensee under Ch 7 of the Corporations Act; and
 - (b) within seven years after the day on which the personal advice is given to the client.
- RG 175.428 The obligation in s912G(4) continues to apply even if the authorised representative ceases to be an authorised representative of the AFS licensee during the period that the records are required to be given or kept.
- RG 175.429 The record-keeping obligations that apply to authorised representatives are in addition to the record-keeping obligations that apply to AFS licensees: s912G(5).
- RG 175.430 The record-keeping requirements in s912G do not apply to the provision of personal advice where the modified best interests duty applies: s912G(6).

RG 175.431 The record-keeping requirements in s912G (other than s912G(2)(d) and 912G(3)) do not apply to:

- (a) personal advice for which an SOA is not required; or
- (b) personal advice for which a record of the advice is kept in accordance with s946B(3A): s912G(7).

Note: Section 946B(3A) is affected by regs 7.7.09 and 7.7.10AE of the Corporations Regulations.

RG 175.432 As a matter of good practice, we consider that client records should contain evidence of the basis on which a reasonable advice provider would believe that the advice is likely to leave the client in a better position if the client follows the advice. For more information, see RG 175.244–RG 175.251.

Appendix 1: Examples of the difference between personal advice and general advice

RG 175.433 The examples in Table 7 illustrate our general approach to determining whether financial product advice is personal advice or general advice.

Table 7: Examples of the difference between personal advice and general advice

Example	Explanation
A1 Mailout to entire client list	<p>A stockbroker prepares periodic newsletters or research reports containing assessments of various financial products and sends them to their entire client list.</p> <p>We would expect that those newsletters or research reports would ordinarily be general advice and not personal advice. We would expect them to contain a general advice warning under s949A.</p> <p>This is because the stockbroker would not ordinarily take into account any individual's relevant circumstances in preparing and providing a periodic newsletter or research report that is sent to all of their clients, and nor would a reasonable person expect them to have done so.</p>
A2 Investment seminar for all clients	<p>A person invites all their clients to an investment seminar.</p> <p>We would expect that they would ordinarily provide general advice and not personal advice at an investment seminar that is open to all of their clients. We would expect them to provide a general advice warning under s949A at such a seminar.</p> <p>This is because the financial product advice the person provides at a seminar that is open to all their clients would not ordinarily take into account any individual's relevant circumstances, and nor would a reasonable person expect it to have done so.</p> <p>However, if the person wants to confine their seminar to providing general advice, they need to consider how the information in the seminar is communicated to the audience and, in particular, ensure that they clearly communicate that they are providing general advice. For example, it is important that the person:</p> <ul style="list-style-type: none"> • does not use language in the presentation that gives the impression that they have considered the objectives, financial situation or needs of any audience members in providing the financial product advice that it contains; • does not respond to audience comments or questions in a way that gives the impression that the financial product advice that they are providing takes into account any audience member's objectives, financial situation or needs; or • does not give personal advice in their response to audience questions.
A3 Mailout of brochure in response to a client query	<p>A product issuer, in response to client queries, sends out a marketing brochure about a particular product or product range that they offer.</p> <p>We would expect that these brochures would ordinarily contain general advice and not personal advice. We would expect them to contain a general advice warning under s949A.</p> <p>This is because a product issuer would not ordinarily take into account any individual's relevant circumstances in providing a marketing brochure in response to a client query, and nor would a reasonable person expect them to have done so.</p>

Example	Explanation
A4 Quoting from a PDS in response to a query	<p>A product issuer responds to telephone queries about product features either by quoting from the PDS, or by using their own words to convey the information in the PDS.</p> <p>By quoting from the PDS in response to a telephone query about product features, the product issuer would not ordinarily take into account any individual's relevant circumstances and nor would a reasonable person expect them to have done so. We would expect the product issuer to provide a general advice warning under s949A.</p>
A5 Mailout to particular client groups	<p>A person sends different newsletters, research reports or marketing brochures to different segments of their client base.</p> <p>In general, we think this person is likely to be providing general advice when, in deciding to send a particular newsletter, research report or marketing brochure to a particular segment of their client list, they look at broad client groupings based on:</p> <ul style="list-style-type: none"> • the size of a client's portfolio; • whether a client currently invests in, or has expressed interest in receiving information about, any of the broad market sectors discussed in the newsletter (e.g. property trusts, the industrials sector); • a client's age; • whether a client is employed or retired; or • whether a client has used the person's services within a particular timeframe.
A6 Marketing campaigns to a market segment	<p>An insurance broker markets a product that is suitable for people who are subject to a particular broad type of risk, and sends standardised marketing material for that product to clients who fall within that broad market segment.</p> <p>This situation falls within Example A5, and, for the same reasons, we think the broker is likely to be giving general advice.</p>
A7 Investment seminars for particular client groups	<p>A person invites a particular segment of their client base to a seminar based on broad groupings, as described in Example A5, and provides a previously prepared presentation focusing on areas that are likely to be of interest to that broad client group.</p> <p>These facts do not necessarily mean that the person has, or might be expected to have, taken into account any client's objectives, financial situation or needs in giving them the financial product advice provided at the seminar.</p> <p>As in Examples A2 and A5, we are likely to take the view that the person is giving general advice.</p>

RG 175.434 [RG 244](#) contains additional guidance on the differences between general and personal advice, and gives practical examples that illustrate these differences.

RG 175.435 We will not take action against an AFS licensee, authorised representative or advice provider where personal advice is given merely because general advice is given using personal information about a client's relevant circumstances to choose general advice that is relevant and useful to the client.

RG 175.436 This only applies if:

- (a) the client's relevant circumstances are not considered when preparing the advice; and
- (b) it is unlikely that the client would expect the advice provided to reflect a consideration of their relevant circumstances: see Section B and [RG 244](#).

Appendix 2: Examples of secondary services and how to avoid providing them

RG 175.437 The examples in Table 8 illustrate when financial product advice can be provided as a secondary service, and how to avoid providing financial product advice as a secondary service.

Table 8: Examples of secondary services and how to avoid providing them

Example	Explanation
B1 A stockbroker provides advice to a financial planner for the financial planner's client	<p>A financial planner seeks advice from a stockbroker about what share purchases should be made for a particular retail client. What can the stockbroker do to ensure that they do not provide a secondary service to the retail client?</p> <p>The stockbroker could give advice to the financial planner, taking reasonable steps to prevent it from being passed on to the retail client as the stockbroker's advice. The stockbroker could achieve this by meeting the three requirements listed in RG 175.133. The financial planner could then formulate their own advice, taking into account what the stockbroker has said.</p> <p>Alternatively, if the stockbroker allows the financial planner to pass on the stockbroker's advice to the retail client, the stockbroker would need to meet all the retail client requirements, including arranging for an FSG to be provided by the financial planner to the retail client on their behalf. This would be necessary because, by allowing the financial planner to pass on their advice, the stockbroker is providing a secondary service to the retail client. However, if the advice is not attributed to the stockbroker, the stockbroker will not be providing a secondary service to the retail client and will not be obliged to give their FSG to that retail client.</p>
B2 An underwriting agency recommends insurance products for an insurance broker's client	<p>A general insurance broker discusses particular details of the insurance needs of their retail clients with an underwriting agency. The general insurance broker then asks the underwriting agency what particular products the underwriting agency might recommend for those clients' circumstances.</p> <p>The underwriting agency could avoid providing a secondary service to the retail clients by taking the three reasonable steps listed in RG 175.133. The general insurance broker could then formulate their own advice, taking into account what the underwriting agency has said.</p> <p>Alternatively, if the underwriting agency allows the general insurance broker to pass on the underwriting agency's advice to the retail client, the underwriting agency would need to meet all the retail client requirements, including arranging for an FSG to be provided by the general insurance broker to the retail client on its behalf. This would be necessary because, by allowing the general insurance broker to pass on its advice, the underwriting agency is providing a secondary service to the retail client. However, if the advice is not attributed to the underwriting agency, the underwriting agency will not be providing a secondary service to the retail client and will not be obliged to give its FSG to that retail client.</p>

Example	Explanation
<p>B3 A research house issues research that includes advice to licensee clients and those clients post the research on their websites</p>	<p>A research house issues a piece of research that includes general financial product advice to its various clients that are AFS licensees (licensee clients). The licensee clients post that research on their websites in a location that can be accessed by their retail clients with an acknowledgement of the source of the research.</p> <p>Unless the research house has taken reasonable steps to prevent its advice being passed on to retail clients (e.g. the three reasonable steps listed in RG 175.133), it is likely to be providing financial product advice to the retail clients by implicitly causing or authorising the provision of its advice to the retail clients, and would need to meet all of the retail client requirements.</p> <p>If the research house allows the licensee clients to pass on its advice to the retail clients, the research house would need to meet all the retail client requirements, including arranging for an FSG to be provided by the licensee clients to the retail clients on its behalf. This would be necessary because, by allowing the licensee clients to pass on its advice, the research house is providing a secondary service to the retail clients.</p>
<p>B4 A research house posts research that includes its advice on its website</p>	<p>A research house issues a piece of research that includes general financial product advice and posts this on its website, which is accessible by the public. An AFS licensee takes the information from the website and passes that information on to its retail clients as the research house's advice. The research house has no agreement or relationship with the licensee, and does not know the identity of the clients of the licensee.</p> <p>The research house will be providing the AFS licensee with general financial product advice. Although the research house may also be providing general advice to retail clients of the licensee, the research house will not be required to give those clients a copy of its FSG if s940B applies. This is because s940B provides that no breach occurs where there is 'no reasonable opportunity' to provide retail clients with an FSG. This defence is likely to be available in this example because, in the circumstances described, the research house does not know, and has no reasonable way of finding out, the identities or the addresses of the retail clients receiving the information taken and disseminated by the licensee.</p>

Appendix 3: Examples of financial advice reviews

- RG 175.438 The following examples illustrate the process we apply when reviewing personal advice to determine whether it complies with the best interests duty in s961B.
- RG 175.439 The example in Table 9 illustrates that, where an adviser has satisfied the safe harbour steps in s961B(2), the adviser will have complied with the best interests duty in s961B(1), and no further analysis will be required.
- RG 175.440 The example in Table 10, on the other hand, illustrates that, where an adviser has not satisfied all of the safe harbour steps, an analysis of whether the adviser has complied with the best interests duty in s961B(1) will be required.

Table 9: Advice that has complied with the best interests duty

Personal circumstances	Jin is 50, is employed full time and earns \$80,000 per year. Ki is 45 and earns \$45,000 per year. Jin and Ki have two financially dependent children, aged 16 and 17.
Assets	Jin and Ki's jointly held assets include their home valued at \$750,000, contents of \$100,000 and a vehicle valued at \$15,000. Jin and Ki have \$10,000 in a savings account and a combined superannuation balance of \$300,000.
Debts	Jin and Ki have a \$150,000 mortgage.
Insurance	Ki has the following cover in place, held within her superannuation fund: <ul style="list-style-type: none"> • life insurance and total and permanent disability (TPD) insurance of \$75,000; and • income protection insurance of \$2,813 per month, with a 90-day waiting period and a two-year benefit payment period. <p>Jin has the following cover in place, held within his superannuation fund:</p> <ul style="list-style-type: none"> • life insurance and TPD insurance of \$350,000; and • income protection insurance of \$5,000 per month, with a 90-day waiting period and a two-year benefit payment period. <p>Jin and Ki have no insurance outside of superannuation.</p>
Reason for seeking advice	Jin and Ki are seeking advice to review their current insurance arrangements. They are seeking peace of mind that, if something were to happen to either or both of them, they have adequate wealth protection in place for their current situation and future objectives. They are only seeking advice in relation to insurance.
Advice	The adviser conducts a 'needs analysis' and considers Jin and Ki's current insurance cover, assets and debts, after-tax income, current mortgage payments and living expenses. The adviser also considers Jin and Ki's health (including any known health issues and their extended family health history), the implications of their children being financially dependent on them and their expectations if either of them were to become ill, injured, disabled or pass away prematurely. In addition, the adviser discusses with Jin and Ki their employment circumstances, including their annual, personal and long service leave entitlements, and whether they can reasonably foresee any changes to their employment situation (planned or unexpected changes).

<p>Advice (continued)</p>	<p>The adviser compares four insurers on the basis of cost, policy definitions and features relevant to Jin and Ki's personal circumstances. The records of this analysis are retained on file and referred to in the adviser's advice to Jin and Ki.</p> <p>The adviser recommends that Ki:</p> <ul style="list-style-type: none"> • increases her life insurance and TPD cover within her existing superannuation fund; • obtains a new, personally held income protection policy with a two-year waiting period, and a benefit payment period to age 65; and • obtains a new trauma insurance policy. <p>The adviser recommends that Jin:</p> <ul style="list-style-type: none"> • retains his life insurance and TPD cover within his existing superannuation fund; • obtains a new income protection policy with a two-year waiting period, and a benefit payment period to age 65; and • obtains a new trauma insurance policy. <p>The adviser is required to balance Jin and Ki's insurance needs realistically with the cost of premiums that increase with age, and the need for Jin and Ki to save for their retirement.</p> <p>The adviser considers and discusses the following when formulating their recommendations and documenting the advice:</p> <ul style="list-style-type: none"> • whether Jin and Ki have adequate life and TPD cover to repay their mortgage in the event of death and/or TPD; • that the age of Jin and Ki's children means that they are likely to become 'less financially dependent' on them in the medium term; • the need for income protection insurance, given the importance of Jin and Ki's ability to earn an income between now and retirement. A policy in addition to their existing policies held within superannuation was recommended which is cost effective due to both the longer waiting periods and tax deductibility; • that Jin and Ki (and their children) have other resources to rely on in the event of ill health, such as cash reserves, employment leave and superannuation (in the event of hardship or death of a partner or parents); and • that a modest amount of trauma insurance will provide peace of mind at a reasonable cost in addition to the resources noted above. <p>The adviser provides strategic advice to Jin and Ki on the nomination of beneficiaries within their respective superannuation funds.</p>
<p>Commentary</p>	<p>The advice to Jin and Ki satisfies the safe harbour steps. The adviser has:</p> <ul style="list-style-type: none"> • clearly outlined the scope of the advice; • made reasonable inquiries about the client's relevant circumstances; • compared multiple insurers before making a recommendation and clearly explained why the chosen insurer was recommended to Jin and Ki over the alternative options; • explained the basis for the recommended sum insured relative to their personal circumstances; • considered affordability; and • prioritised competing objectives (e.g. preserving cash flow for debt reduction and increasing superannuation). <p>We found that the adviser had complied with the best interests duty because they had satisfied each of the safe harbour steps.</p> <p>We were able to determine that the adviser had satisfied the safe harbour steps because the adviser had clearly documented in the client file the actions they had taken in providing advice to the client.</p>

Table 10: Advice that has not complied with the best interests duty

Personal circumstances	<p>Lee is 59, is employed full time and earns \$85,000 per year. Sandra is 58 and does not earn any income because of health issues.</p> <p>Lee and Sandra have one financially dependent son, Benjamin, aged 21.</p>
Assets	<p>Lee has \$290,000 in a superannuation fund.</p> <p>There was no other information in the client file about assets.</p>
Debts	<p>There was no other information in the client file about debt.</p>
Insurance	<p>There was no information in the client file about insurances, other than a reference that the client has some insurance in their superannuation fund.</p>
Reason for seeking advice	<p>Lee is seeking advice on his existing salary sacrifice arrangements. He also intends to retire in the next few years and is interested in understanding his options for commencing his transition to retirement so that he can care for Sandra.</p>
Advice	<p>The adviser recommends that Lee:</p> <ul style="list-style-type: none"> • rolls over \$288,000 of his existing superannuation funds into a different superannuation fund on the basis that this offers a wider range of investment options; • retains \$2,000 in his existing superannuation fund to maintain insurance arrangements, and continues to contribute to this fund through his employer and salary sacrifice arrangements; and • transfers surplus balances from his existing superannuation fund into the new recommended fund on an annual basis.
Commentary	<p>The advice to Lee and Sandra does not satisfy the safe harbour steps. The client file showed insufficient evidence that the adviser had:</p> <ul style="list-style-type: none"> • identified and considered Lee's relevant circumstances and needs in seeking the advice; • made adequate inquiries about the types and levels of the existing insurance held or whether these were suitable for Lee's circumstances; • recommended a financial product that was reasonable, given Lee's reasons for seeking advice; • taken into account Lee's strategic advice needs; • based all judgements in advising Lee on his relevant circumstances. Instead, the documents on file recorded that the advice was based on an increased level of investment options offered, which was not recorded as an identified priority or objective for Lee; or • considered Lee's salary sacrifice arrangements and potential retirement strategies, which was the reason for Lee seeking advice. <p>Instead, it appeared that the adviser had pre-determined the advice that was to be given to the client (demonstrated by the pre-completion of rollover forms by the adviser), without undertaking the necessary inquiries or investigation of Lee's existing financial arrangements.</p> <p>Since the advice did not satisfy the safe harbour steps, we further analysed whether the advice complied with the best interests duty in s961B(1). In this instance, we found that the adviser had failed to act in the best interests of the client in relation to the advice provided.</p>

Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution
advice	Financial product advice. In Section E, 'advice' refers to personal advice
advice provider	A person to whom the obligations in Div 2 of Pt 7.7A of the Corporations Act apply when providing personal advice to a client. This is generally the individual who provides the personal advice. However, if there is no individual that provides the advice, which may be the case if advice is provided through a computer program, the obligations in Div 2 of Pt 7.7A apply to the legal person that provides the advice (e.g. a corporate licensee or authorised representative)
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
associate	Has the meaning given in Div 2 of Pt 1.2 of the Corporations Act
authorised representative	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee Note: This is a definition contained in s761A.
authorising AFS licensee	The licensee on whose behalf an authorised representative provides financial services
basic banking product	Means: <ul style="list-style-type: none"> • a basic deposit product; • a facility for making non-cash payments that is related to a basic deposit product; or • a facility for providing traveller's cheques: s961F of the Corporations Act Note: A basic banking product also includes any other product prescribed by regulations: s961F(e). At the time of publication, no regulations have been made.

Term	Meaning in this document
best interests duty	The duty to act in the best interests of the client when giving personal advice to a client as set out in s961B(1) of the Corporations Act
best interests duty and related obligations	The obligations in Div 2 of Pt 7.7A of the Corporations Act
client	A retail client, unless otherwise specified
client's relevant circumstances	The objectives, financial situation and needs of a client that would reasonably be considered relevant to the subject matter of advice sought by the client
conflicts priority rule	The rule to prioritise a client's interests as set out in s961J of the Corporations Act
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
digital advice	Also known as 'robo-advice' or 'automated advice'—the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser
dollar disclosure provisions	Provisions of the Corporations Act and Corporations Regulations that require various costs, fees, charges, expenses, benefits and interests to be stated as amounts in dollars unless ASIC grants relief: see s947B(2)(h), 947C(2)(i), 947D(2)(d), 1013D(1)(m) and 1017D(5A), and regs 7.7.10A–7.7.11, 7.7.11B–7.7.13B, 7.9.15A–7.9.15C, 7.9.19A–7.9.19B, 7.9.20A–7.9.20B, 7.9.74A–7.9.75 and 7.9.75C–7.9.75D
existing provider	A person who is a relevant provider any time between 1 January 2016 and 1 January 2019 and is not banned, disqualified or suspended on 1 January 2019: see s1546A
financial product	A facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <p>Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.</p>

Term	Meaning in this document
financial product advice	<p>A recommendation or a statement of opinion, or a report of either of these things, that:</p> <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or • could reasonably be regarded as being intended to have such an influence. <p>This does not include anything in an exempt document</p> <p>Note: This is a definition contained in s766B of the Corporations Act.</p>
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
Financial Services Guide (FSG)	<p>A document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act</p> <p>Note: This is a definition contained in s761A.</p>
FOFA	Future of Financial Advice
FOFA Act No. 2	<i>Corporations Amendment (Further Future of Financial Advice Measures) Act 2012</i>
further advice	Has the meaning set out in reg 7.7.10AE of the Corporations Regulations
general advice	<p>Financial product advice that is not personal advice</p> <p>Note: This is a definition contained in s766B(4) of the Corporations Act.</p>
grandfathered	A benefit that is not conflicted remuneration because a transitional provision in s1528 or regs 7.7A.16–7.7A.16F applies
licensee	An AFS licensee
modified best interests duty	<p>The limited number of steps an advice provider needs to take to act in the best interests of the client when the personal advice is about:</p> <ul style="list-style-type: none"> • a basic banking product only and the advice provider is an agent or employee of an Australian ADI, or otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI (s961B(3)); • a general insurance product only (s961B(4)); • a basic banking product, a general insurance product, consumer credit insurance, or a combination of these products, and the advice provider is an agent or employee of an Australian ADI, or otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI (reg 7.7A.05); or • general insurance and other products (reg 7.7A.06)
PDS	Product Disclosure Statement

Term	Meaning in this document
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> the person giving the advice has considered one or more of the client's objectives, financial situation and needs; or a reasonable person might expect the person giving the advice to have considered one or more of these matters <p>Note: This is a definition contained in s766B(3) of the Corporations Act.</p>
platform	<p>Includes investor directed portfolio services (IDPS), IDPS-like schemes, superannuation master trusts, other superannuation funds, self-managed superannuation funds or managed discretionary account services, as defined in Regulatory Guide 179 <i>Managed discretionary accounts</i> (RG 179).</p> <p>It does not include nominee and custody services, as defined in Regulatory Guide 148 <i>Platforms that are managed investment schemes and nominee and custody services</i> (RG 148)</p>
Product Disclosure Statement	<p>A document that must be given to a client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>
providing entity	<p>A person to whom the obligations in Pt 7.7 of the Corporations Act apply. This is the AFS licensee or an authorised representative that provides the financial product advice</p>
Pt 7.7 (for example)	<p>A part of the Corporations Act (in this example numbered 7.7)</p>
reg 7.1.29 (for example)	<p>A regulation of the Corporations Regulations (in this example numbered 7.1.29)</p>
related party	<p>A related party of an advice provider is:</p> <ul style="list-style-type: none"> an associate of the advice provider; an AFS licensee of whom the advice provider is a representative; an associate of an AFS licensee of whom the advice provider is a representative; an authorised representative who has authorised the advice provider to provide financial services (or a financial service) on behalf of an AFS licensee; or an associate of an authorised representative who has authorised the advice provider to provide financial services (or a financial service) on behalf of an AFS licensee

Term	Meaning in this document
relevant financial product	<p>Financial products other than basic banking products, general insurance products, consumer credit insurance, or a combination of any of these products</p> <p>Note: This is a definition contained in s922C of the Corporations Act.</p>
relevant provider	An individual that is authorised to give personal advice to retail clients on relevant financial products: see s921B
representative of an AFS licensee	<p>Means:</p> <ul style="list-style-type: none"> • an authorised representative of the licensee; • an employee or director of the licensee; • an employee or director of a related body corporate of the licensee; or • any other person acting on behalf of the licensee <p>Note: This is a definition contained in s910A of the Corporations Act.</p>
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations
Revised Explanatory Memorandum	Revised Explanatory Memorandum to the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012
RG 79 (for example)	An ASIC regulatory guide (in this example numbered 79)
RSE licensee	Has the meaning given in s10 of the <i>Superannuation Industry (Supervision) Act 1993</i>
s782 (for example)	A section of the Corporations Act (in this example numbered 782), unless otherwise specified
safe harbour for the best interests duty	The steps set out in s961B(2) of the Corporations Act. If an advice provider proves they have taken these steps, they are considered to have met their obligation to act in the best interests of their client
scaled advice	Personal advice that is limited in scope
secondary service provider	An AFS licensee or authorised representative who provides a financial service to a retail client via an intermediary
SMSF	Self-managed superannuation fund
Statement of Advice (SOA)	<p>A document that must be given to a client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>

Term	Meaning in this document
switching advice	Personal advice that recommends a client replace (in full or in part): <ul style="list-style-type: none">• one financial product with another financial product; or• the client's interest in a MySuper product with an interest in another MySuper product or a Choice superannuation product offered by the superannuation fund. This includes where the client's existing holding is money in a bank account
TASA	<i>Tax Agent Services Act 2009</i> , including regulations made for the purposes of that Act
TPB	Tax Practitioners Board
TPD	Total and permanent disability

Related information

Headnotes

advice provider, appropriate advice, basis for the advice, best interests duty, best interests duty and related obligations, client inquiries, client's relevant circumstances, combined disclosure documents, conflicts priority rule, consideration and investigation of the subject matter of the advice, financial product, financial product advice, Financial Services Guide, further advice, general advice, personal advice, providing entity, record-keeping obligations, remuneration, commission and other benefits, retail client, scaled advice, scope of the advice, secondary service, Statement of Advice, subject matter of advice sought by the client

ASIC legislative instruments and pro formas

[ASIC Corporations \(Advertising by Product Issuers\) Instrument 2015/539](#)

[ASIC Corporations \(General Advice Warning\) Instrument 2015/540](#)

[ASIC Corporations \(Financial Services Guides\) Instrument 2015/541](#)

[ASIC Corporations \(Facilitating Electronic Delivery of Financial Services Disclosure\) Instrument 2015/647](#)

[\[CO 12/417\]](#) *Information in a Financial Services Guide given in a time critical situation*

[\[CO 14/923\]](#) *Record-keeping obligations for Australian financial services licensees when giving personal advice*

[PF 209](#) *Australian financial services licence conditions*

ASIC regulatory guides

[RG 1–RG 3](#) *AFS Licensing Kit*

[RG 36](#) *Licensing: Financial product advice and dealing*

[RG 79](#) *Research report providers: Improving the quality of investment research*

[RG 90](#) *Example Statement of Advice: Scaled advice for a new client*

[RG 98](#) *Licensing: Administrative action against financial services providers*

[RG 104](#) *Licensing: Meeting the general obligations*

[RG 105](#) *Licensing: Organisational competence*

[RG 126](#) *Compensation and insurance arrangements for AFS licensees*

[RG 146](#) *Licensing: Training of financial product advisers*

[RG 148](#) *Platforms that are managed investment schemes and nominee and custody services*

[RG 168](#) *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

[RG 179](#) *Managed discretionary account services*

[RG 181](#) *Licensing: Managing conflicts of interest*

[RG 182](#) *Dollar disclosure*

[RG 221](#) *Facilitating digital financial services disclosures*

[RG 244](#) *Giving information, general advice and scaled advice*

[RG 245](#) *Fee disclosure statements*

[RG 246](#) *Conflicted remuneration*

[RG 255](#) *Providing digital financial product advice to retail clients*

ASIC information sheets

[INFO 99](#) *Disclosure of credit ratings in Australia*

[INFO 141](#) *Dealing and providing a custodial or depository service as a secondary service*

[INFO 182](#) *Super switching advice: Complying with your obligations*

Legislation

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

ASIC Act, s12DA, 12ED

Corporations Act, Ch 7, Pt 7.6 Div 10, Pt 7.7, Pt 7.7A, Pt 7.9, Pt 7.10 Div 2, s52, 734, 761A, 761G, 761GA, 766B(1A), 766B(3), 766B(4), 796C, 910A, 911A, 912A, 912B, 912D, 912E, 912F, 912G, 914A, 915C, 921C, 922C, 923A, 923C, 940B, 940C, 941A, 941B, 941C, 941C(6), 941D, 941E, 941F, 942A, 942B, 942C, 942D, 942DA, 945A, 945B, 946AA, 946B, 946B(5)(c), 946C, 947A, 947B, 947C, 947D, 947E, 949A, 951B, 952B, 952C, 952D, 952E, 952H, 953B, 961, 961B, 961G, 961H, 961J, 961K, 961L, 961Q, 964F, 1012D(3), 1013B, 1013D, 1013M, 1017D, 1017K, 1018A, 1020F, 1436A, 1528, 1546A, 1546B, 1546C

Corporations Amendment (Financial Advice Measures) Act 2016

Corporations Amendment (Professional Standards of Financial Advisers) Act 2017

Corporations Regulations, regs 7.1.11–7.1.29, 7.1.17A, 7.6.01, 7.6.01C, 7.6.02AB–7.6.02AF, 7.6.02E, 7.7.01–7.7.13B, 7.7.04A, 7.7.07A–7.7.10E, 7.7.10AA–7.7.10AH, 7.7.20, 7.7A.05, 7.7A.06, 7.7A.1, 7.7A.16–7.7A.16F, 7.9.15A–7.9.15C, 7.9.20A–7.9.20B, 7.9.61AA, 7.9.74A–7.9.75, 7.9.75C–7.9.75D, Sch 10BA

Criminal Code, s6.1, 9.2

FOFA Act No. 2

Superannuation Guarantee (Administration) Act 1992, s32C(2), 32D

Tax Agent Services Act 2009, s20–5, 90–15

Cases

University of New South Wales v Moorhouse & Angus & Robertson (Publishers) Pty Ltd (1975) 133 CLR 1

ASIC reports

[REP 279](#) *Shadow shopping study of retirement advice*

[REP 515](#) *Financial advice: Review of how large institutions oversee their advisers*

Other publications

Treasury, [Financial markets and investment products: Promoting competition, financial innovation and investment](#), Corporate Law Economic Reform Program 1997, Proposals Paper No. 6

Tax Practitioners Board, TPB(I) 22/2014, [Fee or other reward for tax \(financial\) advisers](#), information sheet