REPORT 639

Financial advice by superannuation funds

December 2019

About this report

ASIC has undertaken a project to examine:

- the ways in which superannuation funds provide financial advice to members (survey); and
- the overall quality of personal financial advice provided to members of those funds (advice review).

This report summarises the findings of our work and provides practical tips that superannuation trustees, advice licensees and advice providers can use to improve the quality of the advice that they provide to superannuation members.

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.

Acknowledgement

ASIC wishes to thank all of the superannuation funds that participated in the survey. We are grateful to them for providing their time to give us a richer understanding of their delivery models to provide advice to members.

Disclaimer

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

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

Contents

Executive summary

1 Today's consumers are being asked to make more financial decisions than ever before and the environment in which they are making those decisions is often complex.

2 Many consumers may be ill-equipped to make sound financial decisions and would benefit from being able to access good quality financial advice at key points in their life.

3 Against this backdrop, Australians may look to their superannuation fund to provide them with financial advice. Many superannuation funds have responded to this need by developing and offering financial advice services to members.

The superannuation sector

4 Since the official introduction of the superannuation guarantee system in Australia in 1992, the superannuation sector has grown to a total asset value of $2.9 trillion (as at June 2019).[1]

5 As at 30 June 2019, entities regulated by the Australian Prudential Regulation Authority (APRA) held $1.9 trillion (67%), self-managed superannuation funds (SMSFs) held $748 billion (26%), exempt public sector schemes held $149 billion (5%), and the balance of life office statutory funds held $59 billion (2%).[2]

6 As at 30 June 2019, there were approximately 190 APRA-regulated superannuation funds with more than four members, operated by approximately 114 superannuation trustees.[3]

Our project and findings

7 Given that many superannuation funds now offer financial advice to their members, we considered it timely to conduct an in-depth examination of:

(a) the ways in which superannuation funds provide financial advice to members (survey); and

[1] APRA, *Quarterly superannuation performance statistics June 2019*, 27 August 2019.
[2] APRA, *Quarterly superannuation performance statistics June 2019*, 27 August 2019, p. 7. 'Balance of life office statutory funds' refers to assets held for superannuation or retirement purposes in statutory funds of life insurance companies, excluding the assets held in the life office statutory funds by superannuation entities. The balance of life office statutory funds includes annuities and assets backing non-policyholder liabilities. These products are regulated under the *Life Insurance Act 1995*.
[3] APRA, *Quarterly superannuation performance statistics June 2019*, 27 August 2019, p. 7.

(b) the overall quality of personal financial advice provided to members (advice review).

8 The purpose of this project was to conduct research to improve our understanding of financial advice that is provided to members of superannuation funds.

Methodology and key findings from the survey

9 In December 2018, we surveyed 25 superannuation funds to understand the ways in which financial advice is provided to members (survey). We engaged an independent actuarial consulting firm to analyse the results of our survey.

Note: We did not review a sample of financial advice in relation to SMSFs because this was recently reviewed in Report 575 *SMSFs: Improving the quality of advice and member experiences* (REP 575).

10 Our survey participants included superannuation fund trustees representing a cross-section of the Australian superannuation industry. Specifically, we surveyed 11 retail funds (44%), 10 industry funds (40%), two corporate funds (8%) and two public sector funds (8%).

Note: In this report, we use the term 'funds' to refer to the superannuation funds we surveyed.

11 We used our compulsory information-gathering powers to survey the 25 funds to find out:

(a) what financial advice services the funds offered to members;

(b) how funds engage with members in relation to financial advice and what topics members seek advice on;

(c) how the funds oversee the financial advice provided to members;

(d) what the funds identify as their key conflicts of interest and how these conflicts are managed;

(e) what advice fees are charged to members; and

(f) what future plans funds have in relation to the advice services they offer to members.

12 Appendix 1 to this report lists the 25 funds that participated in our survey.

13 Our survey highlighted that:

(a) across all funds, general advice made up 75% of advice accessed by members from their fund;

(b) the most popular advice topics sought by members were member investment choice, contributions and retirement planning;

(c) across all funds that offer advice services to members, the most common delivery channels for providing advice to members were in-house call centres (37%) and advice providers employed by a related party (26%);

(d) across all funds, the key identified conflicts of interest were vertical integration, relationships with third-party advice providers, and bonuses paid to advice providers; and

(e) 61% of funds intend to increase their use of member self-directed digital advice that can generate Statements of Advice (SOAs).

Note: In this report, we use the term 'advice provider' to mean a person authorised to provide general and/or personal advice on behalf of an Australian financial services (AFS) licensee.

14 The findings from our survey have come directly from the responses provided by the 25 funds. We have not verified the responses provided by the funds.

15 Section A of this report provides further detail on our findings from the survey.

Methodology and key findings from the advice review

16 We examined the personal advice provided to members of 21 of the 25 funds we surveyed. We knew through our survey results that four of the 25 funds did not provide personal advice to members.

17 As part of our advice review, we engaged three independent experts to review 194 advice files where personal advice was provided to members. ASIC reviewed a further 39 advice files in-house, bringing the total number of advice files reviewed to 233 files.

18 The purpose of the advice review was to test whether the advice provided to members complied with the law.

19 ASIC staff with the appropriate skills, training and experience cross-reviewed 24% of the advice files reviewed by the independent experts. The findings of the independent experts and the reviews by ASIC were largely consistent.

20 Using our compulsory information-gathering powers, we requested a mix of intra-fund advice, scaled advice and comprehensive advice to test whether advice providers had complied with the best interests duty and related obligations when providing this advice. We reviewed:

(a) 32 intra-fund advice files;

(b) 68 scaled advice files; and

(c) 133 comprehensive advice files.

21 It is important to note that in some cases, the fund was not the advice provider.

22 This project did not include a review of general advice.

23 Overall, we found that:

(a) 49% of the files demonstrated full compliance with the best interests duty and related obligations;

(b) 36% of the files did not demonstrate full compliance with the best interests duty and related obligations, but the file did not indicate that the member was at risk of suffering financial or non-financial detriment as a result of following the advice provided; and

(c) 15% of the files did not comply with the best interests duty and related obligations and there was an indication that the member was at risk of suffering financial or non-financial detriment as a result of following the advice provided.

24 The main reasons for files not complying with the best interests duty and related obligations were:

(a) the advice provider failed to identify the subject matter of the advice and the member's objectives, financial situation and needs; and

(b) the advice provider failed to conduct a reasonable investigation into financial products and base all judgements on the member's relevant circumstances.

25 Our advice reviews showed that the compliance rate for retail, industry, corporate and public sector fund types varied within a moderate range. Due to the different sample sizes, it is not possible to fairly compare the overall quality of advice based on fund type. As such, our findings are aggregate findings and are not broken down by fund type.

26 Section B of this report provides further details on our findings from the advice review.

Next steps

27 Superannuation funds play an important role in meeting the financial advice needs of Australians. Good financial advice can result in members making the most out of their superannuation savings upon their retirement. Poor financial advice, however, can significantly impact a member's financial position and retirement plans.

28 Our advice review findings show that there is room to improve the personal advice being provided to members.

29 As such, we:

(a) have included a number of practical tips in Section C of this report that superannuation trustees, advice licensees and advice providers can use to improve the quality of the advice that they provide to superannuation members;

(b) have provided these tips to relevant industry associations for circulation to their members; and

(c) for the small number of files where there was an indication that the member was at risk of suffering financial or non-financial detriment, will contact the advice licensee about our expectation that they will review the advice and where required, remediate those affected members. We will ask advice licensees to confirm that they have undertaken the appropriate steps and provide us with an update on the outcome.

A Survey: How funds provide advice

Key points

To better understand the types of advice services that superannuation funds provide, we surveyed 25 superannuation funds across retail, industry, corporate and public sector fund types (survey).

Each fund was asked the same set of questions about its advice services, including on the oversight of advice provided to members, on advice fees, on conflicts of interest and on the fund's future advice plans.

Our survey highlighted that:

- across all funds, general advice made up 75% of advice accessed by members from their fund;
- the most popular advice topics sought by members were member investment choice, contributions and retirement planning;
- across all funds that offer advice services to members, the most common delivery channels for providing advice to members were in-house call centres (37%) and advice providers employed by a related party (26%);
- across all funds, the key identified conflicts of interest were vertical integration, relationships with third-party advice providers, and bonuses paid to advice providers; and
- 61% of funds intend to increase their use of member self-directed digital advice tools that can generate SOAs.

The findings from our survey have come directly from the responses provided by the 25 funds. We have not verified the responses provided by the funds.

About the survey

30 In December 2018, we surveyed 25 funds representing a cross-section of the Australian superannuation industry. We surveyed 11 retail funds (44%), 10 industry funds (40%), two corporate funds (8%) and two public sector funds (8%).

Note 1: Because the funds only included two public sector funds and two corporate funds, the results in this report are not representative of the broader fund types.

Note 2: Due to rounding, some of the percentage totals in this report do not add up to 100%.

31 Our survey collected information from the selected funds as at 30 November 2018, or we asked specifically for information about the 2017–18 financial year.

32 We used our compulsory information-gathering powers to survey the 25 funds to find out:

(a) what financial advice services the funds offered to members;

(b) how funds engage with members in relation to financial advice and what topics members seek advice on;

(c) how the funds oversee the financial advice provided to members;

(d) what the funds identify as their key conflicts of interest and how these conflicts are managed;

(e) what advice fees are charged to members, and

(f) what future plans funds have in relation to the advice services they offer to members.

33 In this report, we refer to the responses from the funds on these issues as the 'survey results'.

The types of advice

34 We describe the different types of financial product advice in this report as:

(a) *General advice*—this is financial product advice that is not personal advice.

(b) *Intra-fund advice*—this is non-ongoing personal advice provided by or on behalf of a superannuation trustee to a superannuation fund member that:

(i) can be collectively charged to the superannuation fund members; and

(ii) does not relate to a topic that falls within the prohibitions under s99F of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

Note: Intra-fund advice can be general advice or personal advice. For the avoidance of doubt, this report is limited to personal intra-fund advice.

(c) *Scaled advice*—this is personal advice that is limited in scope.

(d) *Comprehensive advice*—this is personal advice that is more comprehensive in scope.

Size and membership of funds

Membership and funds under management

35 The funds represent over 10.4 million fund members and $700 billion in funds under management.[4] This accounts for 39% of the superannuation market by member accounts and 28% of the market in terms of total assets.[5]

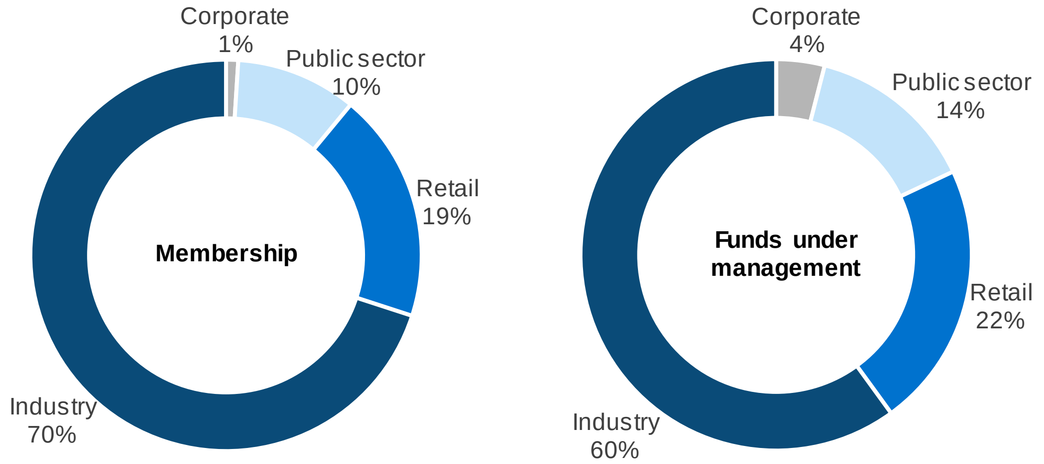
---

[4] APRA, *Annual fund-level superannuation statistics*, June 2018.
[5] APRA, *Annual superannuation bulletin*, June 2018.

36 Figure 1 shows the breakdown of the funds—by membership size and funds under management by type of fund.

37 Across all participating funds, 57% of members were men and 43% of members were women. This is consistent with the broader industry APRA statistics as at June 2018 where 58% of members were men and 42% were women.[6]

Figure 1: Membership size and funds under management by type of fund



Note: See Table 11 in the appendix for the data shown in this figure (accessible version).

Changes to membership size

38 We asked funds about whether their membership size increased or decreased between 1 July 2017 and 30 June 2018. The survey results show that:

(a) 13 funds[7] experienced membership increases, and 12 funds experienced membership decreases;

(b) across the funds that increased their membership, the median increase was 3.4%; and

(c) across the funds that decreased their membership, the median decrease was 5.4%.

39 Between 1 July 2017 and 30 June 2018, variation between the fund types was high, with the change in membership of:

(a) industry funds ranging from a decrease of 1.5% to an increase of 17.5%; and

(b) retail funds ranging from a decrease of 45.7%[8] to an increase of 7.8%.

[6] APRA, *Annual fund-level superannuation statistics*, June 2018.
[7] One fund experienced growth of 216%. We expect that this was driven by a successor fund transfer between 1 July 2017 and 30 June 2018. As this growth is unlikely to be repeated, this fund has been excluded from this analysis.
[8] One retail fund responded that its decrease in membership was due to a successor fund transfer of insurance-only members to another superannuation fund.

40 Figure 2 illustrates the median change in membership by fund type.

41 The main reasons provided for membership growth were:

(a) member engagement strategies; and

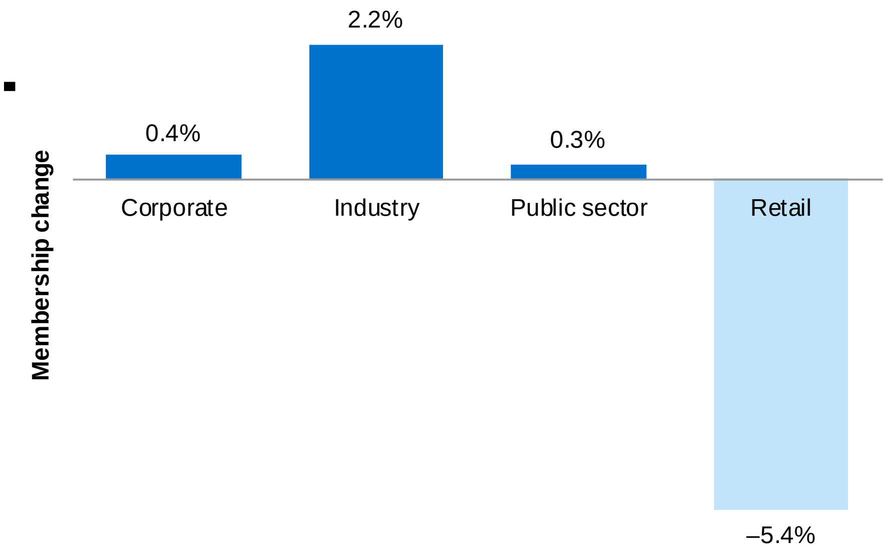
(b) employer engagement strategies.

42 The main reasons provided for membership decline were:

(a) rollovers and benefit payments; and

(b) members moving to retirement.

Figure 2: Median change in membership by fund type (1 July 2017 to 30 June 2018)



Note: See Table 12 in the appendix for the data shown in this figure (accessible version).

Engagement with members

Member advice inquiries

43 In our survey, we asked the funds how many members inquired about accessing advice services from the fund.

44 Of the funds surveyed, approximately half were unable to tell us how many members had inquired about accessing advice services between 1 July 2017 and 30 June 2018.

Note: We only received survey results from one corporate fund and one public sector fund in response to our member advice inquiries question. Due to the small sample size of these fund types, we cannot make generalisations about corporate fund and public sector fund types.

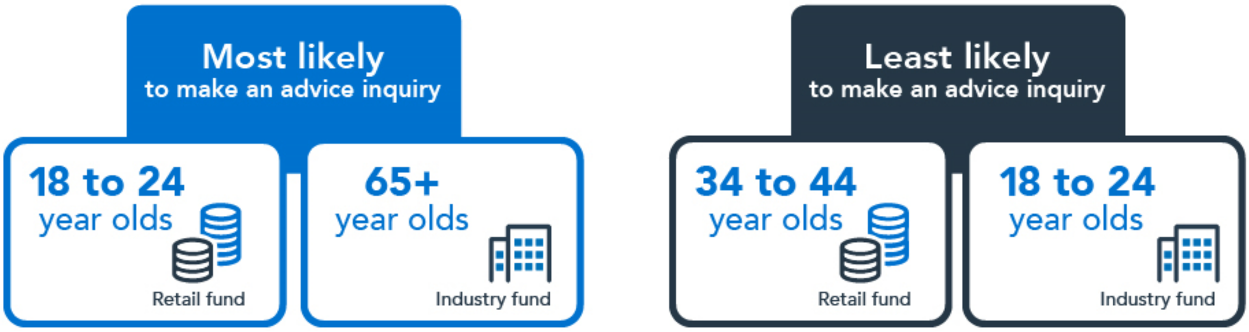
45 For those funds that were able to respond, the average proportion of members inquiring about accessing advice services across participating retail funds and industry funds was 2%.

46 As shown in Figure 3, the survey responses indicated that:

(a) for retail funds, members between the age of 18 and 24 were most likely to make an inquiry with their fund about financial advice and members between the age of 34 and 44 were least likely to make an inquiry; and

(b) for industry funds, members above the age of 65 were most likely to make an inquiry with their fund about financial advice and members between the age of 18 and 24 were least likely to make an inquiry.

Figure 3: Members most likely and least likely to make an advice inquiry with retail funds and industry funds



Note: See paragraph 47 for the text shown in this figure (accessible version).

Reasons for contacting members

47 We wanted to understand more about the particular circumstances in which an advice provider might proactively contact a member. In responding to this question, funds could select more than one answer.

Note: For this question, an advice provider was specified to mean a person authorised to provide general and/or personal advice on behalf of an AFS licensee.

48 Table 1 shows that outside of member requests for advice, the most common reasons for advice providers to proactively contact members (excluding ongoing advice services) included:

(a) to follow up on a targeted campaign or event;

(b) to address legislative change (e.g. changes to superannuation contribution rules);

(c) to generate new advice business; and

(d) a member is nearing retirement age.

Table 1: Reasons why advice providers proactively contact members by fund type

Circumstances	Corporate	Industry	Public sector	Retail
Member request for advice	50%	60%	50%	44%
Follow up on a targeted campaign or event	50%	50%	50%	22%
Address legislative change (e.g. changes to superannuation contribution rules)	50%	50%	50%	22%
Generate new advice business	50%	30%	50%	22%
Member nearing retirement age	50%	30%	50%	22%
Change to product offering	50%	30%	0%	33%
Retain member at risk of leaving (other reasons)	50%	40%	0%	22%
Retain member at risk of leaving to set up an SMSF	0%	10%	0%	22%

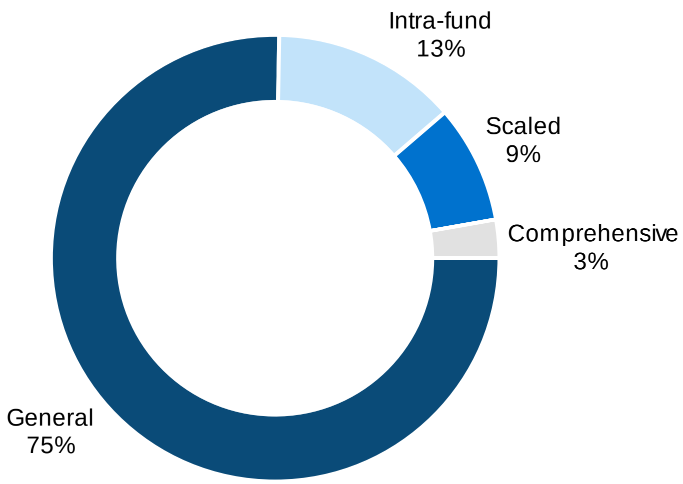
Members who received advice

49 We asked funds about the number of members who received advice between 1 July 2017 and 30 June 2018.

50 Figure 4 shows the type of advice that was received by members across all fund types. General advice made up the majority of advice, while comprehensive advice was the least accessed advice type. These results were self-reported by the funds.

51 Table 2 shows the breakdown of the types of advice by fund type.

Figure 4: Type of advice that was received by members across all fund types



Note: See Table 13 in the appendix for the data shown in this figure (accessible version).

Table 2: Type of advice that was received by members by fund type

Fund type	General	Intra-fund	Scaled	Comprehensive
Corporate	2%	4%	12%	6%
Industry	33%	49%	19%	76%
Public sector	55%	20%	62%	1%
Retail	10%	27%	7%	17%
Total	**100%**	**100%**	**100%**	**100%**

Popular advice topics

52 We asked the funds what topics members most commonly sought advice on. Funds could choose from a list of topics, including but not limited to:

(a) consolidation / rollovers of members;

(b) member investment choice;

(c) contributions;

(d) insurance;

(e) transition to retirement;

(f) death benefit nomination;

(g) estate planning;

(h) retirement planning;

(i) defined benefits; and

(j) comprehensive considerations outside superannuation.

53 Overall, the three most popular advice topics delivered to members were investment choice, contributions and retirement planning.

Figure 5: Most popular advice topics for members accessing advice

Note: See paragraph 54 for the text shown in this figure (accessible version).

Channels for delivering advice to members

54 We asked funds how they deliver their advice services to members.

Note: In this report, we use the term 'delivery channels' to describe the different ways that superannuation funds deliver advice to their members.

55 Figure 6 shows the number of pieces of advice provided to members by delivery channel for all advice types. After in-house call centres, advice providers employed by a related party were the most popular delivery channel for all advice types.

56 Table 3 summarises the proportion of advice provided to members by fund type and delivery channel. The survey results show that the majority of advice provided to members was delivered by internally employed advice providers and advice providers employed by a related party.

Table 3: Proportion of advice provided to members by fund type and delivery channel

Channel	Corporate	Industry	Public sector	Retail	All fund types
Internally employed advice providers	0%	30%	81%	30%	54%
Advice providers employed by a related party	88%	45%	0%	64%	26%
Third-party advice providers	12%	25%	19%	6%	20%
Total	**100%**	**100%**	**100%**	**100%**	**100%**

Note: 'Internally employed advice providers' comprises 'in-house call centre', 'employed advice providers' and 'digital advice tool used to generate SOA (used by member)'. 'Third-party advice providers' comprises 'third-party advice providers (embedded)', 'outsourced call centre', 'third-party advice providers with own AFS licence (no panel arrangement)' and 'third-party advice providers with own AFS licence (panel arrangement)'.

57 We wanted to further break down the survey results to better understand what types of advice are provided to members by different delivery channels. Figure 7 shows the proportion of advice delivered to members by delivery channel and advice type.

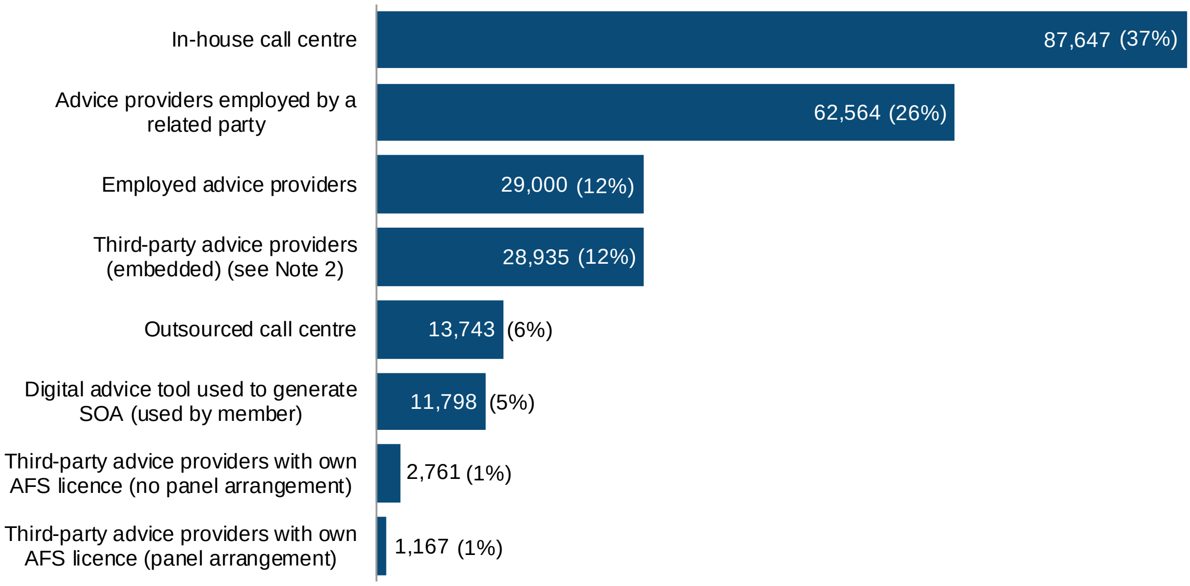
58 The survey results show that:

(a) 49% of general advice was provided by in-house call centres;

(b) 30% of intra-fund advice was provided by member-directed digital advice tools that generate SOAs; and

(c) 72% of comprehensive advice was provided by advice providers employed by a related party.

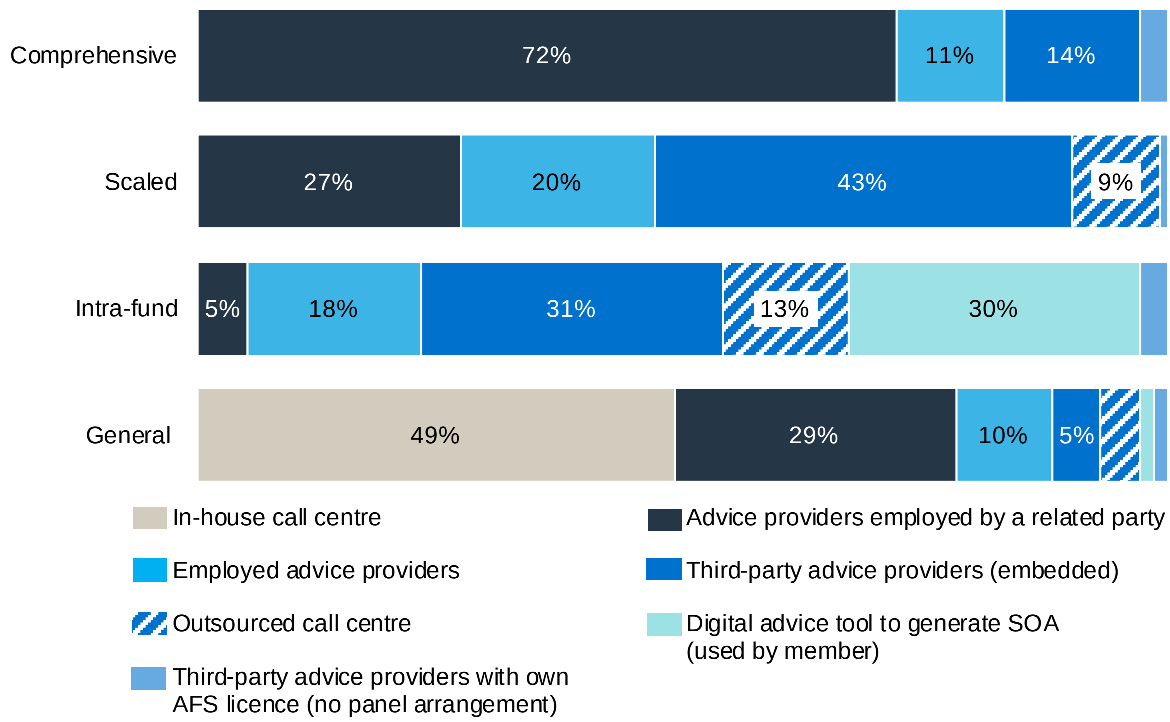
Figure 6: Number of pieces of general advice and personal advice provided to members by delivery channel for all advice types



Note 1: See Table 14 in the appendix for the data shown in this figure (accessible version).

Note 2: In this report, we use the term ‘third-party advice providers (embedded)’ to mean an advice provider that is employed by the fund, but provides financial advice under an unrelated party’s AFS licence.

Figure 7: Proportion of advice delivered to members by delivery channel and advice type



Note 1: Chart labels do not include values less than 4%.

Note 2: See Table 15 in the appendix for the data shown in this figure (accessible version).

Oversight of advice providers

Oversight of the quality of advice

59 We asked funds how they oversee the financial advice provided to members.

60 Out of the 21 funds that provide personal advice to members, 18 funds responded that they use third-party advice providers or advice providers employed by a related party. Of those 18 funds, 12 funds responded that they had a role in the oversight of the quality of advice provided.

Note: In Section C of this report, we have provided some practical tips for superannuation trustees and advice licensees on oversight of advice providers.

Approval of documents

61 We asked funds whether they had a role in approving the content of template documents used by their third-party advice providers, outsourced call centres or their advice providers employed by a related party. These documents include call scripts, 'fact-find' documents, Financial Services Guides (FSGs) and SOA templates.

62 Figure 8 shows that of the 12 funds that approved documents used by different delivery channels, FSGs were the most commonly approved document type across all delivery channels.

63 The survey results also show that:

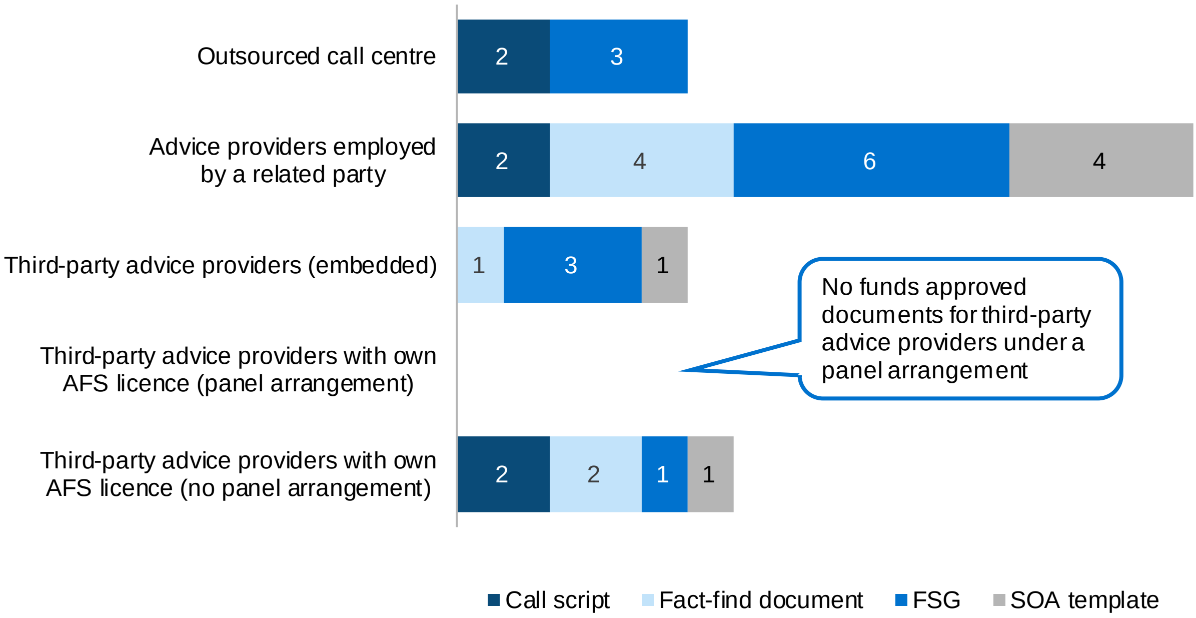
(a) four (40%) funds approved the SOA templates used by advice providers employed by a related party;

(b) one (20%) fund approved the SOA templates used by third-party advice providers (embedded); and

(c) one (11%) fund approved the SOA templates used by third-party advice providers with their own AFS licence (no panel arrangement).

64 Of the three funds that used third-party advisers with their own AFS licence with a panel arrangement, none of them responded that they had a role in approving the content of documents.

Figure 8: Approval by funds of the content of documents used by third-party advice providers, outsourced call centres and advice providers employed by a related party



Note: See Table 16 in the appendix for the data shown in this figure (accessible version).

Advice fees charged to members

65 We asked the funds about the advice fees charged to members.

Note: The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) made two recommendations to limit the deduction of advice fees from superannuation accounts: see Royal Commission, *Final report*, 4 February 2019, recommendations 3.2 and 3.3. The Australian Government released *Restoring trust in Australia's financial system: Financial Services Royal Commission implementation roadmap*, which addressed recommendations 3.2 and 3.3, on 19 August 2019: see The Hon. Josh Frydenberg MP, Treasurer, *Taking action on the Banking, Superannuation & Financial Services Royal Commission—Implementation roadmap*, media release, 19 August 2019.

66 Table 4 shows the fee structures charged to members who seek advice by fund type and advice type. The survey results indicate that fixed fees charged by funds for scaled or comprehensive advice were generally charged within a range.

Table 4: Fee structures charged to members by fund type and advice type

Fund type	Intra-fund	Scaled	Comprehensive
Retail	No fee charged	Fixed fee*	Fixed fee*
Industry	No fee or fixed fee**	Fixed or hourly fee	Fixed or hourly fee

Fund type	Intra-fund	Scaled	Comprehensive
Corporate	No fee charged	Fixed fee	Fixed fee
Public sector	No fee charged	Fixed fee	Fixed fee

* Note 1: One retail fund responded that it charged a fixed or asset-based fee, while all other retail funds have a fixed-fee structure.

** Note 2: 84% of the responding funds did not charge members individualised fees for intra-fund advice. However, four of the 10 responding industry funds charged a fixed fee (e.g. for pension advice, or when the first SOA is free and a fixed fee is charged for any single-issue advice thereafter).

Deduction of fees by third-party advice providers

67 We asked the funds about whether they allow third-party advice provider service fees to be deducted directly from member accounts. The majority of funds allow third-party advice providers to deduct advice service fees directly from member accounts.

Note: In April 2019, APRA and ASIC issued a joint letter to superannuation trustees, calling on them to review their governance arrangements in respect of fees deducted from member accounts for payment to third parties. ASIC and APRA will continue to follow up trustees on their oversight practices, particularly on advice fee deductions.

Ongoing fees

68 We asked the funds about whether they charge ongoing fees related to advice, and 13 funds (62%) told us that they can or do charge members ongoing fees.

69 Common responses to the types of ongoing fees charged to members were:

(a) a flat rate/fixed fee;

(b) a fee for service; and

(c) an annual review fee for comprehensive advice.

Identifying and managing conflicts of interest

70 We asked the funds to tell us about what they thought were the key conflicts of interest for their advice business and their approaches to conflicts management. This survey response was provided as free text giving funds the opportunity to reflect and communicate the issues they perceive in their business.

Identifying conflicts of interest

71 Table 5 shows the key themes highlighted by each fund type in responding to our conflicts of interest question.

Note: Funds that responded to this question could identify more than one of the key themes. As such, the totals in Table 5 do not all equal 100%.

Table 5: Identified conflicts of interest by fund type

Fund type	No direct conflicts	Vertical integration	Relationships with third-party advice providers	Bonuses paid to advice providers
Corporate	50%	50%	0%	0%
Industry	20%	50%	50%	10%
Public sector	0%	0%	50%	50%
Retail	22%	44%	0%	33%

72 The key themes identified by the funds as sources of conflicts of interest were:

(a) vertical integration;

(b) relationships with third-party advice providers; and

(c) bonuses paid to advice providers.

73 A minority of the industry funds (20%) and retail funds (22%) stated that they do not feel subject to any conflicts of interest due to operating a fully outsourced advice model.

Examples of free text survey responses

74 Set out below are some of the free text survey responses around identifying conflicts of interest.

75 A fund that indicated that it did not feel subject to any conflicts of interest told us:

> The trustee does not provide advice services directly under a licence and all advice services are provided by external third-party licensees on a totally arm's length basis.

76 A fund that identified vertical integration as a key conflict told us:

> The key conflict of interest is that [our advice providers] are employed [advice providers] (i.e. a vertically integrated model) and may therefore have conflicting interests, such as promoting [our own] products.

77 A fund that identified relationships with third-party advice providers as a key conflict told us:

> The key conflict of interest is between the advisers being employees of a service provider to the fund and also providing advice to members of the fund.

78 A fund that identified paying bonuses to advice providers as a key conflict told us:

> [Advice providers] are paid salaries by [the fund] and may be eligible for an annual discretionary bonus based on key performance indicators relating to compliance, service standards and business objectives.

Managing conflicts of interest

79 We asked funds about their approaches to managing their conflicts of interest. This was a free text response. All funds except one provided a response.

80 Funds commonly responded that they manage conflicts of interest using a conflicts management framework and internal conflicts management processes. Of the 24 funds that responded to this question, seven funds (29%) referred to the use of a conflicts management framework in their responses. This response was lower than anticipated given that APRA's Prudential Standard SPS 521 *Conflicts of interest* requires all superannuation funds to have a conflicts management framework in place.

81 As shown in Figure 9, funds used a range of other approaches to managing conflicts of interest, including:

(a) the full outsourcing of advice services;

(b) using targeted adviser key performance indicators;

(c) providing disclosure to members about potential conflicts of interest; and

(d) entering into arm's length agreements with advice providers that were related to the superannuation fund.

Figure 9: Approaches to managing conflicts of interest

Note: See paragraphs 81–82 for the text shown in this figure (accessible version).

Future plans for advice services

82 We asked funds what future plans they have for the advice services they offer members.

83 The key themes revealed:

61% of funds indicated they intend to increase the use of member self-directed digital advice tools that can generate SOAs

44% of funds indicated they intend to increase their in-house advice capacity

39% of funds indicated they intend to increase advertising and promotion of their advice services

Note: ASIC has published guidance on providing digital advice in Regulatory Guide 255 *Providing digital financial product advice to retail clients* (RG 255).

B Advice review: The quality of advice

Key points

We looked at the quality of advice being provided to members of 21 of the 25 funds we surveyed. Four of the 25 funds were not included because they responded that they did not provide personal advice to members.

We tested whether advice providers complied with the best interests duty and related obligations when giving advice to members. It is important to note that, in some cases, the fund was not the advice provider.

Overall, we found that:

- 49% of the files demonstrated full compliance with the best interests duty and related obligations;
- 36% of the files did not demonstrate full compliance with the best interests duty and related obligations, but the file did not indicate that the member was at risk of suffering financial or non-financial detriment as a result of following the advice provided; and
- 15% of the files did not comply with the best interests duty and related obligations and there was an indication that the member was at risk of suffering financial or non-financial detriment as a result of following the advice provided.

The main reasons for files not complying with the best interests duty and related obligations were:

- the advice provider failed to identify the subject matter of the advice and the member's objectives, financial situation and needs; and
- the advice provider failed to conduct a reasonable investigation into financial products and base all judgements on the member's relevant circumstances.

Our advice reviews showed that the compliance rate for retail, industry, corporate and public sector fund types varied within a moderate range. Due to the different sample sizes, it is not possible to fairly compare the overall quality of advice based on fund type. As such, our findings are aggregate findings and are not broken down by fund type.

About the advice review

84 During March and April 2019, we used our compulsory information-gathering powers to obtain 233 advice files from 28 AFS licensees that provided advice on behalf of 21 of the funds.

85 We requested a mix of intra-fund advice, scaled advice and comprehensive advice to test whether advice providers had complied with the best interests

duty and related obligations when providing this advice. This project did not include a review of general advice.

86 It is important to highlight the following aspects of our approach:

(a) We aimed to review 10 instances of advice across each of the 25 funds that we surveyed. However, this was not possible because not all funds provided advice and not all funds provided the same advice types to members.

Note: in this report we use the term 'members' however, in some instances the person receiving the advice was a partner of the member.

(b) For funds that offered advice across all three advice types, we requested:

(i) for intra-fund advice—the two most recent examples of advice;

(ii) for scaled advice—the four most recent examples of advice; and

(iii) for comprehensive advice—the nine most recent examples of advice.

Note: We relied on the funds to identify their own scaled advice or comprehensive advice. In the few instances when a fund did not nominate the advice type, we used our judgement to classify the advice type.

(c) For funds that did not offer all advice types to members, we requested a sample of advice files based on the types of advice they did provide.

(d) For funds that responded that they used a panel arrangement to deliver advice to members (i.e. when funds have multiple third parties that they refer members to for advice), we selected advice providers from the list provided by the fund.

87 It is important to note that, in some cases, the fund was not the advice provider.

88 We obtained a total of 233 files with:

(a) 128 files from industry funds;

(b) 59 files from retail funds;

(c) 30 files from corporate funds; and

(d) 16 files from public sector funds.

89 Retail funds were underrepresented in the sample because some retail funds included in the project either did not provide advice or did not provide all advice types.

Assessment of compliance

90 In May 2019, ASIC engaged three independent experts to review 194 advice files. ASIC staff reviewed 39 advice files bringing the total number of files reviewed to 233. The independent experts were selected through a tender

process. The successful tenderers demonstrated that they had the capability and capacity to undertake the reviews in a reasonable timeframe and did not have any conflicts of interest.

91 We provided the independent experts with a template to assess the advice files. ASIC staff used the same template. The template considered compliance by the advice provider with:

(a) the best interests duty and related obligations in Div 2 of Pt 7.7A of the *Corporations Act 2001* (Corporations Act); and

(b) the 'switching advice' requirements in s947D of the Corporations Act.

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

(a) act in the best interests of the member (see s961B and RG 175.242–RG 175.361 in Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175));

(b) provide appropriate advice (see s961G and RG 175 at RG 175.362–RG 175.385); and

(c) prioritise the member's interests (see s961J and RG 175 at RG 175.390–RG 175.411).

93 Section 961B(2) provides a 'safe harbour' that advice providers may rely on to prove they have complied with the best interests duty in s961B. If an advice provider shows they have taken the steps in s961B(2), they have met their obligation in s961B(1) to act in the best interests of the member.

94 Under s947D, when an advice provider recommends that a member replace one financial product with another, in full or in part (known as 'switching advice'), the advice provider must compare the 'from' product with the 'to' product and disclose this information in the SOA. The disclosure obligations contained in s947D also apply when cash and/or other investments are being replaced.

95 The template for assessing the advice files also required additional information to be collected, including:

(a) personal information about the member (i.e. age and income);

(b) whether the advice provider had recommended a superannuation product to the member and, if so, which product was recommended; and

(c) the upfront advice fee charged to the member.

96 The files reviewed by the independent experts were subject to internal quality assurance checks. ASIC staff—with the appropriate skills, training and experience—also independently reviewed 24% of the files. The findings of the independent experts' review and the review by ASIC staff were largely consistent. In the 12 cases where there were inconsistencies, the

findings of the independent experts were adopted. This approach is consistent with the approach taken in REP 575 and Report 562 *Financial Advice: Vertically integrated institutions and conflicts of interest* (REP 562).

97 If the review of the file demonstrated that the advice provider had complied with the law, the file was assessed as being fully compliant. If the reviewer was of the opinion that the file did not demonstrate that the advice provider had met the relevant legal standard, the file was assessed as being non-compliant.

98 The reviews were based on the contents of the advice file. No supplementary investigations or requests for information were made to the trustee, the advice licensee or the advice provider to validate or otherwise support the review of the advice.

Snapshot of advice files

Advice type

99 Across the 233 advice files:

(a) advice was provided to 233 members—in 92 instances, the member and their partner both received advice;

(b) 14% (32 files) were intra-fund advice files;

(c) 29% (68 files) were scaled advice files; and

(d) 57% (133 files) were comprehensive advice files.

Age of members

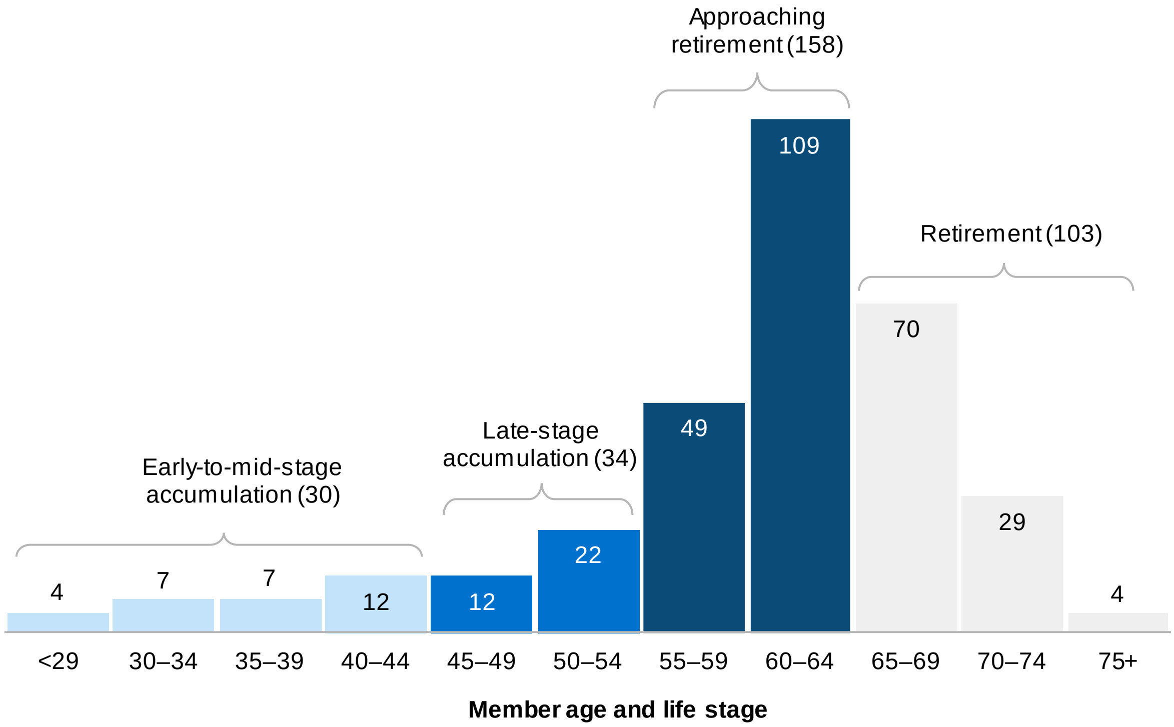
100 The age of members varied widely from 23 to 85—with a median age of 62. The majority of advice was provided to members aged between 60 and 64. Figure 10 shows the distribution of member ages and life stages, based on the advice files reviewed.

Fund balance

101 The average fund balance for individual members was $375,982.

102 The fund balance was less than $250,000 in 85 files (36%), and less than $450,000 in 131 files (56%). Table 6 shows the distribution of the fund balances, based on the advice files reviewed.

Figure 10: Distribution of member ages and life stages



Note 1: See Table 17 in the appendix for the data shown in this figure (accessible version).

Note 2: The number of members who received advice was 325. Based on the 233 advice files reviewed, there were 92 instances when a couple sought advice together.

Table 6: Distribution of fund balances based on advice file

Fund balance based on advice file	Number of files	Percentage	Percentage (cumulative)
$0 to $100,000	36	15%	15%
$100,001 to $250,000	49	21%	36%
$250,001 to $450,000	46	20%	56%
$450,001 to $750,000	47	20%	76%
$750,001 to $1,000,000	18	8%	84%
$1,000,001 to $2,000,000	33	14%	98%
$2,000,001 or more	4	2%	100%

Note: In instances when a couple received scaled advice or comprehensive advice, the fund balance represents the combined superannuation assets for both individuals.

Advice topics

103 The advice provided to members often included advice on more than one topic. In 75 cases (32%), the member only received advice on their superannuation. In 157 cases (67%), the member received advice on another advice topic as well as advice on their superannuation. Other advice topics included strategic advice, insurance advice and/or investment advice.

Note: In one case (less than 1%) the member did not receive advice on their superannuation.

Advice fees

104 In 137 cases (68%), the advice document contained evidence that the member was directly charged an advice fee for the advice services provided. The fees paid by the member ranged from $200 to $5,500, with a median fee of $2,200. The advice fee was paid in a number of ways, including directly from the member's bank account, as a withdrawal from their superannuation product or as a combination of these methods.

105 In 64 cases (32%), the advice document did not contain evidence that the member was directly charged for the advice services provided.

106 We broke down the advice fees by the advice provision method. Based on the files reviewed, advice provided by internally employed staff was cheaper on average, followed by advice provided by an advice provider employed by a related party. Third-party advice providers were the most expensive on average. Table 7 shows how advice fees were charged by delivery channel, while Table 8 shows the range and average fees that were charged to members by delivery channel.

Table 7: How the advice fee was charged, by delivery channel

Delivery channel	No direct fee	Direct fee
Internally employed staff	10%	3%
Advice providers employed by a related party	13%	36%
Third-party advice providers	9%	29%
Total	**32%**	**68%**

Note: This table does not include intra-fund advice files.

Table 8: Cost of the advice fee, by delivery channel

Delivery channel	Range	Average
Internally employed staff	$0 to $2,500	$356

Delivery channel	Range	Average
Advice providers employed by a related party	$0 to $4,600	$1,509
Third-party advice providers	$0 to $5,500	$1,797

Note: This table does not include intra-fund advice files.

Replacement product advice

107 In 180 files (77%), advice providers recommended that the member replace one financial product with another.

108 Of these:

(a) for 34 files the replacement of product was restricted to changing investment options within the same fund; and

(b) for 87 files the replacement of product involved changing from an accumulation superannuation account to an account-based pension account.

Findings: Compliance rates

109 The 233 advice files were reviewed for compliance with the best interests duty and related obligations, and, when applicable, for compliance with the ‘switching advice’ requirements in s947D of the Corporations Act.

110 Overall, in 120 files (51%) we found that the advice provider did not demonstrate full compliance with the best interests duty and related obligations.

111 Specifically, we found that:

(a) in 119 files (51%) the advice provider did not demonstrate compliance with the requirement to act in the best interests of the member in relation to the advice under s961B;

(b) in 79 files (34%), the advice provider did not demonstrate compliance with the requirement to provide appropriate advice under s916G;

(c) in 63 files (27%), the advice provider did not demonstrate that they had prioritised the member’s interests under s961J; and

(d) where advice was provided to replace a product (180 files), the information on the product replacement was inadequate or absent in 36 files (20%).

112 The two main causes of files being assessed as non-compliant were:

(a) the advice provider failed to identify the subject matter of the advice and the member's objectives, financial situation and needs; and

(b) the advice provider failed to conduct a reasonable investigation into financial products and base all judgements on the member's relevant circumstances.

113 Of the files that did not demonstrate full compliance with the best interests duty and related obligations, in 36 files (15%) there was an indication that the member was at risk of suffering financial or non-financial detriment as a result of following the advice provided. The remaining 84 files (36%) did not demonstrate full compliance with the best interests duty and related obligations as a result of procedural, disclosure or record-keeping deficiencies.

Compliance rates across funds types

114 Our advice reviews showed that the compliance rate for retail, industry, corporate and public sector fund types varied within a moderate range. Due to the different sample sizes, it is not possible to fairly compare the overall quality of advice based on fund type. As a result, it would not be appropriate to draw definitive conclusions that the advice provided to members of one fund type was more compliant than the advice provided to members of another fund type.

Findings by delivery channel

115 As shown in Table 9, we broke down the results by delivery channel. The results indicate that advice provided by internally employed staff had the highest rates of compliance. Advice provided by third-party advice providers and advice providers employed by a related party achieved a lower rate of compliance.

Table 9: Percentage of compliant files by delivery channel

Delivery channel	Number of files	Compliant with s961B	Compliant with s961G	Compliant with s961J	Overall compliance rate
Internally employed advice providers	37	57%	65%	84%	57%
Advice providers employed by a related party	112	48%	60%	70%	47%
Third-party advice providers	84	46%	75%	73%	46%

Note: The overall rate of compliant advice represents files that were assessed as complying with the best interests duty and related obligations.

Findings by advice type

116 As shown in Table 10, the comprehensive advice files had a higher rate of non-compliance when compared to the intra-fund and scaled advice files. We attribute the higher non-compliance rate to the fact that comprehensive advice is generally more complex in nature and often contains advice on multiple interrelated advice topics.

Table 10: Percentage of compliant files by advice type

Advice type	Number of files	Compliant with s961B	Compliant with s961G	Compliant with s961J	Overall compliance rate
Intra-fund	32	56%	59%	81%	56%
Scaled	68	57%	65%	79%	56%
Comprehensive	133	43%	68%	68%	43%

Note: The overall compliance rate represents files that were assessed as complying with the best interests duty and related obligations.

Assessing financial and non-financial detriment

117 When files were assessed as being non-compliant, we considered whether there was an indication that the member was at risk of suffering financial or non-financial detriment as a result of following the advice provided.

118 We identified 36 files in total where there was an indication that the member was at risk of suffering financial or non-financial detriment as a result of the advice provided, including:

(a) 25 files (10.7%) where the member was at risk of financial detriment;

(b) four files (1.7%) where the member was at risk of non-financial detriment; and

(c) seven files (3.0%) where the member was at risk of both financial and non-financial detriment.

119 The key indicators of financial detriment included:

(a) failure to investigate contribution history and risk that the advice might lead to the member breaching their contribution cap;

(b) failure to adequately identify or address the member's insurance needs resulting in potential over-insurance;

(c) inconsistency between the member's assessed tolerance for investment risk and the investment option recommended;

(d) failure to investigate and consider the tax consequences of implementing the advice;

(e) failure to investigate the affordability of the recommendation and the impact it may have on the member's cash flow; and

(f) increased product and advice fees when a benefit to the member was not demonstrated.

120 The main indicator of non-financial detriment was due to the advice provider not addressing the member's advice needs. For example, a member sought advice on investment choice and contributions. However, the advice provider scoped the advice to only cover investment choice and the member received no advice on contributions.

Findings: Reasons for non-compliance

121 When an advice file was assessed as non-compliant with s961B, the two main causes were a failure by the advice provider to:

(a) identify the subject matter of the advice and the member's objectives, financial situation and needs; and

(b) conduct a reasonable investigation into financial products and base all judgements on the member's relevant circumstances.

122 In some cases, the advice provider also failed to demonstrate compliance with:

(a) the appropriate advice requirement under s961G;

(b) the conflicts priority rule under s961J; and

(c) record-keeping requirements.

Identifying the subject matter of the advice and the member's objectives, financial situation and needs

123 Under s961B(2)(b), the advice provider must identify and consider:

(a) the subject matter of the advice sought by the member either explicitly or implicitly; and

(b) the objectives, financial situation and needs of the member that would reasonably be considered as relevant to advice sought on that subject matter.

124 An advice provider can determine the scope of the advice only after identifying the subject matter of the advice sought by the member: see RG 175 at RG 175.282.

125 Advice providers need to exercise their judgement in both deciding the scope of the advice and undertaking adequate inquiries into the member's circumstances. It is important to ensure that the scope of advice is not

reduced to exclude critical issues that are relevant to the subject matter of the advice: see Regulatory Guide 244 *Giving information, general advice and scaled advice* (RG 244) at RG 244.68.

126 In some cases, the process of making inquiries might lead to different or additional areas of advice that are also relevant to the member. This will require further discussions with the member and, potentially, a revision of the scope of the advice: see RG 175 at RG 175.306.

127 Advice providers must not determine the scope of the advice in a way that is inconsistent with the member's relevant circumstances or the subject matter of the advice they are seeking: see RG 175 at RG 175.318.

128 In 63 files (27%) that were assessed as non-compliant, we found that the advice provider failed to adequately identify the objectives, financial situation and needs of the member.

129 The two examples below highlight the differences between two advice files, with the first example demonstrating compliant advice and the second example demonstrating non-compliant advice.

Example 1: Advice provider shows that they have properly determined the scope of advice

Personal circumstances	The member was employed full time but wanted to retire as soon as possible. The member intended to take accrued leave for 12 months, and then retire. The member's wife was casually employed and intended to keep working for the next three years. The member had two superannuation funds, and his wife had one superannuation fund. The member was also receiving a small veteran's pension.
Reason for seeking advice	The member and his wife were seeking to maximise their Centrelink entitlements and draw an annual income of $55,000 in retirement until age 90.
Delivery channel	Advice provider employed by a related party
Advice	The advice provider recommended that the member: • consolidate his superannuation to reduce fees (after comparing the member's superannuation accounts); • continue making salary sacrifice contributions to superannuation during his 12 months leave; • commence drawing an account-based pension during the next 12–18 months (upon retirement); • make a lump sum withdrawal of approximately $248,000; and • make a non-concessional contribution of $248,000 into his wife's superannuation account (thereby maximising his Centrelink entitlements). The member's wife was advised to maintain her existing superannuation fund, update her investment options and make a non-concessional contribution of $248,000.

Commentary	The advice provider identified the member's needs as stated by the member, and separately identified implicit needs, including contributions, his wife's superannuation, estate planning and insurance. The advice provider then scoped their advice to the member to include all of these needs. The advice provider's file notes were detailed and showed consideration of the advice that needed to be implemented now and at retirement in 12–18 months time (subject to a review confirming no changes to the circumstances of the member and his wife that would impact the advice). The scope of the advice was broadened by the advice provider to include all relevant subjects related to the advice sought by the member and his wife.

Example 2: Advice provider fails to show that they have properly determined the scope of the advice

Personal circumstances	The member was 63 years old and had been forced to retire earlier than anticipated due to some health concerns. The member had approximately $380,000 in a defined benefit superannuation fund.
Reason for seeking advice	The member was seeking to withdraw a small lump sum to pay down some credit card debts (approximately $25,000–$30,000). The advice provider mentioned to the member that he may need advice on the ongoing suitability of his defined benefit superannuation fund during his retirement. The member then requested advice from the advice provider on this topic.
Delivery channel	Third-party advice provider
Advice	The advice provider gave intra-fund advice and recommended that the member switch from a growth investment option to a balanced investment option.
Commentary	The advice provider scoped out vital issues in order to provide the member with intra-fund advice. The member mentioned on two occasions that he would like to withdraw approximately $25,000–$30,000 from his superannuation fund to pay down credit card debts and this was not addressed in the advice. The advice provider identified that the member would need to review the ongoing suitability of his defined benefit superannuation fund. However, this need was also not addressed in the advice. The member's advice needs were more comprehensive than investment choice only. When an advice provider cannot provide advice due to an advice model limitation, the advice provider should decline to give the advice and refer the member elsewhere.

Reasonable investigation into financial products and basing all judgements on the member's relevant circumstances

130 Under s961B(2)(e) when providing advice to members involving a financial product, advice providers must conduct a reasonable investigation into those financial products.

131 The requirement to conduct a reasonable investigation is scaleable and depends primarily on the member's existing financial circumstances, their needs and objectives, and the subject matter of the advice being provided.

132 A reasonable investigation conducted under s961B(2)(e) does not require an investigation into every product available: see s961D. Less extensive inquiries are likely to be necessary when the advice is for a relatively simple purpose.

133 The advice provider must consider and investigate the member's existing product (and, if applicable, the relevant investment option) to see if it is a financial product that might meet the member's relevant circumstances. If a new financial product is to be recommended, it is expected that the advice provider will exercise judgement in determining what level of investigation into new products is reasonable and conduct that investigation.

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

135 In 83 files (36%) that were assessed as non-compliant, we found that the advice provider had not demonstrated how they based all judgements on the member's relevant circumstances. It is essential that the advice provided to members clearly sets out how their needs and objectives have been addressed.

136 The two examples below highlight the differences between two advice files, with the first example demonstrating compliant advice and the second example demonstrating non-compliant advice.

Example 3: Advice provider shows that they have properly investigated the member's existing superannuation fund

Personal circumstances	A member sought advice with her husband. Both were aged 57 at the time of seeking advice. They have four children, one of whom was financially dependent. The couple earnt a combined annual income of $287,500, plus between $20,000 and $50,000 in bonuses. The couple's annual expenses were $152,640. The member had a defined benefit interest and her husband had an accumulation interest with a different fund. The couple both had life insurance and income protection insurance, and an outstanding mortgage of $20,000. In recent years, cash had been directed to paying down the mortgage. They had a monthly cash surplus of $2,200.
Reason for seeking advice	The couple were approaching retirement. The member wanted to retire when she turned 60 and draw down on her long-service leave and annual leave balance at this time, while continuing to accrue her defined benefit. She would then formally retire. The member had a superannuation surcharge liability of $11,287. The member's husband planned to continue working and retire when he turned 65. The couple anticipated that they would require an annual income of $85,000 in retirement. The couple were seeking to: • review their superannuation arrangements, including the structure of their investments; • minimise their ongoing tax liability; • maximise their wealth before retirement; and • ensure that they had appropriate estate planning strategies in place. The couple also wanted to have a cash balance of $50,000 when they retired and be mortgage free.

Delivery channel	Advice provider employed by a related party
Advice	The advice provider recommended that: • the couple maintain their current superannuation arrangements (and obtained the required approvals from the licensee to recommend a product that was not on the approved product list); • the member repay her superannuation surcharge liability with a one-off non-concessional contribution; • the member's husband increase his salary sacrifice contributions to maximise his concessional contributions; and • the member's husband move to a lower risk investment profile in line with his 'neutral' investment risk profile and complete a binding death benefit nomination. The advice provider also recommended the couple pay down their mortgage debt using their surplus cash flow.
Commentary	The file was very detailed and contained evidence of research undertaken by the advice provider. The advice provider made every effort to scope the advice correctly and to formulate appropriate and measurable goals for the couple. In relation to the member's husband's superannuation account, the advice provider undertook a product comparison against another fund, considering the cost, features, risks and other benefits of retaining and switching superannuation funds. The advice provider recommended that the member's husband retain his existing superannuation fund because his income protection policy provided him with a benefit until age 67, rather than a two-year benefit with the alternative product.

Example 4: Advice provider fails to show that they have properly considered the member's existing superannuation fund

Personal circumstances	A member sought advice with his wife. The couple were aged 65 and 62. The member had retired and his wife was considering retirement within the following three months. The member had a defined benefit pension plan through his employer of approximately $583,000. The member's wife had approximately $65,500 in superannuation with a different superannuation fund.
Reason for seeking advice	The couple were mainly seeking retirement planning advice and wanted to ensure that they had enough in their superannuation to last through their retirement. The member mentioned that Centrelink benefits were also important.
Delivery channel	Third-party advice provider
Advice	The advice provider recommended that they both roll their existing superannuation funds into a new related-party fund, and change their investment choice to match their risk profile. The advice provider recommended that the member's wife make a personal deductible contribution into her superannuation fund. The advice provider recommended the member commence a pension, drawing down $3,000 a month.

Commentary	The advice provider failed to investigate the member's defined benefit pension plan and whether it was suitable for the member to retain his existing fund. The advice provider recommended the couple switch their superannuation/pension accounts to a new provider on the basis that the recommended product was cheaper. However, the product comparisons (on the file) clearly showed that the couple's existing superannuation funds were more cost effective. The advice provider failed to conduct a proper investigation into which products could reasonably meet the member's needs and objectives.

The appropriate advice requirement

137 We assessed whether the advice was appropriate for the member: see s961G. We found that, in 79 (34%) of the files reviewed, the advice provider did not demonstrate compliance with the appropriate advice requirement in s961G.

138 Often, the reasons why a file was assessed as not demonstrating compliance with s961G were associated with a failure by the advice provider to show they had taken each of the 'safe harbour' steps in s961B(2). For example, in situations when the advice provider recommended the member replace an existing superannuation product with another superannuation product without demonstrating that they had adequately investigated that product, the file would also be assessed as not being compliant with s961G. This is because the advice provider would not have been able to demonstrate that the advice to dispose of the existing product was appropriate.

139 In other cases, the file was assessed as being compliant with s961G despite failure by the advice provider to show that they had taken each of the safe harbour steps in s961B(2). Sometimes this was due to scoping. For example, when the advice provider did not demonstrate that they had adequately determined the subject matter of the advice, in some cases, the advice provided remained appropriate for that member's circumstances.

The conflicts priority rule

140 In addition to reviewing each file to check whether the advice provider acted in the member's best interests (see s961B) and whether the advice was appropriate for the member (see s961G), we assessed the advice to see whether the advice provider had prioritised the needs of the member: see s961J.

141 Under s961J, an advice provider must prioritise the member's interests over their own interests or those of a related party of the advice provider.

142 In complying with s961J, advice providers need to consider what a reasonable advice provider without a conflict of interest would do: see RG 175 at RG 175.392. To demonstrate compliance with s961J, an advice provider must identify what interests they or their related parties have: see RG 175 at RG 175.390.

143 In 63 files (27%), we found that the advice provider appeared to have prioritised their own interests, or those of a related party of the advice provider, over the member's interests in breach of s961J.

144 In general, the conflict of interest arose because:

(a) In 55 files (24%) the advice provider, or a related party of the advice provider, obtained fees or other benefits without the advice provider demonstrating that the member's interests were prioritised. This occurred in instances where the advice provider failed to research alternative products, conduct a reasonable investigation into the member's existing products, review the member's current insurance, or justify why a more expensive related-party product was recommended when little or no additional benefit to the member was demonstrated.

(b) In eight files (3%) it appeared there were limitations placed on the advice provider by their advice licensee that resulted in a member receiving inappropriately scoped advice. This included instances where the advice was limited to the member's existing superannuation product, resulting in other relevant advice needs remaining unmet.

145 The example below demonstrates non-compliant advice.

Example 5: Advice provider has failed to show that they have prioritised the member's interests ahead of their own

Personal circumstances	A member and her husband sought advice because they were looking at retiring within the next 12–18 months. They were in their mid-60s with no dependants. The member was employed full time, earning approximately $64,500 a year, and her husband was employed on a casual basis earning approximately $38,000 a year. The couple had a mortgage of $112,000, but minimal other debt. They jointly held approximately $522,000 in pension/superannuation across three superannuation funds.
Reason for seeking advice	The couple were seeking to: • review their situation; • maximise their Centrelink age pension benefits; • minimise their tax liabilities; • reduce their debt upon retirement; and • ensure that they had sufficient funds available to maintain their current cash flow throughout retirement.
Delivery channel	Advice provider employed by a related party

Advice	The advice provider recommended that: • the member continue her salary sacrificing of $1,000 a month into one of her existing superannuation funds; • the member withdraw $189,000 from her pension account, using $89,000 to pay down the mortgage and $100,000 as a non-concessional contribution into a new superannuation account in her husband's name; • in the following financial year, the member withdraw the remainder of her funds and contribute up to $300,000 into her husband's newly established superannuation account as a non-concessional contribution using the 'bring forward' rule; • the couple realign their investment options to their assessed risk profile; and • the member apply for a pension and Seniors Health Card.
Commentary	The advice provider failed to act in the best interests of the member by scoping out the member's existing second superannuation fund and her husband's existing superannuation fund. The advice provider did not consider the existing funds when making the product recommendations and failed to take the member's relevant circumstances into account. The advice provider was conflicted in giving the advice because they were an employee of a related party of the product provider. Additionally, there was evidence on file to indicate the advice provider held an investment within the issued product and may have been eligible for a bonus and other benefits. By scoping out some of the couple's existing superannuation funds, recommending a more expensive product and recommending a related-party product without conducting a proper investigation, the advice provider failed to adequately manage their conflict of interest. In such circumstances, ASIC would expect the advice provider to manage this conflict by conducting a reasonable investigation into the couple's existing and recommended products, and make a recommendation based on the product that best meets their needs and objectives.

Record-keeping requirements

146 The advice review identified that in many of the files that failed to demonstrate full compliance with the best interests duty and related obligations, there was concern that the advice provider did not maintain adequate records. In these instances, poor record keeping hindered our ability to conclude that the advice was compliant.

147 Poor record keeping arose in instances where the advice provider failed to adequately record the member's goals, objectives and financial position, or where the advice provider failed to justify their recommendation.

148 We observed that record keeping was also an issue when the advice provider recommended the member retain their existing product. In some cases, it appeared that retention of the product was appropriate. However, there was insufficient evidence on the advice file that the advice provider had taken steps to demonstrate why the existing product remained suitable for the member's needs and appropriate for their circumstances.

149 In most cases where the advice provider kept good file notes and records of conversations, the advice provider was able to demonstrate how they complied with the best interests duty and related obligations.

150 The advice review included consideration of audio file records of conversations with members. This form of record keeping provided additional insight into the member engagement process undertaken by the advice provider and the appropriateness of the resultant advice.

Improving the quality of advice

151 The findings from our advice review identified the need for improvement in the advice provided to members of superannuation funds. For many files, that did not demonstrate full compliance with the best interests and related obligations, this was due to procedural, disclosure or record-keeping deficiencies.

152 We consider that trustees, advice licensees and advice providers can improve the quality of advice by considering and, where appropriate, implementing the practical tips in Section C of this report.

C Practical tips for trustees, advice licensees and advice providers

Key points

The findings from our advice review identified the need for improvement in the advice provided to members of superannuation funds.

In this section, we outline some practical tips to improve the quality of advice provided to members of superannuation funds. This includes tips for:

- superannuation trustees that arrange advice services for members;
- advice licensees that develop policies and procedures and supervise advice providers; and
- individual advice providers.

To the extent that you are both the superannuation trustee, the advice licensee and the advice provider, you should have regard to all of the tips.

Our practical tips cover the following areas:

- oversight of advice providers;
- managing conflicts of interest;
- scoping advice;
- providing intra-fund advice;
- charging of fees; and
- record keeping.

Oversight of advice providers

153 Superannuation trustees are obliged to exercise their powers and perform their duties in the best interests of members. Inappropriate advice can have significant long-term consequences for superannuation members, which emphasises the importance of superannuation trustees having careful regard to their best interests obligation when providing advice services to members.

154 When a superannuation trustee outsources the provision of advice, we expect that it will:

(a) exercise sufficient skill, care and diligence in choosing suitable service providers;

(b) monitor the ongoing performance of service providers; and

(c) appropriately deal with any actions by service providers that breach service level agreements or the trustee's obligations as a registrable superannuation entity (RSE) licensee or AFS licensee.

155 In particular, the superannuation trustee cannot assume that because it has entered into an arrangement with a licensed advice provider it can simply rely on the AFS licensee to deliver advice services appropriately.

156 APRA's Prudential Standard SPS 231 *Outsourcing* obliges superannuation trustees to satisfy specific requirements if they outsource arrangements involving material business activities. APRA's Prudential Practice Guide SPG 231 *Outsourcing* notes that arrangements with financial planners, particularly when the advice relates to a member's interest in the fund, is an example of an arrangement that may be a material business activity for a superannuation trustee.

157 When advice functions are outsourced, it is the individual advice provider of the outsourced entity that has a duty to act in the best interests of the member and comply with the other obligations in Div 2 of Pt 7.7A of the Corporations Act (assuming it is an individual who provides the advice): see RG 175 at RG 175.224.

158 The advice licensee has an overriding duty to ensure that advice is provided in compliance with the law and should have robust oversight arrangements in place. In some cases, the advice licensee may be the superannuation trustee. The Corporations Act requires advice licensees to implement adequate monitoring and supervision processes to provide financial services efficiently, honestly and fairly, and to ensure that their representatives provide financial services that comply with the financial services laws.

Tips for superannuation trustees: Oversight of outsourced advice

1 You should conduct regular reviews of the appropriateness of outsourced arrangements. This is also an important step in demonstrating the effective management of conflicts of interest.

2 If you intend to use a panel arrangement to offer advice services to members, you should undertake an appropriate vetting process of the advice providers listed on your panel. This could include:

(a) undertaking background checks;

(b) obtaining compliance and audit histories from advice licensees; and

(c) pre-vetting samples of advice.

Tips for advice licensees: Oversight of advice providers

3 You should take all necessary steps to ensure that advice providers operating under your AFS licence are competent to provide financial services. This includes:

(a) identifying the knowledge and skills your advice providers need to competently provide the financial services offered by your licence; and

(b) ensuring that your advice providers have appropriate knowledge and skills, and that they maintain their competence through ongoing training. You should focus on any knowledge areas specific to the services you provide.

4 You should ensure that the arrangements you have in place to oversee the financial services provided by the advice providers operating under your AFS licence are robust. This does not mean you have to scrutinise every activity of your advice providers. However, you do need to have measures to allow you to assess whether your advice providers are complying with the law. Depending on the circumstances, this is likely to include:

(a) the use of data analytics;

(b) business-as-usual audits;

(c) impromptu audits;

(d) appropriate background and reference checking;

(e) pre-vetting of advice;

(f) peer reviews;

(g) retaining adequate levels of qualified and competent compliance staff; and

(h) SOA templates.

5 Audits often form a key part of an AFS licensee's monitoring and supervision arrangements. You should ensure that your audit program is comprehensive and involves both a subjective and objective assessment. It should be more that a 'tick box' exercise: see the checklist in Appendix 3 to Report 515 *Financial advice: Review of how large institutions oversee their advisers* (REP 515).

Managing conflicts of interest

159 Under s912A(1)(aa) of the Corporations Act, AFS licensees must have in place adequate arrangements for managing conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in providing financial services as part of the financial services business of the licensee or the representative.

160 Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181) sets out our guidance on s912A(1)(aa). RG 181, at RG 181.15, defines a 'conflict of interest' as:

> Circumstances where some or all of the interests of people (clients) to whom a licensee (or its representative) provides financial services are inconsistent with, or diverge from, some or all of the interests of the licensee or its representative.

161 Conflicts of interest can be actual, apparent or potential.

162 The obligation to have adequate arrangements in place to manage conflicts of interest does not prohibit all conflicts of interest, but it does require arrangements to ensure that all conflicts are adequately managed: see RG 181 at RG 181.27. Superannuation trustees are obliged to comply with specific obligations in relation to conflicts of interests as a result of s52(d) of the SIS Act.

163 Superannuation trustees and advice licensees can help ensure that the quality of the financial services provided to members is not significantly compromised by conflicts of interest by:

(a) identifying conflicts of interest;

(b) assessing them; and

(c) when appropriate, putting measures in place to manage them.

164 The quality of a service is significantly compromised if the service is of materially lesser quality than the AFS licensee would have been likely to provide if they were not subject to the relevant conflict of interest: see RG 181 at RG 181.14.

165 In our survey, the key sources of conflicts of interest identified by the funds were:

(a) vertical integration;

(b) relationships with third-party advice providers; and

(c) bonuses paid to advice providers.

166 Funds commonly responded that they manage conflicts of interest using a conflicts management framework. Of the 24 funds that responded to our survey, seven funds (29%) referred to the use of a conflicts management framework in their responses. This response was lower than anticipated given that APRA's Prudential Standard SPS 521 *Conflicts of interest* requires all superannuation funds to have a conflicts management framework in place.

167 In our advice review we identified some practices by advice providers that may have been used to manage conflicts of interest, but were problematic, including:

(a) declining to provide advice on the actual superannuation product, where it was central to the advice and needed to be included in the scope of the advice; and

(b) recommending that the member seek further personal advice to confirm the appropriateness of the advice provided.

Tips for superannuation trustees: Managing conflicts of interest

6 You should conduct regular reviews of the appropriateness of outsourced arrangements. This is also an important step in demonstrating the effective oversight of third-party advice providers or advice providers employed by a related party.

7 Advice referral arrangements and remuneration arrangements for advice providers should be regularly reviewed to ensure that payments or other incentives do not drive conflicts.

Tips for advice licensees: Managing conflicts of interest

8 You should have a rigorous approval process for selecting the products on your approved product list. All products should undergo the same approval process, regardless of whether they are in-house products or external products. This is particularly important for vertically integrated institutions.

9 It is good practice to specifically monitor the allocation of member funds invested in in-house products (for vertically integrated institutions) compared with external products to assess whether there are any incentives (monetary or non-monetary) for an advice provider to recommend an in-house product. You should analyse the data across advice providers as a group and also for individuals. This will assist you to monitor and supervise their advice providers by enabling you to determine which advice providers require more frequent auditing.

10 You should support the provision of advice that is genuinely in the member's/client's best interests, including appropriate scoping, genuine consideration of the their circumstances and basing all judgements, including products recommended, on the member's/client's best interests.

11 You should ensure that you have appropriate remuneration arrangements in place. If you use balanced scorecards, you should ensure that they have the right focus on member/client outcomes and compliance, and avoid giving undue weight to sales-related measures: see REP 562 at paragraph 178.

12 Training programs that you develop for advice providers should address conflicts of interest. This may involve regular coaching and training in compliance or providing training for advice providers on conscious or unconscious bias when giving advice on products.

Tips for advice providers: Managing conflicts of interest

13 If you cannot prioritise the member's interests in providing advice, you should decline to provide the advice.

14 You must keep records of the reasoning behind any recommendation that you make. Keeping records will be necessary to show that you prioritised the interests of the member ahead of your own.

15 Ask yourself when reviewing your advice, 'Would I have given this advice if I didn't have the conflict of interest?'

16 If you have a conflict of interest that affects the advice you provide to a member, you must disclose this to your AFS licensee.

Scoping advice

168 All personal advice is 'scaled' or 'limited in scope' to some extent—advice is either less or more comprehensive in scope along a continuous spectrum.

169 Either the advice provider or the member may suggest limiting or revising the subject matter of the advice. When advice is scaled, the advice provider must take reasonable steps to explain to the member the limited scope of the advice in a way that will be clear to the member.

170 In our advice reviews, we saw some examples of advice not being properly scoped. A number of these examples involved insurance advice.

171 When providing insurance advice, advice providers should discuss with the member:

(a) their existing level of insurance;

(b) the level of insurance they will require in the future;

(c) the affordability of insurance for the member; and

(d) how best to implement the right insurance strategy. If this involves a change to the member's existing insurance arrangements, this will involve comparing the costs and benefits or disadvantages of changing the member's insurance.

172 In our advice review, we saw examples of advice providers identifying a member's insurance needs, but inappropriately excluding insurance from the scope of advice.

173 If an advice provider identifies insurance as an advice need or relevant to the advice being provided, they must deal adequately with the member's insurance needs.

174 In some situations, it may not be necessary for an advice provider to discuss insurance issues with a member.

175 When insurance is excluded from the scope of advice, the advice provider must make it clear to the member that no insurance advice is being provided and explain the potential downside and risks, if any, to the member of choosing not to receive advice on this aspect of their personal circumstances.

Note: See RG 244, 'Example 3: A retirement savings health check'.

Tips for advice providers: Scoping advice

17 Either you or a member can suggest limiting or revising the subject matter of the advice. However, you must use your judgement when deciding on the scope of the advice. You must determine the scope of advice in a way that is consistent with the member's relevant circumstances and the subject matter of the advice they are seeking.

18 You must take reasonable steps to explain to the member the limited scope of the advice you are giving in a way that will be clear to the member. For example, this could involve explaining the scope of your advice to them, and that you will not be considering any other issues. This will help the member understand what advice they are getting and ensure that there is no misunderstanding about what they are, and are not, being advised on.

19 It is also good practice to give a simple and accurate explanation about why the scope of the advice has been limited.

20 If you identify that a member needs advice on insurance, you must consider and advise the member on their insurance needs. If you do not have the necessary expertise to provide insurance advice, you should notify the member and refer the member to an advice provider who has the expertise to provide the advice.

21 If you are providing advice about a member's insurance needs, you should discuss:

(a) their existing insurance cover;

(b) the level of insurance cover they will need in the future;

(c) the costs and options of maintaining, increasing or decreasing (as appropriate) their existing insurance cover through their existing fund;

(d) whether they have any health issues that may affect their ability to get insurance cover; and

(e) the advantages and disadvantages of the different insurance options considered.

22 When you cannot act in the best interests of the member in scoping the advice due to an advice model limitation, you should decline to give the advice and refer the member elsewhere.

Providing intra-fund advice

176 'Intra-fund advice' refers to the types of advice that a superannuation trustee can provide to members when the cost of the advice is collectively charged to the superannuation fund members: see s99F of the SIS Act.

> Note: See Information Sheet 168 *Giving and collectively charging for intra-fund advice* (INFO 168).

177 Intra-fund advice may be provided by a superannuation trustee directly or by another person acting as the trustee's employee or under an arrangement on behalf of the trustee.

178 In this report, we looked at intra-fund advice. Personal intra-fund advice must comply with the same advice conduct obligations as non-intra-fund personal advice.

> Note: In this report, we use the term 'intra-fund advice' to mean non-ongoing personal advice provided by or on behalf of a superannuation trustee to a superannuation fund member that can be collectively charged to the superannuation fund members and does not relate to a topic that falls within the prohibitions under s99F of the SIS Act.

179 When providing intra-fund advice to members, advice providers must ensure that the advice is clear, concise and effective, and promotes understanding of the advice by members. This includes presenting the information in as brief a manner as reasonably possible, without compromising its accuracy: see RG 175 at RG 175.207.

180 For example, in our advice reviews we saw, in some instances, that members sought intra-fund advice on more than one issue of advice. In these instances, advice providers either dealt with the issues in one SOA or provided the member with multiple SOAs, each covering a single issue. The review of these files identified that when the advice provider dealt with the intra-fund issues in one SOA, the advice was clearer.

Tips for superannuation trustees: Providing intra-fund advice

23 You must ensure that you do not directly or indirectly pass on to members the costs of advice in breach of s99F of the SIS Act.

24 You should communicate with members their rights to intra-fund advice and outline its limitations. For example, more complex advice is unlikely to fall within the definition of intra-fund advice and may require the member to pay a separate fee to receive the advice.

25 You should have in place internal policies to manage the costs of providing intra-fund advice and ensure that this advice is not excessively used by any particular member to the detriment of other members.

26 You should ensure that your advice providers are adequately trained and competent to ensure that, in providing narrowly scoped intra-fund advice, they are acting in the best interests of members.

27 You should provide clear guidance to advice providers on the steps they should take when they identify that the member's advice needs cannot be addressed by the provision of intra-fund advice.

Tips for advice providers: Providing intra-fund advice

28 If a member has sought intra-fund advice on two separate issues, you should consider addressing both issues in the same SOA. This ensures that the advice is clear, concise and effective for the member under s947C(6) of the Corporations Act. You should also ensure that SOA template documents can accommodate the provision of advice on more than one issue at a time.

29 When you cannot act in the best interests of the member in scoping the advice due to the legal limitations that apply to intra-fund advice, you should decline to give the advice and refer the member elsewhere.

Charging of fees

181 Superannuation trustees must ensure that they observe the best interests and other covenants in s52 of the SIS Act as part of their advice model. These covenants include the obligations to act honestly, to exercise powers in members' best interests and to prioritise members' interests.

182 As conveyed in the joint letter we sent with APRA to all trustees in April 2019, we expect trustees to have in place strong governance, risk management and oversight processes to ensure that only authorised and appropriate fees and other charges are deducted from members' superannuation accounts.

183 Measures should be in place to:

(a) confirm the relevant services for which fees are being charged; and

(b) ensure those services are being provided to the member as agreed.

184 There are some circumstances when fees should not be deducted. These include when:

(a) the member does not have an advice provider, such as when the advice provider ceases practice or ceases to be able to provide financial advice;

(b) the member has no access to advice services, such as when the member changes plans;

(c) no services are provided, despite an advice provider being linked to a member's account;

(d) the member is 'lost'; or

(e) the member has died.

185 Superannuation trustees should consider all necessary steps to make sure that members are clearly aware of fees being deducted from their account. Best practice would be to obtain effective member authorisation to charge the fees on a regular basis.[9]

186 Superannuation trustees must comply with the fee charging rules in the SIS Act and the wider sole purpose test in s62 of the SIS Act, which governs the purposes for which superannuation funds must be maintained.

187 Superannuation trustees should also be considering the potential implications of recommendations 3.2 and 3.3 of the Royal Commission, including any possible process and system changes.

188 Advice providers should also be aware, when providing services to members and charging for those services, the limitations that apply to fees being deducted from member accounts.

Tips for superannuation trustees: Charging of fees

30 You must have in place strong governance, risk management and oversight processes to ensure that only authorised and appropriate advice fees are deducted from a member's superannuation account.

31 You should ensure that members are clearly aware of fees being deducted from their superannuation account.

32 You should regularly check that the relevant services for which fees have been charged are being provided to the member.

Tips for advice providers: Charging of fees

33 When charging fees for advice that are deducted from a member's superannuation fund, you should be careful that the deduction is consistent with the sole purpose test in s62 of the SIS Act.

Record keeping

189 Superannuation trustees should keep appropriate records of any decisions they make in respect of advice services offered to members, including decisions about outsourcing arrangements, to demonstrate the decisions are made in members' best interests.

[9] The Royal Commission made two recommendations to restrict or, in the case of MySuper accounts, prohibit the deduction of advice fees (other than fees for intra-fund advice) from superannuation accounts: see Royal Commission, *Final report*, 4 February 2019, recommendations 3.2 and 3.3. The Australian Government released *Restoring trust in Australia's financial system: Financial Services Royal Commission implementation roadmap*, which addressed recommendations 3.2 and 3.3, on 19 August 2019: see The Hon. Josh Frydenberg MP, Treasurer, *Taking action on the Banking, Superannuation & Financial Services Royal Commission—Implementation roadmap*, media release, 19 August 2019. Legislation to implement these recommendation is to be consulted on and introduced into Parliament by 30 June 2020.

190 In our advice review, we observed record-keeping problems in many of the advice files where the advice was assessed as non-compliant. The common problems we saw included that:

(a) there was no evidence in the file that the advice provider had considered and investigated the member's existing superannuation;

(b) there was no evidence in the file that the advice provider had considered and investigated alternate strategies that may have met the member's needs and objectives; and

(c) the file did not contain appropriate records of discussions relevant to the advice, such as conversations between the advice provider and the member about the member's relevant circumstances and their reasons for seeking advice.

191 Record keeping is a requirement of the Corporations Act*:* see RG 175 at RG 175.417–RG 175.422. The benefits of good record keeping are that:

(a) the advice provider can demonstrate that they are meeting the best interests duty and related obligations;

(b) creating contemporaneous file records at the time of the event (i.e. meeting with a member or phone call) assists with ensuring that records are accurate;

Note: In appropriate cases, we will take action when records have been altered: see Media Release (16-239MR) *ASIC bans north Queensland financial adviser* (26 July 2016).

(c) the advice provider and the AFS licensee can demonstrate professionalism; and

(d) in the event of a member complaint, a complete file is available and accessible, allowing the advice provider and the AFS licensee to respond to the member in a timely and member-focused way.

Note: Section 912G of the Corporations Act, as notionally inserted by Class Order [CO 14/923] *Record keeping obligations for Australian financial services licensees when giving personal advice*, requires AFS licensees to ensure that records are kept of the information relied on and the action taken by an advice provider to demonstrate they have complied with the best interests duty and related obligations: see also Media Release (16-362MR) *ASIC clarifies record-keeping obligations for financial services licensees* (27 October 2016).

Tips for superannuation trustees: Record keeping

34 You should maintain member authorisations for fee deductions from their superannuation accounts and be satisfied that adequate processes are in place to ensure that the deduction is consistent with the sole purpose test in s62 of the SIS Act.

35 You should keep records that demonstrate which advice provided to members is intra-fund advice.

Tips for advice providers: Record keeping

36 You should clearly demonstrate in the advice file the reasons or objectives that prompted the member to seek advice and the outcomes the member wants to achieve. This should be clearly recorded in the member's own words in the advice file and in the SOA.

37 You should ensure that, together, the file and the SOA record:

(a) the subject matter of the advice sought by the member (both explicit and implicit);

(b) the subject matter and scope of the advice being provided; and

(c) why the subject matter and scope are suitable for the member and consistent with the member's objectives, financial situation and needs.

38 You should not reduce the scope of advice to exclude critical issues that are relevant to the subject matter of the advice sought. When the subject matter of the advice is limited in scope at the request of the member, you should record this carefully in the file, including the member's reasons for the request. This should also be detailed in the SOA.

39 If the advice is complex, you may need to make additional inquiries to those you would normally make, and demonstrate evidence of this in the advice file.

40 You must conduct a reasonable investigation into products that will meet the member's needs and objectives. The level of inquiries you need to make will vary according to the complexity of the advice, including the financial products and strategies recommended. Complex financial products and strategies necessitate more extensive inquiries. These inquiries and their outcome should be recorded on the file.

41 When recommending a financial product, you should demonstrate in the file:

(a) whether it is reasonable to recommend a financial product, taking into account the reasons why the member sought advice;

(b) that you have considered strategic advice that may form the basis of the financial product recommendations;

(c) that you have considered and investigated financial products, taking into account:

(i) the member's existing financial products;

(ii) financial products that might meet the member's needs and objectives (including the recommended financial products);

(iii) why the recommended financial products meet the member's needs and objectives when compared with other products considered (including the member's existing products); and

(iv) any research you have used.

42 You may choose to create and maintain records in different formats, including audio files. Audio files can be a good way of accurately capturing discussions with the member.

43 You should create a new SOA for each member and not base it on an old template. We saw a number of errors in SOAs when advice providers attempted to modify old SOAs, but did not update the member's details.

44 When providing a digital advice service, you must ensure that all relevant records are kept. This includes the information a member has entered into the digital advice tool.

Appendix 1: Project participants

Superannuation fund trustee	Fund type
Australian Meat Industry Superannuation Pty Ltd	Industry
AustralianSuper Pty Ltd	Industry
Avanteos Investments Limited as trustee for the Avanteos Superannuation Trust	Retail
Challenger Retirement and Investment Services Limited	Retail
Equipsuper Pty Ltd	Industry
Equity Trustees Superannuation Limited	Retail
Fiducian Portfolio Services Limited	Retail
First Super Pty Ltd	Industry
FSS Trustee Corporation	Public sector
I.O.O.F. Investment Management Limited as trustee for the I.O.O.F Portfolio Services Super	Retail
L.U.C.R.F. Pty Ltd	Industry
Mercer Superannuation (Australia) Limited	Retail
Nulis Nominees (Australia) Limited	Retail
Perpetual Superannuation Limited	Retail
Qantas Superannuation Limited	Corporate
Retail Employees Superannuation Pty Limited	Industry
Statewide Superannuation Pty Ltd	Industry
Suncorp Portfolio Services Limited	Retail
SunSuper Pty Ltd	Industry
Telstra Super Pty Ltd	Corporate
Tidswell Financial Services Ltd as trustee for the Tidswell Master Superannuation Plan	Retail
UniSuper Limited	Industry
United Super Pty Ltd (CBUS)	Industry
VicSuper Pty Ltd	Public sector
Zurich Australian Superannuation Pty Ltd	Retail

Appendix 2: Accessible versions of figures

This appendix is for people with visual or other impairments. It provides the underlying information for the figures presented in this report.

Table 11: Membership size and funds under management by type of fund

Type of fund	Membership (%)	Funds under management (%)
Corporate funds	1%	4%
Public sector funds	10%	14%
Retail funds	19%	22%
Industry funds	70%	60%

Note: This table shows the data contained in Figure 1.

Table 12: Median change in membership by fund type (1 July 2017 to 30 June 2018)

Type of fund	Average membership change (%)
Corporate funds	0.4%
Industry funds	2.2%
Public sector funds	0.3%
Retail funds	–5.4%

Note: This table shows the data contained in Figure 2.

Table 13: Type of advice that was received by members across all fund types

Type of advice	Advice provided (%)
Intra-fund advice	13%
Scaled advice	9%
Comprehensive advice	3%
General advice	75%

Note: This table shows the data contained in Figure 4.

Table 14: Number of pieces of general advice and personal advice provided to members by delivery channel for all advice types

Delivery channel	Pieces of advice	Pieces of advice (%)
In-house call centre	87,647	37%
Advice providers employed by a related party	62,564	26%
Employed advice providers	29,000	12%
Third-party advice providers (embedded) (see Note 2 to Figure 6)	28,935	12%
Outsourced call centre	13,743	6%
Digital advice tool used to generate SOA (used by member)	11,798	5%
Third-party advice providers with own AFS licence (no panel arrangement)	2,761	1%
Third-party advice providers with own AFS licence (panel arrangement)	1,167	1%

Note: This table shows the data contained in Figure 6.

Table 15: Proportion of advice delivered to members by delivery channel and advice type

Delivery channel	Comprehensive	Scaled	Intra-fund	General
In-house call centre	0%	0%	0%	49%
Advice providers employed by a related party	72%	27%	5%	29%
Employed advice providers	11%	20%	18%	10%
Third-party advice providers (embedded)	14%	43%	31%	5%
Outsourced call centre	0%	9%	13%	4%
Digital advice tools to generate SOA (used by member)	0%	0%	30%	2%
Third-party advice providers with own AFS licence (no panel arrangement)	3%	1%	3%	1%

Note: This table shows the data contained in Figure 7.

Table 16: Approval by funds of the content of documents used by third-party advice providers, outsourced call centres and or advice providers employed by a related party

Delivery channel	Call script	Fact-find document	FSG	SOA template
Outsourced call centre	2	0	3	0
Advice providers employed by a related party	2	4	6	4

Delivery channel	Call script	Fact-find document	FSG	SOA template
Third-party advice providers (embedded)	0	1	3	1
Third-party advice providers with own AFS licence (panel arrangement) Note: No funds approved documents for third-party advice providers under a panel arrangement.	0	0	0	0
Third-party advice providers with own AFS licence (no panel arrangement)	2	2	1	1

Note: This table shows the data contained in Figure 8.

Table 17: Distribution of member ages and life stages

Life stage and member age	Frequency
Early-to-mid-stage accumulation	30
29 and younger	*4*
30-34	*7*
35-39	*7*
40-44	*12*
Late-stage accumulation	34
45-49	*12*
50-54	*22*
Approaching retirement	158
55-59	*49*
60-64	*109*
Retirement	103
65-69	*70*
70-74	*29*
75 and older	*4*

Note: This table shows the data contained in Figure 10.

Key terms

Term	Meaning in this document
advice	Financial product advice
advice licensee	An AFS licensee that provides personal advice to retail clients
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 who 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)
advice review	ASIC's review of the quality of personal financial advice provided to members of the 25 superannuation funds that ASIC surveyed
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
approved product list	A list of financial products, determined by the advice licensee, and considered suitable for the licensee's representatives to recommend to members
APRA	Australian Prudential Regulation Authority
balanced scorecard	An approach used by some employers to measure the amount of any performance benefit given to an employee based on a number of differently weighted criteria
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	See 'retail client'

Term	Meaning in this document
compliant advice	Personal advice provided to a retail client by an advice provider who has demonstrated compliance with the best interests duty and related obligations, as well as compliance with s947D, in providing the advice Note: Further guidance on these provision is set out in RG 175.
comprehensive advice	Personal advice that is more comprehensive in scope
conflict of interest	Circumstances where some or all of the interests of persons (clients) to whom an AFS licensee (or its representative) provides financial services are inconsistent with, or diverge from, some or all of the interests or duties of the licensee or its representatives
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
delivery channels	The different ways that superannuation funds deliver advice to their members
digital advice	Also known as 'robo advice' or 'automated advice'—the provision of automated financial product advice using algorithms and technology without the direct involvement of a human adviser
factual information	Objectively ascertainable information whose truth or accuracy cannot reasonably be questioned
financial product	A facility through which, or through the acquisition of which, a person does one or more of the following: • makes a financial investment (s763B); • manages financial risk (see s763C); • makes non-cash payments (s763D) Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.
financial product advice	A recommendation or a statement of opinion, or a report of either of these things, that: • 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. This does not include anything in an exempt document or statement Note: This is a definition contained in s766B of the Corporations Act.

Term	Meaning in this document
FSG	A Financial Services Guide—a document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act Note: This is a definition contained in s761A.
funds	The 25 superannuation funds ASIC surveyed
general advice	Financial product advice that is not personal advice Note: This is a definition contained in s766B(4) of the Corporations Act.
in-house products	Financial products that are manufactured by a related party
intra-fund advice	Non-ongoing personal advice provided by or on behalf of a superannuation trustee to a superannuation fund member that: • can be collectively charged to the superannuation fund members; and • does not relate to a topic that falls within the prohibitions under s99F of the SIS Act Note: Intra-fund advice can be general advice or personal advice. For the avoidance of doubt, this report is limited to personal intra-fund advice
member	See 'retail client'
non-compliant advice	Personal advice provided to a retail client by an advice provider who has not demonstrated compliance with the best interests duty and related obligations, as well as compliance with s947D, in providing the advice Note: Further guidance on these provision is set out in RG 175.
panel arrangement	An arrangement where a superannuation fund can refer a member to one or more pre-approved third-party financial advice providers to provide advice to the member
personal advice	Financial product advice given or directed to a person (including by electronic means) in circumstances where: • the person giving the advice has considered one or more of the person'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 Note: This is a definition contained in s766B(3) of the Corporations Act.
providing entity	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

Term	Meaning in this document
Pt 7.7 (for example)	A part of the Corporations Act (in this example numbered 7.7)
related party	Means: • a related body corporate as defined by s50 of the Corporations Act; or • an associated entity as defined by s50AAA of the Corporations Act.
representative	Means: • an authorised representative of the licensee: • an employee or director of the licensee; • an employee or director or a related body corporate of the licensee; or • any other person acting on behalf of the licensee Note: This is a definition contained in s910A of the Corporations Act.
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations 2001
RG 175 (for example)	An ASIC regulatory guide (in this example numbered 175)
Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
RSE licence	Registrable superannuation entity licence (granted by APRA)
RSE licensee	A registrable superannuation entity licensee—has the meaning given in s10 of the SIS Act
s961 (for example)	A section of the Corporations Act (in this example numbered 961), 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
SIS Act	*Superannuation Industry (Supervision) Act 1993*
SOA	A Statement of Advice—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 Note: See s761A for the exact definition.
survey	ASIC's survey of the ways in which 25 superannuation funds provide financial advice to members

Term	Meaning in this document
switching advice	Personal advice that recommends a client replace (in full or in part): • 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
third-party advice provider	An advice provider that is not employed by the superannuation fund or a related party of the fund
third-party advice provider (embedded)	An advice provider that is employed by the superannuation fund, but provides advice under an unrelated party's AFS licence
vertically integrated institution	A business model used where financial advice, platforms and funds management are controlled by a single institution

Related information

Headnotes

advice licensee, advice provider, AFS licence, AFS licensee, APRA-regulated superannuation fund, Australian financial services licence, best interests duty, conflict of interest, conflicts management, digital advice, financial product advice, general advice, member, non-compliant advice, personal advice, retail client, SOA, Statement of Advice, superannuation trustee

Legislative instruments

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

Regulatory guides

RG 175 *Licensing: Financial product advisers—Conduct and disclosure*

RG 181 *Licensing: Managing conflicts of interest*

RG 244 *Giving information, general advice and scaled advice*

RG 255 *Providing digital financial product advice to retail clients*

Legislation

Corporations Act, Div 2 of Pt 7.7A; s912A, 912G, 947C, 947D, 961B, 961G, 961J

Life Insurance Act 1995

SIS Act, s52, 62, 99F

Reports

REP 515 *Financial advice: Review of how large institutions oversee their advisers*

REP 562 *Financial advice: Vertically integrated institutions and conflicts of interest*

REP 575 *SMSFs: Improving the quality of advice and member experiences*

Information sheets

INFO 168 *Giving and collectively charging for intra-fund advice*

Media releases

16-239MR *ASIC bans north Queensland financial adviser* (26 July 2016)

16-362MR *ASIC clarifies record-keeping obligations for financial services licensees* (27 October 2016)

Prudential standards and guidance

SPG 231 *Outsourcing*

SPS 231 *Outsourcing*

SPS 521 *Conflicts of interest*

Non-ASIC documents

APRA, *Annual fund-level superannuation statistics*, June 2018

APRA, *Annual superannuation bulletin*, June 2018

APRA, *Quarterly superannuation performance statistics June 2019*, 27 August 2019

Australian Government, *Restoring trust in Australia's financial system: Financial Services Royal Commission implementation roadmap*, 19 August 2019

Royal Commission, *Final report*, 4 February 2019