



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 167

Licensing: Discretionary powers

June 2019

About this guide

This guide is for Australian financial services (AFS) licensees and financial services providers.

It explains:

- our approach to applications for relief from compliance with Pts 7.6–7.8 (other than Divs 4 and 8 of Pt 7.6 and Div 8 of Pt 7.8) of the Corporations Act;
- how we use our powers to impose AFS licence conditions to support the AFS licensee obligations under the Corporations Act; and
- our approach to relief for securitisation special purpose vehicles and for providers of generic financial calculators.

About ASIC regulatory documents

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

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

Regulatory guides: give guidance to regulated entities by:

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

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

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

Document history

This guide was issued in June 2019 and is based on legislation and regulations as at the date of issue. On 27 July 2020, we updated the process for submitting an application for relief in RG 167.22–RG 167.23 and a breach report in RG 167.121. We also updated the information about our discretionary powers in RG 167.17.

Previous versions:

- Superseded Regulatory Guide 167, amended August 2015, reissued April 2016 and December 2016
- Superseded Policy Statement 167, issued November 2001, reissued May 2005, amended October 2005, November 2005, December 2005 and January 2007, and rebadged as a regulatory guide 5 July 2007

Disclaimer

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

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

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A Overview

Key points

This guide explains our approach to giving relief from the key licensing, conduct and disclosure requirements that apply to providers of financial services.

It also sets out the relief we have given to certain securitisation entities and providers of generic financial calculators.

Purpose of this guide

- RG 167.1 A person who carries on a financial services business in Australia must hold an Australian financial services (AFS) licence covering the provision of the financial services: see s911A of the *Corporations Act 2001* (Corporations Act).
- RG 167.2 This guide explains:
- (a) how we use our powers to impose licence conditions to support the AFS licensee obligations under the Corporations Act (see Section B);
 - (b) our approach to applications for relief from compliance with Pts 7.6–7.8 (other than Divs 4 and 8 of Pt 7.6 and Div 8 of Pt 7.8) of the Corporations Act (licensing provisions), which include the key licensing, conduct and disclosure requirements that apply to providers of financial services (see Section B);
 - (c) our policy on relief for securitisation special purpose vehicles (see Section C); and
 - (d) our policy on relief for providers of generic financial calculators (see Section D).

Related guidance

- RG 167.3 This guide should be read in conjunction with other guides we have issued on how we will administer the licensing provisions, which can be found on our website at www.asic.gov.au/rg. We have also listed some of our relevant guidance in the ‘Related information’ section at the end of this guide.

B Our approach to AFS licence conditions and to relief from the licensing provisions

Key points

This section explains how we use our powers to impose licence conditions to support the AFS licensee obligations under the Corporations Act.

It also explains the factors we consider when deciding whether to exercise our powers to give relief from the licensing provisions, and our powers of exemption and declaration (to enable modifications of the Corporations Act). Applicants seeking relief should provide the information that is set out in this section.

Our approach to AFS licence conditions

- RG 167.4 We impose licence conditions to support AFS licensee obligations under the Corporations Act. We impose licence conditions in order to specify the way in which we believe an AFS licensee must comply with their obligations. The licence conditions support our guidance on minimum expectations for compliance with the licensee obligations where appropriate.
- RG 167.5 We only impose licence conditions if the advantages (for the AFS licensee and ASIC) in terms of certainty justify imposing such licence conditions.
- RG 167.6 We have imposed standard licence conditions for all AFS licensees and other standard licence conditions for particular classes of licensee. Among other things, these licence conditions specify the particular financial services or class of financial services that the licensee is authorised to provide. [Pro Forma 209 Australian financial services licence conditions](#) (PF 209) contains more information about our standard licence conditions.
- RG 167.7 We will continue to review and, if appropriate, vary our standard licence conditions. We may also impose additional licence conditions for particular AFS licensees (e.g. if we consider this will promote compliance with the licensee obligations, given the particular circumstances or conduct of the licensee).

Our powers to give relief

- RG 167.8 We will consider giving relief to address atypical or unforeseen circumstances and unintended consequences of the licensing provisions. Relief is provided under s911A(2)(1), 926A, 951B and 992B of the Corporations Act: see RG 167.17–RG 167.19. We may give relief on our initiative or on application.

Note: For a discussion of our approach to relief from Div 8 of Pt 7.8, see [Regulatory Guide 169 Disclosure: Discretionary powers](#) (RG 169).

- RG 167.9 We have the flexibility under the law to give partial or complete relief from the licensing provisions (including with conditions). The kind of relief that is given (if any), the extent of the relief and the situations in which the relief applies will depend on what is appropriate in the circumstances.
- RG 167.10 When considering using these powers to give relief, we will keep in mind the regulatory goals of:
- (a) promoting consumer confidence in using financial services (including informed decision making);
 - (b) promoting the provision of efficient, honest and fair financial services by all AFS licensees and their representatives; and
 - (c) supporting confident use of financial markets by consumers and market participants.
- RG 167.11 We suggest that applicants address these goals in their applications.
- RG 167.12 Factors that we may consider when deciding whether to exercise our relief powers include:
- (a) whether strict compliance with the financial services regime would be impossible or disproportionately burdensome;
 - (b) whether persons to whom financial services are provided would still have the protection intended by Parliament;
 - (c) whether those to whom the relief applies (e.g. the applicant) will receive any benefits;
 - (d) whether a reasonable person would think that the predominant purpose of the product to which the service relates is not a 'financial product purpose' (see RG 167.13–RG 167.15);
 - (e) whether the service is subject to 'adequate' alternative regulation (see RG 167.16);
 - (f) whether the likelihood and extent of potential client and especially retail client detriment resulting from the proposed relief is minimal; and
 - (g) whether the service is only provided to wholesale clients (or in some cases only to professional investors as defined in s9).

Note 1: The above list is not exhaustive. Relevant considerations will always depend on the applicable facts and circumstances. How much weight is given to any particular item in the list or any other relevant consideration will depend on the circumstances.

Note 2: The consideration in paragraph (g) is unlikely of itself to be a sufficient basis for relief due to the legislative policy of requiring licensing for financial services businesses where the only clients are wholesale clients and financial services market integrity considerations.

Financial product purpose

RG 167.13 In making a decision about relief, we may consider whether a reasonable person is likely to think that the predominant purpose of the product to which the service relates is, or is not, a ‘financial product purpose’: see RG 167.12(d).

RG 167.14 A financial product purpose is a purpose of:

- (a) making a financial investment;
- (b) managing a financial risk; or
- (c) making non-cash payments (see s763A).

RG 167.15 In considering whether there is a financial product purpose, we anticipate that a reasonable person would be influenced by all of the facts and circumstances surrounding the product, including whether the product involves:

- (a) a promise to make future monetary payments (e.g. deposit products and debentures);
- (b) the pooling or management of funds to produce a return (e.g. managed investment schemes and superannuation);
- (c) the pooling or management of funds to reduce a risk (e.g. insurance);
- (d) a promise used to manage the financial consequences if a particular circumstance occurs, rather than prepayment for future services (e.g. insurance and derivatives); or
- (e) a promise to settle transactions for the benefit of the client, particularly where the service enables the client to pay a wide variety of third parties (e.g. non-cash payment facilities such as direct debits and smart cards).

Note: The above list is not exhaustive. Relevant considerations will always depend on the applicable facts and circumstances.

‘Adequate’ alternative regulation

RG 167.16 When considering whether an alternative regulatory regime is ‘adequate’ (see RG 167.12(e)), we will generally consider whether (and how effectively) the regime addresses:

- (a) efficient, honest and fair service provision;
- (b) service provider resources and competence;
- (c) compliance, conflicts management and risk management practices by service providers;
- (d) initial and ongoing disclosure to retail clients about the provision of a service;
- (e) protection of client assets;

- (f) financial and transaction record keeping;
- (g) access by retail clients to internal and external dispute resolution services; and
- (h) the provision of any advice to retail clients on a reasonable basis.

Note: The above list is not exhaustive. Relevant considerations will always depend on the applicable facts and circumstances. How much weight is given to any particular item in the list or any other relevant consideration will depend on the circumstances.

Our powers of exemption or declaration

RG 167.17 We have powers of exemption or declaration (to omit, vary or modify) that apply to the licensing provisions. Our main discretionary powers are to:

- (a) exempt a person who provides certain services from the requirement to hold an AFS licence (see s911A(2)(1));
- (b) grant exemptions and modifications of the Corporations Act to persons from the requirements of Pt 7.6 (other than Divs 4 and 8) (see s926A);
- (c) grant exemptions or modifications of the Corporations Act to persons from the requirements of Pt 7.7, including obligations to provide a Financial Services Guide (FSG) and a Statement of Advice (SOA) (see s951B); and
- (d) grant exemptions or modifications of the Corporations Act to persons from the requirements of Pt 7.8, including obligations on dealing with client money, financial records and statements, and audit (see s992B).

RG 167.18 Any exercise of power has to be justified by the net benefits that will arise. We will carefully consider the impact of any relief on retail client protection.

RG 167.19 Our powers under s926A, 951B and 992B extend to any definitions, regulations and transitional provisions that apply for the purposes of Pts 7.7 and 7.8.

Note: For further information, see s761H and the legislative notes to s951B and 992B.

How to apply for relief

RG 167.20 Applications for relief need to address why and to what extent relief would save costs or otherwise provide commercial benefits. Applications must also address the effects of the requested relief on others—in particular, retail clients. This approach reflects that adopted in [Regulatory Guide 51 Applications for relief](#) (RG 51).

RG 167.21 Generally, if your application does not contain all relevant information, we will refuse it. In some limited circumstances, we may consider delaying a decision on your application until you provide more information.

- RG 167.22 You should submit your application for relief through the [ASIC Regulatory Portal](#). Your application for relief should address the requirements set out in [RG 51](#). You will need to pay fees for your application. Fees are set under legislation. We have provided details about payment options in the portal. For more information, see [how you apply for relief](#).
- RG 167.23 In your application, you must:
- (a) specify and quantify any financial and other benefits and costs (including any loss of retail client protection) of the relief as far as you can. If you cannot quantify the benefits and costs, explain why this is so and how the scale of the effects of the relief can be estimated;
 - (b) candidly set out all information that may be relevant to your application, including your commercial objectives and how you will address any loss of retail client protection; and
 - (c) address, to the extent that they are relevant, the factors highlighted in RG 167.10, RG 167.12, RG 167.13, RG 167.15 and RG 167.16.
- RG 167.24 We exercise our powers based on as much relevant information as can reasonably be obtained. You are better placed than us to get the most relevant information, such as quantification of costs and benefits. It is appropriate that you do so if you choose to seek the benefit of relief.

C Securitisation special purpose vehicles

Key points

Securitisation entities that are established only for the purpose of a specific securitisation transaction are exempt from the licensing provisions in certain circumstances.

The securitisation industry

RG 167.25 Securitisation is the process by which a portfolio of relatively illiquid assets is packaged into marketable securities (securitisation products). These securitisation products are debt instruments, such as debentures or interests in managed investment schemes, which are then sold into capital markets on either a public or private basis. The benefits payable to investors from a securitisation will depend largely on the return from the underlying assets.

Note: Paragraph 4 of [ASIC Corporations \(Securitisation Special Purpose Vehicles\) Instrument 2016/272](#) defines ‘securitisation product’; s9 of the Corporations Act defines ‘debenture’ and ‘managed investment scheme’.

RG 167.26 The securitisation industry operates almost exclusively in the wholesale market, where the securitisation product is sold to wholesale investors—usually through the on-sale of the securitisation product by a licensed dealer.

Securitisation transactions

RG 167.27 A securitisation transaction typically involves:

- (a) an issuer, known as the securitisation entity, that purchases the underlying assets and issues the resulting securitisation products (see RG 167.29–RG 167.32);
- (b) a number of service providers that perform specific dedicated services in respect of the securitisation transaction, such as a securitisation manager and a servicer of the underlying assets (see RG 167.33–RG 167.35); and
- (c) an asset sponsor that sells the underlying assets for securitisation to the securitisation entity.

RG 167.28 A securitisation transaction may also involve a custodian that holds the underlying assets of a securitisation product on behalf of the securitisation entity. Alternatively, custodial services may be provided by the securitisation manager.

Securitisation entities

- RG 167.29 The securitisation entity purchases the assets for securitisation from the asset sponsor and then issues the resulting securitisation products. Typically, the securitisation entity will be a special purpose entity or special purpose vehicle (SPV) that has been established for the limited purpose of carrying on a specific securitisation transaction. The SPV can be either a special purpose company that issues debentures, or a trustee of a trust that issues interests in a managed investment scheme.
- RG 167.30 The role of the securitisation entity is to carry on the business of securitisation—namely:
- (a) issuing the securitisation products;
 - (b) dealing in derivatives and foreign exchange contracts related to the securitisation products;
 - (c) providing custodial or depository services for related financial products (i.e. the underlying assets) on behalf of the securitisation product holders; and/or
 - (d) dealing in financial products as trustee on behalf of the securitisation product holders.
- RG 167.31 The securitisation entity will often also enter into ancillary arrangements with third parties in order to hedge the risks that are associated with the securitisation transaction.
- RG 167.32 Securitisation entities generally provide a financial service when they carry on the business of securitisation by issuing, dealing or providing a custodial or depository service. This would ordinarily require the securitisation entity to hold an AFS licence unless otherwise exempted.

Securitisation managers

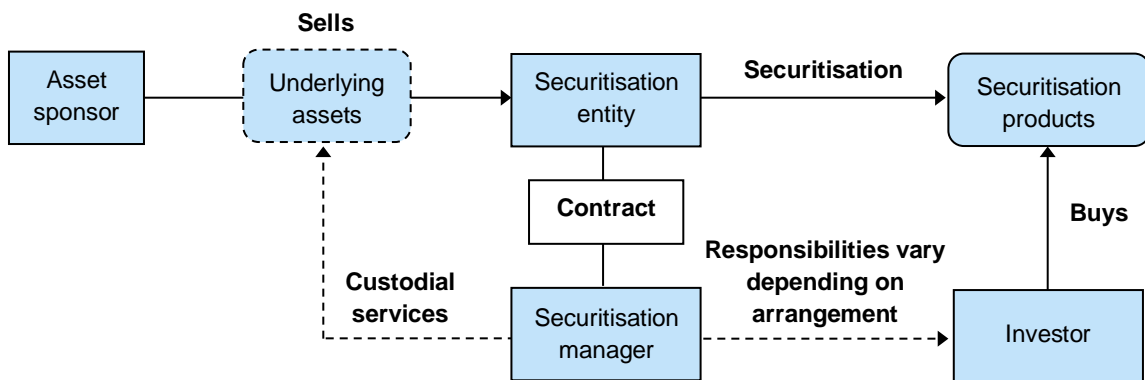
- RG 167.33 A securitisation manager is appointed under a contractual arrangement with the securitisation entity to manage the securitisation transaction. Typically, the securitisation manager will be an authorised deposit-taking institution (ADI) or a subsidiary of an ADI, and must be a separate legal entity to the asset sponsor.
- RG 167.34 Broadly, the securitisation manager is responsible for:
- (a) the provision of:
 - (i) financial product advice to investors through a securitisation information memorandum that details important information about the securitisation transaction; and
 - (ii) financial product and dealing advice to the securitisation entity about how and to whom the securitisation product should be sold;

- (b) collecting money owing by investors; and
- (c) keeping records.

RG 167.35 Securitisation managers carry on a business of providing a financial service when they offer financial product and/or dealing advice to investors and securitisation entities. Accordingly, securitisation managers must hold an AFS licence unless otherwise exempted: see RG 167.51–RG 167.53.

RG 167.36 Figure 1 provides an overview of the securitisation process.

Figure 1: Overview of the securitisation process



Note: The flowchart shown in this figure is described in RG 167.27–RG 167.35 (accessible version).

Our relief for certain securitisation entities

RG 167.37 We have provided relief from the requirement to hold an AFS licence to certain entities in the securitisation industry: see [ASIC Corporations \(Securitisation Special Purpose Vehicles\) Instrument 2016/272](#). This relief has been granted to address concerns about the disproportionate burden placed on securitisation entities that have been established for the limited purpose of carrying on a securitisation transaction.

Which entities does the relief apply to?

RG 167.38 The relief applies to a securitisation entity that:

- (a) carries on a securitisation business;
- (b) reasonably believes that it is an insolvency-remote special purpose entity according to criteria of an internationally recognised rating agency that are applicable to the entity’s circumstances (regardless of whether the agency has determined that the body meets those criteria); and

- (c) raises all or substantially all of its funds by issuing securitisation products on terms that the funds raised would be applied in the securitisation business.

Note: See paragraph 4 of [ASIC Corporations \(Securitisation Special Purpose Vehicles\) Instrument 2016/272](#). Paragraphs 4(a) and (b) of this definition are based on s820.39(3)(a) and (c) and s820.39(4) of the *Income Tax Assessment Act 1997*. An explanation of the operation of those provisions is set out at paragraphs 1.8–1.12 of the Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 5) 2003.

Scope of the relief

- RG 167.39 The relief applies to the provision of the financial services set out in paragraph 5(2)(a)–(d) of [ASIC Corporations \(Securitisation Special Purpose Vehicles\) Instrument 2016/272](#) by a securitisation entity in the course of carrying on a securitisation business. These financial services are explained in RG 167.40–RG 167.43. Further requirements that must be satisfied for the relief to apply are set out in RG 167.44.

Issuing a securitisation product

- RG 167.40 The relief applies to a securitisation entity issuing a securitisation product where:
- (a) the securitisation transaction is for the purpose of managing some or all of the economic risk associated with the underlying assets held by the securitisation entity;
 - (b) the issue is to a person who either holds an AFS licence or is otherwise exempt from holding a licence under any relevant ASIC instrument or section of the Corporations Act; and
 - (c) at the time of issue, the securitisation entity has taken all reasonable steps to ensure the securitisation product will not be subsequently acquired by a retail client.

Note: Section 761G of the Corporations Act provides a definition for ‘retail client’.

Dealing in derivatives and foreign exchange contracts

- RG 167.41 The relief applies to dealing in derivatives and foreign exchange contracts (or both) in the course of a securitisation business where:
- (a) the dealing does not involve making a market for derivatives or foreign exchange contracts;
- Note: Section 766D of the Corporations Act provides a definition for making a market for a financial product.
- (b) the dealing is entered into for the purpose of managing a financial risk that arises in the ordinary course of a securitisation business; and
 - (c) the counterparty for the dealing is a wholesale client.

Note: Section 761G of the Corporations Act provides a definition for ‘wholesale client’.

Providing custodial or depository services for financial products on behalf of securitisation product holders

RG 167.42 The relief applies to providing custodial or depository services for financial products (such as the underlying assets or associated hedging transactions) on behalf of securitisation product holders where the securitisation entity has:

- (a) not issued the securitisation products to retail clients; and
- (b) taken all reasonable steps to ensure the securitisation products are not acquired by a retail client.

Dealing in financial products as trustee on behalf of securitisation product holders

RG 167.43 The relief applies to dealing in financial products as trustee for holders of securitisation products where:

- (a) the dealing is not by issuing or acquiring derivatives or foreign exchange contracts; and
- (b) the securitisation entity has:
 - (i) not issued the securitisation products to retail clients; and
 - (ii) taken all reasonable steps to ensure the securitisation products are not acquired by a retail client.

Further conditions of the relief

RG 167.44 Exemptions from the requirement to hold an AFS licence only apply where the securitisation entity:

- (a) only provides the financial services set out in RG 167.40–RG 167.43 in accordance with financial product advice given by an AFS licensee who is authorised to provide advice on those particular financial products (see paragraph 5(2) of [ASIC Corporations \(Securitisation Special Purpose Vehicles\) Instrument 2016/272](#)); and
- (b) enters into a written agreement with the AFS licensee under which:
 - (i) the securitisation entity receives the financial product advice mentioned in RG 167.44(a); and
 - (ii) the licensee does not limit its liability for any loss or damage resulting from any negligence in providing the financial product advice to the securitisation entity.

Licensee advising the securitisation entity

RG 167.45 In providing the advice, the AFS licensee will need to take account of any obligations of the securitisation entity under a trust deed, its contracts and general law. We expect that the advice will be framed so as to ensure the

licensee's conduct in providing advice to the securitisation entity does not adversely affect the efficient, honest and fair provision of financial services by the securitisation entity.

- RG 167.46 Under the written agreement between the securitisation entity and the AFS licensee authorised to provide advice, the licensee must not exclude liability for its negligence. This means the licensee cannot exclude liability for financial product advice that was provided negligently because the licensee unreasonably assumed facts about the securitisation entity. However, we consider that the written agreement under which the licensee provides the advice may exclude liability for reasonable reliance on information provided by third parties.

Securitisation entity receiving the advice from the licensee

- RG 167.47 Under the written agreement between the securitisation entity and the AFS licensee authorised to provide advice described in RG 167.44(b), the securitisation entity does not need to agree to act on the advice provided. However, the securitisation entity must consider whether to act on any advice, having regard to its duties to securitisation product holders. If the securitisation entity does not act on the advice, the relief will not apply.
- RG 167.48 We anticipate it will be uncommon for a securitisation entity to be bound under its duties to act contrary to the advice of an AFS licensee authorised to provide advice. In the unlikely event the securitisation entity is not able to act on the advice of a licensee, the entity can consider making an application to ASIC for case-by-case relief from the licensing provisions.

Intersection with Australian Prudential Regulation Authority's (APRA) policy on securitisation

- RG 167.49 Under APRA's current securitisation policy, a securitisation entity must be financially and operationally independent of its originating ADI. An originating ADI is an ADI that:

- (a) directly or indirectly originates underlying exposures in the pool of assets to be securitised;
- (b) is the managing (or sponsoring) ADI for the securitisation; or
- (c) provides a facility (other than derivatives) to a securitisation.

Note: The relevant APRA standard is Prudential Standard [APS 120](#) *Securitisation* (APS 120). See paragraph 15 of APS 120 for the obligation for securitisation entities to be financially and operationally independent of their originating ADIs.

- RG 167.50 After consultation with APRA, we understand that a securitisation entity will not be in breach of APRA's securitisation policy merely because it has entered into the written agreement described in RG 167.44(b) with an AFS licensee that is also its securitisation manager. Any ADI subsidiary that does

provide financial product advice under the written agreement described in RG 167.44(b) would of course need to comply with all prudential requirements applied by APRA to the functions it is contracted to undertake.

Case-by-case relief for securitisation managers

- RG 167.51 We do not currently provide relief from the requirement to hold an AFS licence for financial services providers merely because they are acting as a securitisation manager under typical securitisation arrangements.
- RG 167.52 Securitisation managers typically play a significant role in providing financial product advice to investors, as well as financial product advice and dealing services to the securitisation entity. We consider it is not appropriate to provide securitisation managers with relief from the requirement to hold an AFS licence to provide such financial services because:
- (a) ASIC's ability to provide securitisation market users with confidence that securitisation services will be provided efficiently, honestly, fairly and in compliance with the Corporations Act may be compromised by granting this relief;
 - (b) we think that any regulatory detriment on the part of securitisation managers is outweighed by the regulatory benefit arising from market participant confidence; and
 - (c) we think the requirement for securitisation managers to hold an AFS licence is not disproportionately burdensome considering the key role they play in the securitisation process.
- RG 167.53 Securitisation managers may still apply for relief on a case-by-case basis. We will generally only grant relief in new policy applications when there is a net regulatory benefit, or any regulatory detriment is minimal and is outweighed by the commercial benefit.

Note: See [RG 51](#) for more information on when ASIC will grant relief in new policy applications.

D Generic financial calculators

Key points

This section sets out how we regulate generic financial calculators under the Corporations Act. It explains:

- how we define a generic financial calculator;
- the relief we give to providers of generic financial calculators from the licensing and financial product disclosure requirements in the Corporations Act; and
- the requirements that a provider of a generic financial calculator must satisfy when they provide a calculator that benefits from our relief.

It also explains that our relief does not apply to product-specific calculators and risk profilers because these are not considered generic financial calculators.

What is a generic financial calculator?

- RG 167.54 A generic financial calculator is a facility, device, table or other thing that:
- (a) is used to make a general numerical calculation or find out the result of a numerical calculation about a financial product; and
 - (b) does *not* advertise or promote one or more specific financial products.

- RG 167.55 Typically, generic financial calculators help the user calculate:
- (a) the estimated value of total superannuation, savings or investments at a future point in time; and/or
 - (b) the estimated level of superannuation contributions, savings, investments or life insurance cover required to achieve a particular financial goal.

- RG 167.56 Generic financial calculators can be a useful and cost-effective educational tool through which consumers can better understand their financial circumstances and goals. Calculators can help consumers engage with their superannuation, insurance and investment strategies.

- RG 167.57 Examples of generic financial calculators include the following (but only where they are not about specific financial products):
- (a) superannuation calculators;
 - (b) savings calculators;
 - (c) managed investment calculators; and
 - (d) life insurance calculators.

RG 167.58 A calculator is not a generic financial calculator merely because its output is a numerical figure. For example, an advice tool that produces a numerical rating of a financial product or comparative ranking of financial products is not a generic financial calculator.

Our relief for providers of generic financial calculators

RG 167.59 Our overriding objective when regulating generic financial calculators is to facilitate the cost-effective provision of useful and accurate information about financial products and services to consumers through generic financial calculators.

RG 167.60 If you provide a generic financial calculator and comply with certain conditions, we give you relief under [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) from:

- (a) the requirement in s911A(1) of the Corporations Act to hold an AFS licence covering the provision of that advice; and
- (b) if you are an AFS licensee or an authorised representative of a licensee, Divs 2, 3 and 4 of Pt 7.7 of the Corporations Act in relation to that advice.

Note: The best interests duty and related obligations under Div 2 of Pt 7.7A do not have effect in relation to a person to whom ASIC Corporations (Generic Calculators) Instrument 2016/207 applies: see reg 9.12.04 of the Corporations Regulations 2001 (Corporations Regulations) (first appearing). This is subject to compliance with the conditions set out in the exemption.

Superannuation calculators

RG 167.61 In addition to satisfying the requirements for relief in [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#), providers of superannuation calculators should take account of superannuation reforms and initiatives in determining how superannuation calculators could most appropriately present and calculate estimates in the future. The relevant reforms and initiatives include:

- (a) the commencement of s29QC of the *Superannuation Industry (Supervision) Act 1993* (SIS Act)—s29QC requires that if a registrable superannuation entity (RSE) licensee provides certain information to APRA and the RSE licensee gives the same or equivalent information to another person, including on a website, then the RSE licensee must ensure that this information is calculated in the same way as the information given to APRA;

- (b) the government's response to the Financial System Inquiry recommendations about including retirement income projections on member statements and facilitating access to consolidated superannuation information from the Australian Taxation Office to use with retirement income projections and later developments;
- (c) the release by ASIC of the consumer testing of the Choice product dashboard undertaken by researchers, Latitude Insights (see [Report 455 Consumer testing of the Choice product dashboard](#) (REP 455)); and
- (d) the release of exposure draft regulations to refine the Corporations Act provisions on Choice product dashboards, including the use of a 'super estimator' (i.e. a link at the end of the Choice product dashboard to ASIC's [Moneysmart](#) website and a basic version of a calculator that uses some of the data from the dashboard) and the form of any regulations that come into force.

RG 167.62 We will monitor the impact of these reforms and initiatives to assess the ongoing appropriateness of our relief under [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) to superannuation calculators. In the meantime, we expect providers of superannuation calculators relying on our relief to comply with the ASIC instrument.

The need for relief

RG 167.63 A generic financial calculator involves financial product advice if it produces recommendations or statements of opinion that are (or could reasonably be regarded as being) intended to influence the user in making a decision about a financial product or class of financial product: see s766B.

RG 167.64 Personal advice is financial product advice that is given or directed to a person (including by electronic means) in circumstances where:

- (a) the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or
- (b) a reasonable person might expect the provider of the advice to have considered one or more of those matters (see s766B(3)).

RG 167.65 Whether a particular calculator involves financial product advice and whether the financial product advice is likely to be personal advice will depend on the facts of the particular case.

Note: For more guidance on the difference between giving factual information, general advice and personal advice, see [Regulatory Guide 244 Giving information, general advice and scaled advice](#) (RG 244) and [Regulatory Guide 36 Licensing: Financial product advice and dealing](#) (RG 36).

- RG 167.66 Without the relief in [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) the provider of a generic financial calculator that provides financial product advice:
- (a) will be subject to the AFS licensing, conduct and disclosure obligations in Ch 7 of the Corporations Act; and
 - (b) must comply with the personal advice regime in Div 3 of Pt 7.7 and the best interests duty and related obligations under Div 2 of Pt 7.7A of the Corporations Act if the generic financial calculator provides personal advice to retail clients.
- RG 167.67 We understand that the imposition of these regulatory requirements and/or the uncertainty about their application may inhibit the provision of generic financial calculators, particularly because these calculators are often provided free of charge.
- RG 167.68 The cost of complying with the AFS licensing, conduct and disclosure obligations may be passed on to consumers, subject in the case of trustees of regulated superannuation funds to s99F of the SIS Act. In some cases, generic financial calculators may be withdrawn due to the operating costs. This may restrict access to useful information provided by calculators, which would disadvantage consumers.

Note: Generally, access to superannuation calculators is not going to be limited to members of the regulated superannuation fund. A superannuation calculator must not advertise or promote a specific financial product, such as a beneficial interest in a regulated superannuation fund. [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) does not give relief from the obligations under s99F of the SIS Act and therefore a trustee or trustees of a regulated superannuation fund must not directly or indirectly pass on to members the cost of establishing and operating the superannuation calculator if it involves the provision of personal advice to non-members or relates to a financial product that is not a beneficial interest in the fund.

Our conditions of relief

- RG 167.69 Generic financial calculators have the potential to mislead consumers if they are not designed responsibly. The conditions of our relief seek to ensure that these calculators are designed responsibly and the information provided is useful and accurate. Table 1 sets out the requirements that apply when you provide a generic financial calculator under our relief in [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#).

Table 1: Overview of the conditions of our relief

Issue	Condition	Location of guidance
Promoting a specific financial product	The generic financial calculator must not advertise or promote a specific financial product.	See RG 167.70–RG 167.78
Assumptions	<p>If the generic financial calculator is an electronic facility or device, it must:</p> <ul style="list-style-type: none"> • enable the user to change any of the assumptions that are applied by the calculator other than statutory assumptions, which can either be fixed or able to be altered by the user; and • work out, or enable the user to work out, an estimate on the basis of the changed assumptions. <p>The assumptions applied by the generic financial calculator, unless changed by the user, must be reasonable for the purpose of working out the estimate.</p> <p>Statutory assumptions must remain up to date.</p>	See RG 167.79–RG 167.86
Disclosure	<p>The generic financial calculator must display to the user in the ordinary course of its use or have printed on it:</p> <ul style="list-style-type: none"> • a clear and prominent statement about the purpose and limitations of the calculator; • a clear and prominent explanation of the impact of any significant limitations of the calculator; • a clear and prominent statement of the assumptions; • where the estimate is of an amount payable or receivable at a future time of two or more years—a clear and prominent statement setting out the present value of the estimate; and • a clear and prominent statement to the effect that the calculator is not intended to be relied on for the purposes of making a decision in relation to a financial product and that the user should consider obtaining advice from an AFS licensee before making any financial decisions. <p>The generic financial calculator must display to the user or have printed on it an explanation of why the assumptions, including any statutory assumptions, are reasonable for the purposes of working out the estimate.</p> <p>A statement or explanation must contain as much detail as a retail client using the generic financial calculator would reasonably expect having regard to the nature of the calculator.</p>	See RG 167.87–RG 167.113
Compliance issues	<p>You must report non-compliance.</p> <p>You must keep a copy of the generic financial calculator for seven years from when it is made available.</p> <p>If the generic financial calculator is an electronic facility or device, the calculator must not prevent the user from readily printing or electronically storing the estimate.</p>	See RG 167.114–RG 167.124

Ensuring the calculator does not advertise or promote a specific financial product

- RG 167.70 It is a condition of our relief that a generic financial calculator must not advertise or promote a specific financial product. We are concerned that if a generic financial calculator advertises or promotes a specific financial product it increases the risk that consumers will:
- (a) misunderstand the purpose of the calculator;
 - (b) place too much reliance on it when making financial decisions; and
 - (c) assume the calculator is a complete substitute for personal advice from an AFS licensee.
- RG 167.71 We consider that your generic financial calculator can refer to a type of financial product without advertising or promoting a specific financial product provided that you and your associates cannot reasonably be expected to issue most of the financial products of that type. For example, a generic financial calculator could refer to a type of financial product such as an account-based pension fund, but not the specific financial product such as XYZ Personal Super Division Account-based Pension.
- RG 167.72 Allowing the calculator to refer to a class of financial product provides necessary context for the consumer around choices and inputs, but the consumer will not associate the results with a specific financial product and assume the calculator can be relied on for the purpose of making a decision about a specific financial product.
- RG 167.73 Similarly, we consider that the generic financial calculator should not refer to a specific investment option available to consumers unless the investment option and the name of the investment option does not relate to a specific financial product. For example, the calculator could use generic terms that do not specifically relate to a specific financial product such as ‘balanced option’ or ‘growth option’.
- RG 167.74 We consider that you will not satisfy the condition of relief if the output from your generic financial calculator goes beyond the numerical result of the calculation and a description of the result. Your calculator should not refer to a particular action in the output other than prompting the user to make further inquiries or obtain advice from an AFS licensee. For example, the calculator should not, in light of the relevant numerical result, refer to acquiring or investing an amount in a specific financial product, but it may include a link to a ‘find an adviser’ tool.
- RG 167.75 Similarly, a generic financial calculator that is directly connected to promotional material for a named financial product is not able to rely on the relief (e.g. if the calculator includes a link to the Product Disclosure Statement (PDS) for the product or a link to an ‘apply now’ button).

- RG 167.76 We consider that ancillary marketing material (i.e. material that is not specific to the generic financial calculator or the result it generates) can be included on the same page or screen as a generic financial calculator provided it does not relate to a specific financial product. For example, the ancillary marketing material could relate to a class of financial product (see RG 167.71), include the provider's logo or include a link to the provider's home page, but should not refer to a specific financial product or include links to other product sites.
- RG 167.77 A generic financial calculator does not advertise or promote a specific financial product merely because its default assumptions (e.g. fees or rate of return) are the same as the actual features of a specific financial product. You can refer to the specific financial product, but only as part of your disclosure about why the assumptions are reasonable for working out the estimate and only if it is material to that disclosure.
- RG 167.78 If your calculator refers to a specific financial product in the disclosure about the reasonableness of assumptions, you must take reasonable steps to ensure that it does not advertise or promote the specific financial product, including by ensuring that the disclosure is not more prominent than any other information about the reasonableness of assumptions and less prominent than the calculator itself: see RG 167.94–RG 167.97.

Assumptions

- RG 167.79 Assumptions (whether default or set by the user) are an important component of any calculator. Even small changes to assumptions can make large differences to results.
- RG 167.80 We have not set prescriptive rules about assumptions, except for requirements about the disclosure of future values in today's dollars: see RG 167.103–RG 167.113. For example, we have not prescribed what assumptions the generic financial calculator should take into account or how the default values of assumptions should be determined. Instead, we have adopted a more flexible approach requiring that:
- (a) in the case of electronic facilities or devices, the user must be able to alter the default assumptions (except for those that reflect certain statutory fixed factors, such as taxation rates, which can either be fixed or able to be altered by the user);
 - (b) the default assumptions must be reasonable for working out the estimate; and
 - (c) the calculator must include clear statements about, among other things, the limitations of the calculator and why the provider considers the default assumptions to be reasonable.

- RG 167.81 We consider that assumptions are likely to be reasonable if they are:
- (a) approved by an actuary or other appropriately qualified professional;
 - (b) consistent with standards for assumptions used by calculators approved by the Australian Government Actuary;
 - (c) consistent with industry standards for assumptions used by calculators; or
 - (d) consistent with similar calculators provided by ASIC.

Statutory assumptions

- RG 167.82 Statutory assumptions are assumptions that reflect a rate or amount fixed by legislation, such as the taxation rates or the rates of compulsory superannuation contribution.
- RG 167.83 Under [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#):
- (a) the statutory assumptions can either be fixed or able to be altered by the user;
 - (b) the statutory assumptions, unless changed by the user, must be reasonable for working out the estimate; and
 - (c) the generic financial calculator must include clear and prominent statements about:
 - (i) the limitations of the calculator and the impact of any significant limitations; and
 - (ii) why the provider considers the statutory assumptions are reasonable for working out the estimate.
- RG 167.84 We consider that there is potential for consumers to be misled if a generic financial calculator includes out-of-date statutory assumptions. The behavioural economics research suggests that default settings are powerful and consumers are reluctant to change default settings. It is important, therefore, that a default statutory assumption is up to date.
- RG 167.85 We consider that the conditions of our relief require statutory assumptions to be up to date because if they are not up to date they are not 'reasonable for the purpose of working out the estimate'. Further, if the assumptions are not up to date they are misleading. We expect that you will have processes and procedures in place to monitor changes in statutory assumptions and ensure that you comply with your obligation to update them.
- RG 167.86 Given the potential for consumers to be misled if your statutory assumptions are out of date, we expect that your statutory assumptions will be updated as soon as possible after a change in the assumption becomes substantially certain. You should take steps to limit your risk that the calculator is misleading during the period it takes you to update your calculator where

statutory assumptions are out of date. For example, you could include the date at which the statutory assumptions are effective (date stamp) and could include a clear and prominent warning message that the statutory assumptions are out of date.

Disclosure

- RG 167.87 It is a condition of our relief that a generic financial calculator must display ‘clear and prominent’ statements and explanations about prescribed matters. For example, if the calculator has any significant limitations (e.g. by not including the effect of exit fees or taxation payable by the client, or not enabling users to alter default assumptions), these limitations and their impact should be clearly and prominently explained.
- RG 167.88 It is important that users of generic financial calculators can easily understand that calculators are educational tools and are not intended to be relied on for the purpose of making a decision about a financial product. It is also important that users understand the assumptions and limitations of the calculator. For this reason, it is important that the statements and explanations are accessible and that user engagement with this information is promoted.
- RG 167.89 A statement or explanation must contain as much detail as a retail client using the generic financial calculator would reasonably expect having regard to the nature of the calculator.
- RG 167.90 We expect that you will present these statements and explanations in a way that aids comprehension and usability by an ordinary and reasonable consumer of the generic financial calculator. The behavioural economics research suggests that people comprehend information differently depending on the context in which it is provided. Context can be based (among other things) on the environment, the individual, the nature of the products/services, timing factors and the way the information is presented.
- RG 167.91 We consider that the approach adopted by the provider should reflect an understanding of how consumers access and engage with the particular generic financial calculator and make decisions (e.g. you should consider user testing to assess how well users understand the information being relayed by your calculator).

Disclosure of assumptions

- RG 167.92 Under our relief, a generic financial calculator must display to the user in the ordinary course of its use, or have printed on it, a clear and prominent statement of the assumptions that have been taken into account. The calculator must also display to the user, or have printed on it, an explanation of why the assumptions, including any statutory assumptions, are reasonable for the purpose of working out the estimate.

- RG 167.93 The headline assumptions must be clearly and prominently displayed, but the explanation of why the assumptions are reasonable for working out the estimate can be layered (i.e. the disclosure can be accessed on request through a link to the information).
- RG 167.94 You can refer to a specific financial product as part of your disclosure about why the assumptions are reasonable for working out the estimate, but only if it is material to that disclosure.
- RG 167.95 If your generic financial calculator refers to a specific financial product in the disclosure about the reasonableness of assumptions, you must take reasonable steps to ensure that it does not advertise or promote the specific financial product. For example, the reference to the specific financial product must not be more prominent than the rest of the disclosure about reasonableness of assumptions.
- RG 167.96 Your generic financial calculator is also subject to the prohibition against misleading or deceptive conduct in the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act). Where past performance information is used to support the reasonableness of assumptions about rates of return, the assumptions may be misleading if there are not reasonable grounds to make the stated assumption. It would not be reasonable for working out the estimate if you used past performance selectively so as to exaggerate the success or disguise the lack of success of a particular investment option. For example, your calculator must not refer to the short-term past performance of a specific financial product to demonstrate the reasonableness of a high default rate of return if those short-term returns are above a return that could reasonably be expected as a long-term average.
- RG 167.97 Similarly, your assumptions may not be reasonable and may also be misleading if they rely simply on past performance figures without any reference to their relevance to future circumstances.

Disclosure of fees and costs

- RG 167.98 [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) does not explicitly require generic financial calculators to include a field relating to fees or costs. For example, some calculators may present a default rate for investment earnings that is net of fees or costs, while others may present fees or costs as a separate factor in the calculation.
- RG 167.99 Under our relief, the assumptions about fees and costs must be reasonable and the generic financial calculator must include clear and prominent explanations of why the assumptions are reasonable. The calculator must also display to the user a clear and prominent statement about the limitations of the calculator.

- RG 167.100 Mandating standardised fee disclosure is difficult because generic financial calculators apply to a range of different financial products. We consider that the conditions of our relief will ensure consumers are adequately informed about the impact of fees and costs on long-term outcomes.
- RG 167.101 If the generic financial calculator does not take into account the effect of certain fees and costs such as exit fees, activity fees or taxes payable by the user, this has to be clearly and prominently explained to the user in the ordinary course of its use, including a clear and prominent explanation of the impact of this limitation.
- RG 167.102 Further, as noted in RG 167.96, a generic financial calculator is subject to the prohibition against misleading or deceptive conduct in the Corporations Act and the ASIC Act.

Disclosure of future values in today's dollars: Adjusting for inflation

- RG 167.103 To provide useful information to consumers, the information on future returns or amounts payable must be presented in such a way that it can be properly understood. We consider that consumers' comprehension of future returns is assisted by giving an indication of what the investment may be at current dollar values at the end of the specified term.
- RG 167.104 Therefore, under our relief, a generic financial calculator must account for inflation. Where the estimate is of an amount payable or receivable at a future time of two or more years, you must include a clear and prominent statement setting out the present value of the estimate. We recognise, however, that in some limited cases it may not be appropriate to adjust for inflation (e.g. in the case of a generic financial calculator that already adjusts for inflation, such as a mortgage repayment calculator).

Default inflation rate (for calculators that are not superannuation or retirement calculators)

- RG 167.105 The default inflation rate for discounting the future receipt or payment for generic financial calculators that are not superannuation or retirement calculators is 2.5%.

Note: For information on the default inflation rate for superannuation and retirement calculators, see RG 167.109–RG 167.113.

- RG 167.106 The default rate of inflation of 2.5% is based on the midpoint of the Reserve Bank of Australia's (RBA) target range for inflation published on 18 March 2016. ASIC may amend [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) in the future to reflect a change in the RBA's target range for inflation. If you wish to provide a result in future dollars as well as current dollars, both should be clearly labelled so as to avoid consumer confusion.

RG 167.107 In expressing a value in today's dollars, we expect that your generic financial calculator will include clear and prominent statements about the limitations of this assumption and why the assumption is reasonable for working out the estimate. For example, your calculator may include the following:

The assumed rate of inflation is set by ASIC at 2.5% based on the midpoint of the Reserve Bank of Australia's target range for inflation. The actual rate of inflation may differ significantly from this assumption and, if inflation is more or less than the assumed rate of inflation, the outcome at the end of the selected period could be affected.

RG 167.108 We recognise that you may wish to illustrate a variety of different inflation scenarios. This is a strength of generic financial calculators because it demonstrates variability in consumer outcomes. Our standardised assumption about the rate of inflation does not prevent calculators from modelling a range of inflation scenarios and does not prevent users from selecting their own alternative inflation rate assumption.

Default inflation rate for superannuation and retirement calculators

RG 167.109 In the case of superannuation and retirement calculators, providers may calculate the present value of estimates using either:

- (a) the default inflation rate set out in [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) for superannuation and retirement calculators; or
- (b) an alternative default inflation rate, as long as certain disclosure requirements are met.

RG 167.110 The default inflation rate for discounting superannuation and retirement estimates under the relief is based on the default inflation rate used by ASIC's Moneysmart superannuation and retirement calculators, and includes a component that reflects the cost of meeting increases in community living standards.

RG 167.111 Adjusting for the cost of meeting increases in community living standards may assist users to better decide if future retirement assets or income will be adequate compared to their current standard of living. We will amend [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) in June each year to reflect any changes in the default inflation rate used by ASIC's Moneysmart superannuation and retirement calculators. This rate is reviewed and updated annually.

RG 167.112 We recognise that there may be instances when it is appropriate for a superannuation and retirement calculator to use a different default inflation rate—for example, to take into account:

- (a) the wage profile of the likely users of the calculator; or
- (b) the provider's wage growth outlook.

- RG 167.113 Accordingly, under our relief, superannuation and retirement calculators may use an alternative default inflation rate to calculate the present value of estimates. If the alternative default inflation rate does not include a component that reflects the cost of meeting increases in community living standards, the superannuation and retirement calculator must:
- (a) disclose that the present value of the estimate does not take into account the cost of meeting increases in community living standards; and
 - (b) explain the implications of the present value not taking into account the cost of meeting those increases.

Note: Superannuation and retirement calculators relying on [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) must comply with the requirements referred to in RG 167.108 from 5 December 2019. During this transitional period, if your superannuation and retirement calculator does not comply with the requirements in RG 167.108, it must continue to display to the user in the ordinary course of its use whether or not the estimate takes into account the assumed change in the cost of living between the time of preparation of the estimate and the future time.

Compliance issues

- RG 167.114 Under [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#), you must notify ASIC of certain matters and comply with conditions relating to record keeping.

Notify ASIC of breaches

- RG 167.115 Under our relief, a failure to comply with a condition, other than a breach reporting condition, does not preclude a person from taking advantage of the relief, but it is a circumstance in which ASIC may give the person a notice in writing excluding them from the relief.
- RG 167.116 Breach notifications play an important role in our oversight of the financial services industry. Apart from alerting us to significant breaches of the law, they also give us valuable information to help us identify emerging trends of non-compliance.
- RG 167.117 The reporting of matters that constitute or may constitute contraventions of the conditions under [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) is an important element of the effective regulation of generic financial calculators and the protection of people who rely on these calculators.
- RG 167.118 If you are relying on our relief and you become aware of matters that give you reason to believe that you have failed, other than in an immaterial respect, to comply with a condition, you must notify ASIC in writing of details of the breach as soon as practicable, and in any case within 10 business days of becoming aware of the breach.

- RG 167.119 Whether a breach is a material breach will depend on the individual circumstances of the breach. We consider that an immaterial breach is a breach of a technical or trivial kind. For example, you may consider that a temporary technical fault that prevents the user from readily printing or storing an electronic estimate for a short period of time to be an immaterial breach. However, if you are experiencing ongoing technical issues with your generic financial calculator that may reduce your ability to comply with this condition in the future, it may be a material breach.
- RG 167.120 If immaterial breaches repeatedly occur, it is likely a new breach will be material because it may indicate inadequacies in your compliance arrangements. If you are unsure whether a breach is material, you should report the breach.

How to submit a breach report

- RG 167.121 You should report a significant breach (or likely significant breach) to us through the [ASIC Regulatory Portal](#). See our [explanation on submitting breach reports](#) through the portal for more detail about the breach report transaction and how it works in the portal.

Note: For more information, see [Regulatory Guide 78 Breach reporting by AFS licensees \(RG 78\)](#).

- RG 167.122 In determining any regulatory response, we will consider the nature, scope and effect of any breach, including whether you have identified the cause of the breach and addressed it so that it is unlikely to recur. Our response may include, where appropriate, exclusion from reliance on our relief by way of a notice.

Record-keeping obligations

- RG 167.123 You must keep a copy of your generic financial calculator for seven years after it has been made available, including a copy of the statements and explanations required to be disclosed (set out in Table 1) under paragraphs 6(1)(d) and (e) of [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#). The copy must enable you to reproduce each version of the calculator that was made available to users. However, the provider does not have to keep sufficient records to enable it to reproduce each actual use of the calculator by an individual user.
- RG 167.124 If the generic financial calculator is an electronic facility or device, the calculator must not prevent the user from readily printing or electronically storing the estimate.

Calculators not covered by our relief

RG 167.125 Our relief under [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) does not apply to calculators that are not generic financial calculators. Other types of calculators include product-specific financial calculators and risk profilers. We expect providers of these other types of calculators to comply with the AFS licensing requirements and, if applicable, requirements for providing personal advice.

Product-specific financial calculators

RG 167.126 A product-specific financial calculator is a facility, device or table that:

- (a) is used to make a numerical calculation or find out the result of a numerical calculation relating to a financial product; and
- (b) advertises or promotes one or more specific financial products.

Note: See RG 167.70–RG 167.78 for guidance on when a calculator advertises or promotes one or more specific financial products.

Risk profilers

RG 167.127 Risk profilers are tools that, based on the user's answers to a series of questions about investment preferences, assess the user's attitude to risk.

RG 167.128 Risk profilers are only calculators in the broadest sense. They generally do not produce numerical results. Although the results may be derived using mathematical formulas (e.g. by assigning scores to the user's answers and using the total to produce a result), the results themselves are not numerical (e.g. the output is that the client has a risk weighting, such as 'conservative' or 'aggressive').

Note: This category of calculator includes a risk profiler that produces a numerical figure combined with an interpretative guide to explain the significance of that numerical figure (e.g. a risk profiler that results in the output '5' and then has an interpretative guide that '5' equates to a 'conservative' risk profile).

RG 167.129 A risk profiler does not fall within the AFS licensing requirements if it does not produce financial product advice. It does not produce financial product advice if it:

- (a) does not relate to financial products at all (e.g. the risk profiler only provides information about the user's attitude to risk); or
- (b) only makes recommendations or statements of opinion about the allocation of the user's funds among one or more classes of assets (e.g. shares, debentures, deposit products and managed investment products).

Note: Under reg 7.1.33A of the Corporations Regulations, asset allocation advice is not a financial service.

Key terms

Term	Meaning in this document
ADI	An authorised deposit-taking institution (ADI)—a corporation that is authorised under the <i>Banking Act 1959</i> . ADIs include: <ul style="list-style-type: none"> • banks; • building societies; and • credit unions
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
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
asset sponsor	An entity that sells the underlying assets in a securitisation transaction to the securitisation entity
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
Div 4 (for example)	A division of the Corporations Act (in this example numbered 4)
financial product advice	A recommendation or a statement of opinion, or a report of either of these things, that: <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or • could reasonably be regarded as being intended to have such an influence. <p>This does not include anything in an exempt document or statement</p> <p>Note: This is a definition contained in s766B of the Corporations Act.</p>
Financial Services Guide (FSG)	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.
general advice	Financial product advice that is not personal advice Note: This is a definition contained in s766B(4) of the Corporations Act.

Term	Meaning in this document
generic financial calculator	<p>A facility, device, table or other thing that:</p> <ul style="list-style-type: none"> • is used to make a general numerical calculation or find out the result of a numerical calculation about a financial product; and • does <i>not</i> advertise or promote one or more specific financial products
licensing provisions	The AFS licensing regime in Pts 7.6–7.8 (other than Divs 4 and 8 of Pt 7.6 and Div 8 of Pt 7.8) of the Corporations Act
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> • the person giving the advice has considered one or more of the client’s objectives, financial situation and needs; or • a reasonable person might expect the person giving the advice to have considered one or more of these matters <p>Note: This is a definition contained in s766B(3) of the Corporations Act.</p>
Product Disclosure Statement (PDS)	<p>A document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>
Pt 7.6 (for example)	A part of the Corporations Act (in this example numbered 7.6)
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
RSE licensee	A registrable superannuation entity licensee
s911A(2) (for example)	A section of the Corporations Act (in this example numbered 911A(2)), unless otherwise specified
securitisation	The process by which a portfolio of relatively illiquid assets is packaged into marketable securities
securitisation entity	An entity that issues securitisation products in a securitisation transaction
securitisation manager	An entity, typically an ADI, that manages the securitisation transaction
securitisation product	A debt instrument or an interest in a managed investment scheme
securitisation SPV	A securitisation entity that has been established for the limited purpose of carrying out a specific securitisation transaction

Term	Meaning in this document
securitisation transaction	A transaction in which a portfolio of illiquid assets is packaged into marketable securities (securitisation products), which are then sold into capital markets on either a public or private basis. The benefits payable to investors from a securitisation will depend largely on the return from the underlying assets
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SPV	Special purpose vehicle, also known as a special purpose entity
Statement of Advice (SOA)	A document that must be given to a retail 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.
wholesale client	A client who is not a retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations

Related information

Headnotes

Australian financial services licence, AFS licence, AFS licensee, Financial Services Guide (FSG), generic financial calculator, Statement of Advice (SOA), Product Disclosure Statement (PDS), retail client, securitisation special purpose vehicle, securitisation transaction

Legislative instruments and pro formas

[ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#)

[ASIC Corporations \(Securitisation Special Purpose Vehicles\) Instrument 2016/272](#)

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

Regulatory guides

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

[RG 38](#) *The hawking provisions*

[RG 51](#) *Applications for relief*

[RG 78](#) *Breach reporting by AFS licensees*

[RG 80](#) *Managed investment schemes: Interests not for money*

[RG 136](#) *Funds management: Discretionary powers*

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

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

[RG 165](#) *Licensing: Internal and external dispute resolution*

[RG 166](#) *Licensing: Financial requirements*

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

[RG 169](#) *Disclosure: Discretionary powers*

[RG 175](#) *Licensing: Financial product advisers—Conduct and disclosure*

[RG 178](#) *Foreign collective investment schemes*

[RG 179](#) *Managed discretionary accounts*

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

[RG 182](#) *Dollar disclosure*

[RG 183](#) *Approval of financial services sector codes of conduct*

[RG 185](#) *Non-cash payment facilities*

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

Legislation

ASIC Act

Corporations Act, Pts 7.6, 7.7, 7.7A and 7.8; s9, 761G, 761H, 763A, 766B, 766D, 911A, 926A, 951B, 992B

Corporations Regulations, regs 7.1.33A, 9.12.04

SIS Act, s29QC, 99F

Consultation papers and reports

[CP 246](#) *Remaking ASIC class order on securitisation special purpose vehicles: [CO 04/1526]*

[CP 249](#) *Remaking ASIC class order on generic financial calculators: [CO 05/1122]*

[REP 455](#) *Consumer testing of the Choice product dashboard*

[REP 477](#) *Response to submissions on CP 249 Remaking ASIC class order on generic financial calculators: [CO 05/1122]*

ASIC forms

[Form FS80](#) *Notification by an AFS licensee of a significant breach of a licensee's obligations*