

3 February 2026

Mr [REDACTED]

Australian Securities and Investments Commission
GPO Box 9827
MELBOURNE VIC 3001

By email: rij.consultation@asic.gov.au

Dear [REDACTED]

Proposed updates to Regulatory Guide 234

1. The Law Council of Australia appreciates the opportunity to provide feedback to the Australian Securities and Investments Commission (**ASIC**) on the proposed updates to Regulatory Guide 234 *Advertising financial products and services (including credit): Good practice guidance (RG 234)*.
2. This submission is made by the Legal Practice Section's Australian Consumer Law Committee (**ACL**C) and Superannuation Committee (**SC**), and the Business Law Section's Financial Services Committee (**FSC**), collectively the **Committees**.

Summary

3. RG 234 provides important practical guidance on the application of the law with respect to misleading or deceptive conduct in advertising financial products and services. The Committees broadly support the proposed updates to RG 234, which help to ensure that the guidance remains relevant and fit-for-purpose. We particularly welcome:
 - (a) the inclusion of additional examples and case references that reflect ASIC regulatory and enforcement action in relation to advertising conduct;
 - (b) updating the guidance to reflect other forms of advertising such as sponsored content and "influencers" on social media;
 - (c) the addition of a quick-reference guide at Appendix 1; and
 - (d) the consolidation of guidance contained in Regulatory Guide 53 *The use of past performance in promotional material (RG 53)*.

4. The Committees provide some further commentary below in respect of further possible updates that we believe may further enhance RG 234, including:
 - (a) providing greater clarity on the regulatory status of the guidance and the intersection with other relevant regulatory obligations;
 - (b) providing additional factual scenarios and examples; and
 - (c) consideration of emerging themes such as the use of technology for targeted advertising and other applications of artificial intelligence.

Scope and application

5. The FSC recommends that the scope of the guidance and its 'weight' is clarified.
6. In draft paragraph RG 234.2, it is stated that the purpose of the guidance is to help with the obligations in relation to misleading and deceptive conduct and false or misleading statements. The FSC believes that it is important in these opening paragraphs to also make it clear that other obligations apply and that the guidance is to be read in conjunction with these other obligations and the separate ASIC guidance published in relation to them.
7. Draft paragraph RG 234.4 sets a very wide ambit, with the words 'any communication'. The subsequent paragraph provides some context with the word 'advertising', and reference to a number of forms of advertising discussed further in Section C. The FSC recommends that the concept of advertising is expanded upon. For example, the social media content created by influencers (draft paragraph RG 234.169) is not necessarily within the meaning of the concept of advertising as it is traditionally understood and it would be valuable for ASIC's position to be stated here.
8. The FSC recommends that ASIC considers expanding how industry should treat this guidance. Draft paragraph RG 234.14 references the greater interest that ASIC may take in material that does not meet the guidance. This raises a question, for example, as to whether ASIC would encourage an 'if not, why not' approach and if not, whether this guidance be treated with greater or lesser weight? The previous terminology of good practice arguably implied a more flexible standard. The FSC would appreciate clarification of this matter.

Corporations Act disclosure requirements in relation to advertising

9. The FSC notes the purpose of the guidance as stated in draft paragraph RG 234.1 and supports the effort in this revised guidance to reduce repetition and eliminate material found elsewhere. However, in the anecdotal experience of members of the FSC, RG 234 is the primary source used by the regulated population when financial services providers consider the compliance obligations that apply to marketing material. Accordingly, the FSC is of the view that signposts to other relevant legal and compliance obligations that apply to advertising and marketing communications play a valuable role and should not be eliminated entirely.

10. Draft paragraph RG 234.41 provides an example of this opportunity for this. The text mentions warnings or notices required to be included under various provisions of the *Corporations Act 2001* (Cth) or other laws. The two notes focus on the credit laws. While a comprehensive list of these 'various provisions' would not be necessary, the current draft appears unnecessarily vague and the notes appear to be selective.
11. Section 1018A of the Corporations Act is a fundamental obligation for retail issuers and promoters of financial products that impacts all marketing communications. The same could be said for section 734 in relation to an offer of securities. It would be reasonable in the view of the FSC to incorporate a reference to these provisions into these notes. The material which appears in the current form of draft paragraph RG 234.121 could be reused at this location to bring the provision to notice while eliminating repetition.
12. The FSC requests that the table located in the current form of paragraph RG 234.115 is retained in a duly updated form as industry finds it highly useful.

Advertised returns and advertised fees

13. It is relatively common in the superannuation and managed funds industries to advertise a fund using returns for an investment option or specific fees. The SC and the FSC consider that it would be useful if ASIC provided commentary on "good" or "bad" practices involving returns advertising. This could include guidance on:
 - (a) advertising based on short term (e.g. 1 year) rather than longer term (e.g. 10 years) returns;
 - (b) advertising the returns of one investment option but not other investment options; and
 - (c) the need to state in the advertising that returns are only one feature to consider for a superannuation product or managed investment product.

Targeted advertising

14. The ACLC recommends that ASIC provide further guidance on targeted advertising in RG 234. As explained by the Office of the Australian Information Commissioner:

When an organisation tries to match the ads you see while browsing online with your interests, this is called targeted advertising. It's also called interest-based advertising or online behavioural advertising. Advertising and data collection organisations do this by placing a 'cookie' on your computer, smartphone or tablet.¹

15. Targeted advertising is prevalent in the financial services and credit industries. It can be used to provide personalised advertising content to individuals based on factors such as life events, browsing behaviour and demographics.

¹ Office of the Australian Information Commissioner, *Targeted online marketing* (Web Page) <<https://www.oaic.gov.au/privacy/your-privacy-rights/social-media-and-online-privacy/targeted-online-marketing>>.

16. Draft paragraph RG 234 notes that advertisements should not state or imply that a product is suitable for a particular class of consumers unless the promoter has actually assessed the suitability of the product for the particular consumers targeted by the advertisement.² However, the ACLC considers that industry would benefit from further guidance on the interaction between targeted advertising and legal requirements relating to:
- (a) anti-hawking;
 - (b) design and distribution obligations;
 - (c) the provision of personal financial advice to retail clients;
 - (d) the provision of credit assistance (including credit assistance provided by mortgage brokers that is subject to the best interests obligations); and
 - (e) misleading or deceptive conduct.

Internet advertising

17. The SC and the FSC acknowledge that some changes have been made to update the section on internet advertising. However, given the significance of the shift to internet advertising in recent years, particularly in the use of social media, we recommend that this section of the guidance be expanded to provide greater clarity to promoters in using this medium.
18. As recognised by ASIC, this form of advertising can be particularly challenging for promoters because of the size limitations around content. For example, some forms of internet advertising have strict character limits, which restrict the ability of the promoter to include warnings, disclaimers and qualifications (eg banner advertising, advertising in a tile). Whilst we fully support and endorse ASIC's position that physical limitations of a particular medium are not a reason for producing misleading advertisements, the SC and the FSC recommend that the guidance includes more practical examples highlighting ASIC's expectations of advertising in the 'real world' of this medium, particularly in relation to the inclusion of warnings, disclaimers and qualifications. The SC and the FSC encourage the inclusion of such examples to cover a number of different forms of internet advertising as this medium covers a wide range of advertising forms and it is unlikely that one approach would be suitable for all forms of advertising in this channel.

Warnings, disclaimers, qualifications and fine print

19. The SC and the FSC provide the following observations and comments in relation to the disclosure of warnings, disclaimers, qualifications and fine print in advertising.
20. RG 234 reiterates the need to include the requisite warnings, disclaimers and qualifications in all forms of advertising. This includes, for instance, the full name of the product issuer, ABN, AFSL, name of the product, superannuation fund details,

² Australian Securities and Investments Commission, [Draft Regulatory Guide 234, Advertising financial products and services \(including credit\): Good practice guidance](#) (November 2025), draft paragraphs RG 234.127 and RG 234.132.

warnings and qualifications, reference to the PDS etc. Whilst the importance of this information is not in dispute, the SC and the FSC consider that some flexibility is required in how that information is provided, having regard to our comments above on internet advertising. In draft paragraph RG 234.41, it is noted that information required under the Corporations Act (such as under section 1018A), “does not necessarily need to be as prominent as the headline claim”. Noting ASIC’s comments on banner advertising in draft paragraph RG 234.61, it would be helpful if ASIC could consider whether some of the required disclosure in a range of other forms of internet advertising could, for example, be included by a hyperlink or “clicking through” to a webpage and if so, in what circumstances and which elements of the required disclosure could be so included.

21. The SC and the FSC note ASIC’s comments in relation to warnings or disclaimers in film and video advertisements needing to be ‘prominent’ (draft paragraph RG 234.158). Whilst in no way wanting to minimise the importance of customers clearly being informed of any warnings or conditions, it would be helpful to differentiate between the need to prominently display qualifications relating to the content of the advertisement as opposed to disclaimers required by legislation. The SC and the FSC recommend that ASIC clarify whether some disclaimers and warnings could be given less prominence (as contemplated by draft paragraph RG 234.41) in this medium. This would also assist in highlighting the key information (such as relevant risks and warnings) rather than it being subsumed in a ‘dense block of text’ where critical information is less likely to be read (draft paragraph RG 234.35).
22. ASIC’s view of the use of “drop-downs” to provide warnings, disclaimers, qualifications and fine print in advertising is not clear. It would be helpful if ASIC stated whether or not it considered the use of drop-downs to be compliant with the requirement that the warnings, disclaimers or qualifications be ‘in similar form’ to the main body of the advertisement (draft paragraph RG 234.37) and/ or sufficiently prominent.
23. As a general comment, the inclusion of more practical examples of adequate versus inadequate disclosure of warnings, disclaimers or qualifications would provide greater clarity around ASIC’s expectations, particularly in relation to internet advertising.

Comparisons

24. As noted in RG 234, consumers are heavily influenced by advertisements for products and services when making financial decisions and seeking financial advice.³ Advertisements that compare product features or performance can be particularly influential.
25. The ACLC and the FSC recommend that ASIC provide additional examples or information in relation to comparisons, particularly comparisons between competitors in respect of similar products. For example, it would be helpful to better understand ASIC’s expectations of financial services providers to verify and update information about competitors’ products when used in advertisements.

³ Ibid 4.

The “ordinary and reasonable” consumer

26. In relation to whether an advertisement is misleading or deceptive, one of the key legal tests is the reaction of an “ordinary and reasonable” member of the advertisement’s audience on first viewing of the advertisement. RG 234 provides only limited guidance on this issue, stating that this is “normally anyone who is neither unusually astute nor unusually gullible”.⁴
27. The ACLC welcomes the inclusion of commentary in RG 234 on *Australian Securities and Investments Commission v Latitude Finance Australia (No 2)* [2024] FCA 1205 (the **Latitude case**), where the Court considered the relevant legal test in detail. However, the ACLC considers that further examples and commentary on the “ordinary and reasonable” consumer test would be beneficial. For example, guidance on:
- (a) determining the ordinary and reasonable member of the advertisement’s audience (for example, the Latitude case held that “ordinary and reasonable consumers” were the class of persons who are purchasers of home and electrical goods, such as those advertised in the representative advertisements);⁵
 - (b) the impact of utilising targeted advertising on determining the class of ordinary and reasonable consumers;
 - (c) the scope for “diversity of responses”⁶ to a particular advertisement; and
 - (d) the impact of directing an advertisement at a class of persons or group of individuals who are likely to be experiencing vulnerability.
28. The ACLC notes that there is a significant volume of case law in respect of misleading or deceptive conduct that could be drawn upon to provide further practical examples and guidance to aid the determination of the audience class and their likely responses to a particular advertisement.

Artificial intelligence

29. Artificial intelligence (**AI**) is now being utilised across almost all digital media channels. Industry is also using more advanced forms of Search Engine Optimisation, including the use of Answer Engine Optimisation and Generative Engine Optimisation to influence AI-generated answers to consumer questions about financial services and products.
30. Given the pervasiveness of AI across all aspects of the financial services and credit industries, including in advertising and search engine results, the Committees recommend AI-specific commentary and examples be included in RG 234 to discuss the unique risks and challenges passed by advertising practices involving AI.

⁴ Ibid, draft paragraph RG 234.189.

⁵ *Australian Securities and Investments Commission v Latitude Finance Australia (No 2)* [2024] FCA 1205, [360].

⁶ *Comite Interprofessionnel du Vin de Champagne v Powell* [2015] FCA 1110, [171] cited with approval in *Australian Securities and Investments Commission v Latitude Finance Australia (No 2)* [2024] FCA 1205, [356].

Contact

31. The Committees appreciate the opportunity to contribute to this consultation. If you require further information or clarification, please contact the [REDACTED]

[REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]
Chief Executive Officer