



**ASIC**  
Australian Securities &  
Investments Commission

**Quality of Advice Review:  
Consultation paper—  
Proposals for reform**

**Submission by the Australian  
Securities and Investments  
Commission**

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## Executive summary

1 The Australian Securities and Investments Commission (ASIC) welcomes the opportunity to make a confidential submission to Treasury’s proposals paper on [Quality of Advice Review: Consultation paper—Proposals for reform](#) (proposals paper), released on 29 August 2022.

2 Financial advice that is good quality, accessible and affordable can help Australian consumers make better financial decisions over their lifetime: see [Report 224 Access to financial advice in Australia](#) (REP 224) and [Report 627 Financial advice: What consumers really think](#) (REP 627).

3 ASIC wants to see consumers provided with good quality, accessible and affordable financial advice. **s37(2)(b), s47C, s47E(d)**

This aligns in many ways with ASIC’s recent unmet advice needs project, which aimed to help ASIC understand what we and industry can do to better promote access to good quality affordable personal advice.

Note: This project involved engaging with industry and other stakeholders on the issues and impediments that exist in delivering affordable personal advice to consumers: see [Consultation Paper 332 Promoting access to affordable advice for consumers](#) (CP 332). In response to the feedback received, ASIC identified a range of initiatives to help industry which included, publishing [INFO 267 Tips for giving limited advice](#) with an example statement of advice and [INFO 266 FAQs: Records of Advice](#) with examples of records of advice, and launching a new [Financial Advice Hub](#) for advice licensees and advisers.

4 Advice can be provided along a spectrum, from comprehensive advice to limited or single topic advice. ASIC’s previous research into the demand and supply of financial advice highlighted that many consumers preferred receiving piece-by-piece or limited advice rather than comprehensive advice: see [REP 224](#). **s37(2)(b), s47C, s47E(d)**

Note: For further details about previous research ASIC has undertaken on consumer preferences in relation to financial advice, see [CP 332](#) at paragraphs 6–10.

5 **s37(2)(b), s47C, s47E(d)**

s37(2)(b), s47C, s47E(d)



**Table 1: Overview of ASIC’s submission**

Topic/reference	Proposals	Summary of ASIC’s feedback
<p><b>Regulation of financial advice</b> See Section A of this submission</p>	<p>Proposal 1 recommends that the financial services regime should regulate the provision of ‘personal advice’ and that ‘personal advice’ should be defined as a recommendation or opinion provided to a client about a financial product (or class of financial product) and, at the time the advice is provided, the provider has or holds information about the client’s objectives, needs or any aspect of the client’s financial situation.</p> <p>Proposal 2 recommends that ‘general advice’ should no longer be regulated as a financial service and the definition of ‘general advice’ should be removed together with the obligation to give a general advice warning.</p> <p>Proposal 3 recommends that a person who provides personal advice should be required to provide ‘good advice’. ‘Good advice’ is advice that would be reasonably likely to benefit the client, having regard to the information that is available to the provider at the time the advice is provided.</p> <p>Proposal 4 recommends that a provider of personal advice should be a ‘relevant provider’ where the provider is an individual and the client pays a fee for the advice, the provider (or the provider’s authorising licensee) receives a commission in connection with the advice, and there is an ongoing advice relationship between the adviser and the client, and the client has a reasonable expectation that such a relationship exists.</p>	<p>s37(2)(b), s47C, s47E(d)</p>

Topic/reference	Proposals	Summary of ASIC's feedback
<p><b>Advice provided by superannuation trustees</b> See Section B</p>	<p>Proposal 5 recommends that superannuation trustees should be able to provide personal advice to their members about their interests in the fund, including when they are transitioning to retirement. In doing so, trustees would be required to consider the member's personal circumstances, including their family situation and social security entitlements if that is relevant to the provision of the advice.</p> <p>Proposal 6 recommends that superannuation trustees should have discretion to decide how to charge members for personal advice they provide to members and the restrictions on collective charging of fees should be removed.</p>	<p>s37(2)(b), s47C, s47E(d)</p>
<p><b>Advice fees</b> See Section C</p>	<p>Proposal 7 recommends that superannuation trustees should be able to pay a fee from a member's superannuation account to an adviser for personal advice provided to the member about the member's interest in the fund on the direction of the member.</p> <p>Proposal 8 recommends that Fee Disclosure Statements (FDSs) should not be required. Providers of personal advice should obtain annual written consent from their client to deduct advice fees from a financial product if there is an ongoing fee arrangement. The consent form should explain the services that will be provided and the fee that the adviser proposes to charge over the course of the following 12 months. Where advice fees are deducted from more than one product, a single consent form should cover each of the products issued by a product issuer.</p>	

Topic/reference	Proposals	Summary of ASIC's feedback
<p><b>Disclosure obligations</b> See Section D</p>	<p>Proposal 9 recommends that providers of personal advice to retail clients would be required to maintain complete records of the advice they provide and to provide a written record of advice to a client on request. This would replace the existing requirement for advisers to provide a statement of advice or record of advice.</p> <p>Proposal 10 recommends that advice providers should either continue to give their clients a copy of the Financial Services Guide (FSG) or make information available to their clients on their website about their remuneration and other benefits they receive, their internal dispute resolution procedures and access to the Australian Financial Complaints Authority (AFCA).</p>	<p>s37(2)(b), s47C, s47E(d)</p>
<p><b>Design and distribution obligations</b> See Section E</p>	<p>Proposal 11 recommends that the reporting requirements under the design and distribution obligations (DDO) regime should be simplified by requiring relevant providers to only report to the product issuer where they have received a complaint in relation to a financial product.</p>	

## A Regulation of financial advice

### Key points

This section outlines ASIC’s feedback on Proposals 1–4 relating to:

- what should be regulated; and
- how personal advice should be regulated.

### What should be regulated?

#### Personal advice

- 8 Proposal 1 recommends that the definition of personal advice should be broadened to be ‘a recommendation or opinion provided to a client about a financial product (or class of financial product) and, at the time the advice is provided, the provider has or holds information about the client’s objectives, needs or any aspect of the client’s financial situation’.

s37(2)(b), s47C, s47E(d)





**s37(2)(b), s47C, s47E(d)**



### **General advice**

- 14            Proposal 2 recommends that ‘general advice’ would no longer be regulated as a financial service and the general advice definition would be removed from the Corporations Act together with the obligation to give a general advice warning.

**s37(2)(b), s47C, s47E(d)**



s37(2)(b), s47C, s47E(d)



s37(2)(b), s47C, s47E(d)



21 Further, the proposals paper states that under Proposal 2 general advice provided by persons who do not provide any other financial services (and are therefore unlicensed) will fall outside the framework of the ASIC Act. s

s37(2)(b), s47C, s47E(d)



## How should personal advice be regulated?

### Good advice duty

- 23 Proposal 3 recommends that a person who provides personal advice would be required to provide ‘good advice’. ‘Good advice’ is advice that would be reasonably likely to benefit the client, having regard to the information that is available to the advice provider at the time the advice is provided. The stated outcome of this proposal is to reduce regulatory complexity and burden while improving the quality of advice.

s37(2)(b), s47C, s47E(d)



**s37(2)(b), s47C, s47E(d)**



30 We note that the conflicts duty in Standard 3 of the *Financial Planners & Advisers Code of Ethics 2019* (Code of Ethics) will continue to apply to professional advice providers under the proposals paper. **s37(2)(b), s47C,**

**s37(2)(b), s47C, s47E(d)**



s37(2)(b), s47C, s47E(d)

**Definition of ‘relevant provider’**

- 37 Proposal 4 recommends that relevant providers should be defined as individuals who provide personal advice where they:
- (a) receive a fee or commission in connection with the advice; and
  - (b) have an ongoing advice relationship (or the client has a reasonable expectation that such a relationship exists).

s37(2)(b), s47C, s47E(d)

**s37(2)(b), s47C, s47E(d)**



s37(2)(b), s47C, s47E(d)





## B Advice given by superannuation trustees

### Key points

This section outlines ASIC's feedback on Proposals 5 and 6 relating to giving superannuation trustees greater scope to provide personal advice to their members and to pay for the provision of advice out of the fund.

### Providing personal advice to members

- 53 Proposal 5 recommends that superannuation trustees should be given more regulatory certainty about their ability to provide personal advice to their members about their members' interests in the fund and to pay for the provision of this advice using fund assets (e.g. paid collectively by all members through administration fees).
- 54 Proposal 6 recommends that superannuation trustees should have discretion to decide how to charge members for personal advice provided to members by the trustee, and that restrictions on collective charging of fees should be removed. The intention is to put the onus on superannuation trustees to decide what advice to provide and how to charge for advice in a way that is consistent with their general duties, including their best financial interests duty and the other covenants in s52 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).
- 55 Some, but not all, superannuation trustees provide or arrange for the provision of personal advice to their members about their interest in the fund. This is a longstanding industry practice. Depending on the nature of the advice given, trustees can charge individual members a fee for the advice (generally deducted from the member's account), or recoup the cost of providing advice through an intrafund advice model (i.e. collectively charging across the fund's membership). Members may also receive advice from an entity other than the trustee, with some or all of the cost deducted from their superannuation account (where the advice relates to the member's superannuation) or paid for directly by the member outside of superannuation.

s37(2)(b), s47C, s47E(d)

s37(2)(b), s47C, s47E(d)



## C Advice fees

### Key points

This section outlines ASIC's feedback on Proposals 7 and 8 relating to:

- advice fees in superannuation; and
- ongoing fee arrangements and consent.

### Advice fees in superannuation

- 61 Proposal 7 recommends that the requirement for trustees to seek written consent to deduct adviser fees from a member's superannuation account (for personal advice about the member's interest in the fund) should be replaced with a requirement to deduct adviser fees on the direction of the member.
- 62 The proposals paper notes that this proposal would regularise what currently happens in practice. **s37(2)(b), s47C, s47E(d)**


**s37(2)(b), s47C, s47E(d)**

## Ongoing fee arrangements and consent

### Removing FDSs and annual written consent

- 66 Proposal 8 recommends that advice providers should no longer need to provide an FDS to clients, but that they should continue to obtain annual written consent from their clients before deducting ongoing fees from their client’s accounts, with a single consent form explaining the services to be provided and fees to be charged over the upcoming 12-month period. The services received in the previous year, and the ongoing fees paid for those services, would no longer be required to be disclosed.
- 67 The Financial Services Royal Commission noted that the ‘invisible’ nature of the payment of ongoing fees from a client’s investment account contributed to the charging of fees for no service. For this reason, it recommended that clients give written consent for ongoing fees to be deducted from their accounts.

s37(2)(b), s47C, s47E(d)



s37(2)(b), s47C, s47E(d)

### Resetting the ‘anniversary day’

- 74 Under s962G of the Corporations Act, the ‘anniversary day’ for an ongoing fee arrangement is defined as the anniversary of the day on which the arrangement was entered.

s37(2)(b), s47C, s47E(d)

s37(2)(b), s47C, s47E(d) Before the commencement of the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*, industry could reset the anniversary date by giving clients an FDS within 12 months of the last one being provided. s37(2)(b), s47C, s47E(d)

## D Disclosure obligations

### Key points

This section outlines ASIC’s feedback on Proposals 9 and 10 relating to:

- Statements of Advice; and
- Financial Services Guides.

### Statements of Advice

77 Proposal 9 recommends that the existing requirement for advice providers to provide a Statement of Advice (SOA) or record of advice would be replaced with a requirement for advice providers to maintain complete records of the advice they provide and to provide a written record of advice to the client on request.

s37(2)(b), s47C, s47E(d)




**s37(2)(b), s47C, s47E(d)**



Note 1: Various regulatory provisions in the European Union require that a firm must provide certain information to a client in writing, either on paper or in another durable medium. The FCA provides guidance on the meaning of ‘[durable medium](#)’.

Note 2: As ASIC has made clear in our guidance, the Corporations Act is technology neutral and provides flexibility in the form the record is provided: see [Regulatory Guide 175 Licensing: Financial product advisers—Conduct and disclosure](#) (RG 175) at RG 175.431, [Regulatory Guide 255 Providing digital financial product advice to retail clients](#) (RG 255) at RG 255.86 and [Regulatory Guide 244 Giving information, general advice and scaled advice](#) (RG 244) at Section F.

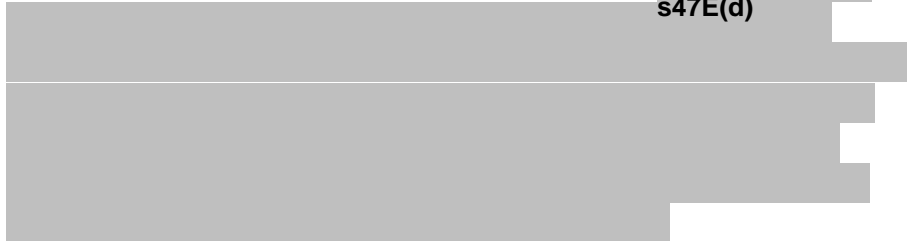
**s37(2)(b), s47C, s47E(d)**



s37(2)(b), s47C, s47E(d)



88 We note that the proposals paper refers to the requirement for advice providers to maintain complete records of their advice. s37(2)(b), s47C, s47E(d)



## Financial Services Guides

89 Proposal 10 recommends that providers of personal advice should either continue to give their clients a copy of the FSG or make information available to their clients on their website about their remuneration and other benefits they receive, their IDR procedures and AFCA. This information should be available at the time the advice is provided. The proposal offers advice providers increased flexibility in how they provide information to their clients.

s37(2)(b), s47C, s47E(d)





## E Design and distribution obligations

### Key points

This section outlines ASIC's feedback on Proposal 11 relating to reporting requirements under the DDO regime.

### Reporting requirements

- 91 Proposal 11 recommends that the reporting requirements under the design and distribution obligations (DDO) regime be simplified by requiring relevant providers to only report to the product issuer where they have received a complaint in relation to a product.

s37(2)(b),  
s47C,  
s47E(d)

- 92 As noted in the proposals paper, ASIC (following an announcement by Treasury) has already taken action to simplify the reporting requirements to reduce the burden on distributors (including advice providers) resulting from a 'nil-complaints' obligation: see [ASIC Corporations \(Design and Distribution Obligations Interim Measures\) Instrument 2021/784](#).

s37(2)(b), s47C, s47E(d)

### Existing streamlined obligations for advice providers

- 95 In recommending the implementation of a principles-based product design and distribution obligation, the Financial System Inquiry (FSI) proposed an obligation that was universal and scalable in line with the nature of the product. The proposed obligation would require product issuers and distributors to agree on how a product should be distributed to consumers and, where applicable, require distributors to have in place controls to act in accordance with the issuer's expectations for distribution to target markets.

Note: See [FSI final report](#), pp. 198, 202–203.

- 96            These obligations were legislated as a requirement on the issuer to set conditions and restrictions on distribution, and on the distributor to take reasonable steps to distribute in accordance with the target market determination (TMD) set by the issuer: see s994B(5)(c) and 994E(3) of the Corporations Act.

**s37(2)(b), s47C, s47E(d)**



### Underlying rationale for the reporting requirements

101 As noted in the proposals paper, a key underlying rationale of the reporting requirements under the DDO regime is to support the flow of information to product issuers from product distributors, including advice providers.

[Redacted]

s37  
(2)  
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s47  
C,  
s47  
E(d)

s37(2)(b), s47C, s47E(d)

[Redacted]

s37(2)(b), s47C, s47E(d) As stated in ASIC’s guidance, the obligation for distributors to report significant dealings is intended to help the issuer make timely and appropriate decisions (e.g. a decision to review a TMD), in addition to meeting its obligation to report to ASIC. s37(2)(b), s47C, s47E(d)

[Redacted]

[Redacted]

105 As explained in RG 274.214, distributors will only be aware of their own dealings in assessing whether a significant dealing has occurred.

[Redacted]

s3  
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,  
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7C  
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s4



### Issuer’s ability to set information requirements

106 The DDO regime, by legislative design, places the primary obligations on the product issuer to determine the appropriate settings for the design and distribution of their product, acknowledging that the issuer is best placed to make the determination. However, as discussed earlier, the issuer is reliant on distributors to collect and provide the necessary information for them to meet their obligations. To facilitate access to this information, the issuer may specify information that it requires distributors to report: see s994B(5)(h).

Note: See the [Revised Explanatory Memorandum](#) at 1.46 and note 25.

**s37(2)(b), s47C, s47E(d)**



109 **s37(2)(b), s47C, s47E(d)**  
  
 Our guidance states that information obtained by issuers from distributors must be only the information that is relevant and necessary for the purposes of promptly identifying when a TMD may no longer be appropriate, and that issuers should consider what information they already hold or can obtain themselves in determining what is necessary and reasonable to require a distributor to provide: see RG 274.112 and RG 274.115.

**s37(2)(b), s47C, s47E(d)**



## Key terms

Term	Meaning in this document
ACCC	Australian Competition and Consumer Commission
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
AFCA	Australian Financial Complaints Authority—the EDR scheme for which an authorisation under Pt 7.10A of the Corporations Act is in force
APRA	Australian Prudential Regulation Authority
best interests duty	The duty to act in the best interests of the client when giving personal advice to a client as set out in s961B(1) of the Corporations Act
best interests duty and related obligations	The obligations in Div 2 of Pt 7.7A of the Corporations Act
client	A retail client, unless otherwise specified
Code of Ethics	<i>Financial Planners &amp; Advisers Code of Ethics 2019</i>
conflicts priority rule	The rule to prioritise a client's interests as set out in s961J of the Corporations Act
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 332 (for example)	An ASIC consultation paper (in this example numbered 332)
design and distribution obligations (DDO)	The obligations contained in Pt 7.8A of the Corporations Act
EDR	External dispute resolution

Term	Meaning in this document
FDS	A fee disclosure statement—a document required under s962G to be given in accordance with Div 3 of Pt 7.7A of the Corporations Act. Specifically, it is a statement in writing provided by a fee recipient to its retail clients on an annual basis about the previous period of 12 months of their ongoing fee arrangement, including information about the amount of fees paid by the client, the services received by the client, and the services that the client was entitled to receive, as well as this information for the upcoming period of 12 months
fee recipient	A fee recipient is: <ul style="list-style-type: none"> <li>• an AFS licensee or its representative who enters into an ongoing fee arrangement with a client; or</li> <li>• if the rights of the person who entered into the ongoing fee arrangement have been assigned, the person who currently holds those rights</li> </ul> <p>Note: See s962C of the Corporations Act.</p>
financial product	Generally, a facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> <li>• makes a financial investment (see s763B);</li> <li>• manages financial risk (see s763C);</li> <li>• makes non-cash payments (see s763D)</li> </ul> <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition. In addition to the general categories above, this specifies certain things as being included or excluded from the definition.</p>
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"> <li>• 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</li> <li>• could reasonably be regarded as being intended to have such an influence.</li> </ul> <p>This does not include anything in an exempt document</p> <p>Note: This is a definition contained in s766B of the Corporations Act.</p>
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
Financial Services Guide (FSG)	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.
finfluencer	Social media financial influencers who produce social media content about investing and financial products
FOFA	Future of Financial Advice

Term	Meaning in this document
FSCP	ASIC's Financial Services and Credit Panel through which we may exercise our power to make a banning order
general advice	<p>Financial product advice that is not personal advice</p> <p>Note: This is a definition contained in s766B(4) of the Corporations Act.</p> <p>Proposal 2 of the proposals paper recommends that general advice should not be regulated as a financial service</p>
IDR	Internal dispute resolution
licensee	An AFS licensee
ongoing fee arrangement	An ongoing fee arrangement exists when an AFS licensee or its representative gives personal advice to a person as a retail client and the client enters into an arrangement with the licensee or representative, the terms of which provide for the payment of a fee (however described or structured) during a period of more than 12 months.
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"> <li>the person giving the advice has considered one or more of the client's objectives, financial situation and needs; or</li> <li>a reasonable person might expect the person giving the advice to have considered one or more of these matters</li> </ul> <p>Note: This is a definition contained in s766B(3) of the Corporations Act.</p> <p>Proposal 1 of the proposals paper recommends changes to the definition of 'personal advice'</p>
proposals paper	<a href="#">Quality of Advice Review: Consultation paper—Proposals for reform</a> , released on 29 August 2022
Pt 7.7 (for example)	A part of the Corporations Act (in this example numbered 7.7)
relevant provider	<p>An individual that is authorised to give personal advice to retail clients on relevant financial products: see s921B.</p> <p>Proposal 4 of the proposals paper recommends amendments to the definition of relevant provider</p>
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations
REP 627 (for example)	An ASIC report (in this example numbered 627)
RG 79 (for example)	An ASIC regulatory guide (in this example numbered 79)
s782 (for example)	A section of the Corporations Act (in this example numbered 782), unless otherwise specified

Term	Meaning in this document
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
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
Statement of Advice (SOA)	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.
target market determination (TMD)	Has the meaning given in s994B of the Corporations Act