



RESPONSIBLE MANAGER TRAINING

– SEPTEMBER 2024



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ADVISER FEEDBACK – NET PROMOTOR SCORE

1. On a scale of 0 to 10, how likely are you to recommend Centrepoint Alliance to a friend or colleague?
2. Why do you say that?



A photograph of a small, bright blue wooden house with a white door and two windows, situated on a wooden pier extending into a body of water. The sky is a clear, vibrant blue with some light clouds. The house is the central focus of the image, and the pier leads the eye towards it.

AGENDA

Wholesale Clients

Overseas Clients

Records of Advice

Delivering Better Financial Outcomes



WHOLESALE CLIENTS

- 5 wholesale client tests
- The history of wholesale client tests and current review
- Personal wealth test
- ASIC guidance
- Polling questions



POLLING QUESTION

Where a person meets one of the wholesale tests, for which of the following products is an adviser required to provide advice to the person as a retail client?

- A. Managed funds
- B. Account-based pension
- C. Margin loan
- D. Personal insurance

WHOLESALE CLIENTS V RETAIL CLIENTS

Corporations Act SECT 761G

A financial product or service is always provided to a person as a retail client if:

- It is a general insurance product; or
- A superannuation product or RSA (unless the person is the trustee of a super fund that has net assets of \$10 million)

A financial product or service (that is not one of the above) is provided to a person as a retail client unless the person meets one of these 5 tests:

- Personal wealth test
- Professional investor test
- Business test
- Product price/value test
- Sophisticated investor test

WHOLESALE TESTS

| Test | Requirements |
|-----------------------------|--|
| Personal wealth test | <ul style="list-style-type: none">• Net assets of at least \$2.5 million; or• Gross annual income for the last 2 financial years of at least \$250,000 |
| Professional investor test | <p>Includes:</p> <ul style="list-style-type: none">• Trustee of a superannuation product with more than \$10 million in net assets• An SMSF with at least \$2.5 million in net assets• A person who controls gross assets of at least \$10 million |
| Business test | Product or service is for use in connection to a business that has more than 20 employees (100 for a manufacturing business) |
| Product price/value test | The price/value of an investment into a single class of financial product, provided by the same product issuer, and acquired at the same time, is at least \$500,000. (Excludes insurance products) |
| Sophisticated investor test | Experience and knowledge to assess the merits and value of the product, the risks, the client's information needs, and the adequacy of information provided by the adviser. Statement provided to the client listing reasons why the adviser is satisfied that the client has relevant investment experience; and a signed client acknowledgement that disclosure documents are not provided |

HISTORICAL DEVELOPMENT

Corporations Bill 1988

- a prospectus was not required to be given for an investment 'where the minimum subscription by any one person is at least \$500,000'.
- The value of \$500,000 from 1988 is equivalent to \$1,350,326.47 in 2023 terms.

FSR Bill 2001

- the product value test was 'set initially at \$500,000
- introduced the 'individual wealth' test
 - net assets of at least \$2.5 million = \$3,602,680.07 today
 - gross income of \$250,000 = \$450,335.01 today

2005

- Extended to include related or controlled companies of a person who qualifies as wholesale

2007

- Added the sophisticated investor test

REVIEWS AND INQUIRIES

2011

- Treasury Options Paper considered changes including scrapping the wholesale/retail distinction; or making 'sophisticated investor' the sole test. Do nothing prevailed.
- Arguments were made that if the thresholds were increased, the pool of investors who were eligible to participate in capital raisings would be reduced, and some investors would be excluded from access to attractive products.

2014

- Senate Economics References Committee's Final Report on the Performance of ASIC recommended clarifying the definitions of retail and wholesale investors.
- Dissatisfaction with ASIC's performance often relate to financial products that should not have been available to retail clients.

2021

- ALRC Inquiry noted the greater consequences of being classified as a wholesale client now - consumer protections for DDO, ASIC product intervention powers, conflicted remuneration, BID, access to AFCA, and professional standards.
- Invites views on definitions, thresholds, carve outs for super and GI

2023

- Treasury review of the regulatory framework for MIS. Sought consultation on the thresholds that determine an investor is a wholesale client.
- QAR recommended wholesale clients who meet income and assets thresholds provide written consent to be treated as wholesale.

REVIEWS AND ENQUIRIES

ASIC submission to MIS review

- In 2023 ASIC recommended increasing the financial thresholds for sophisticated investors for the purpose of raising capital to account for inflation since 2001 plus annual increases:
 - the ‘gross income test’ would increase from \$250,000 per annum in the last two financial years to \$450,000 for the same period;
 - the ‘assets test’ would increase from \$2.5 million to approximately \$4.5 million; and
 - the ‘product value’ test, being the threshold price for securities that deems a person to be sophisticated, would increase from \$500,000 to approximately \$900,000.
- No recommendation to exclude assets from the test e.g. main residence or superannuation
- Likely that the wholesale test under Chapter 7 would be aligned

Parliamentary review

- Parliamentary Joint Committee on Corporations and Financial Services inquiry into a review of the wholesale investor/client tests.
- Consideration of any proposals to change the test including consequences, costs, benefits and impacts e.g. impact on existing investors who no longer meet the test
- Submissions closed 31 May 2024. Intends to report to Parliament by the end of 2024.

SCRUTINY OF WHOLESALE INVESTOR TEST

Case for change:

- Not always a positive correlation between wealth and financial literacy.
- Increased accessibility (from 1.9% in 2002 to 16% of the population) due to inflation, earnings growth, increasing superannuation values and property prices.
- Argument that investors are treated as wholesale without their knowledge or consent by virtue of their wealth or income.
- Reluctance by licensees to use the sophisticated investor test due to subjectivity and fear of liability.

Case for status quo:

- If wealth is not a proxy for financial literacy, why change the thresholds?
- Increased investor knowledge and education
- Regulatory protections – s912A, fiduciary duty, protection from misleading and deceptive conduct
- In practice licensees employ a nuanced approach and have robust processes for wholesale clients.
- Unintended consequences e.g. existing investors, professional standards for advisers



POLLING QUESTION

When calculating the personal wealth test, which of the following income and assets can be included for an individual?

- A. Joint assets and income
- B. Assets and income of a company they own
- C. Assets and income of a trust
- D. Assets and income of their SMSF

PERSONAL WEALTH TEST CALCULATION



- ✓ Individual assets and income
- ✓ Share of joint assets and income
- ✓ Company (controlled by the individual) – all assets and income of the company
- ✓ Company (not controlled by the individual) – share of assets and dividends
- ✓ Unit Trust holdings – value of units and distributions
- ✓ Unit Trust (sole trustee or majority shareholder and director of a corporate trustee) – the income and assets of the trust
- ✓ Discretionary Trust (beneficiary) – income distributions but not the trust assets.
- ✓ Single member SMSF – assets and income
- ✓ Non-single member SMSF – member's balance and any income paid as a pension, but not the assets and income of the fund



POLLING QUESTION

If an individual is a wholesale client, can you also treat their SMSF as a wholesale client?

- A. Yes
- B. No

ENTITIES AND SMSFS

SMSFs

- If an SMSF does not meet the threshold for the professional investor test it may be able to be treated as wholesale in certain circumstances.
- If an individual is a wholesale client, and they are an individual trustee of an SMSF or director of corporate trustee, the SMSF can only be treated as wholesale if the individual controls the SMSF or the corporate trustee. Generally, only a single member fund can be treated as wholesale by extension.

Companies and Trusts

- If a person satisfies the net assets or gross income criteria, you may be able to treat their related entities e.g. a company or trust as wholesale in certain circumstances.
- If the person is a wholesale client and controls the entity i.e., they can make or influence decisions about the entity's finances and operations, the entity may also be treated as wholesale.
- However, if the person is obliged to exercise its control of an entity for the benefit of someone else, the entity cannot be treated as wholesale by extension. For example, if the person is a trustee of a trust, they are required to make decisions for the benefit of the beneficiaries and does not control the entity for their own benefit.

ASIC GUIDANCE ON TREATMENT OF SMSFS AS WHOLESALE

2004 QFS 150 - When financial services are provided to a trustee of a superannuation fund, are they provided to a retail client?

A financial service would generally relate to a superannuation product in a situation where financial services were provided to the trustee of a SMSF (meaning the **\$10 million net asset test** would apply and the trustee would be classified as a retail client if it did not satisfy this test).

2014 Media Release 14-19MR Statement on wholesale and retail investors and SMSFs

Where the trustee receives advice about how to invest the fund's assets, ASIC will not take action if the trustee is a wholesale client based on the general test (e.g. if the trustee has **net assets of at least \$2.5 million**), rather than applying the higher \$10 million net asset test.

AFCA CONSIDERS TREATMENT OF SMSFS AS WHOLESALE

Home / News / Advisers warned about 'grey area' of wholesale client test for SMSFs

Advisers warned about 'grey area' of wholesale client test for SMSFs

NEWS | By Keeli Cambourne | April 09 2024 | 2 minute read | [1 View Comment](#)

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A senior ombudsman from AFCA has cautioned advisers to “tread with caution” when applying the wholesale test to SMSFs.

Alex Sidoti, senior ombudsman for AFCA, told SMSF Adviser that applying the general wholesale test could pose risks for advisers due to unresolved legal



“The industry needs to be careful around this issue. AFCA has a couple of matters coming through that will go through to determination and hopefully, it will have to resolve the uncertainty and make a call, but ultimately it is up to licensees to make that call to see what their risk settings are.”



POLLING QUESTION

Will AFCA consider complaints from a wholesale client?

- A. Yes
- B. No

COMPLAINTS - AFCA GUIDELINES

- Financial firms that have wholesale clients can voluntarily join AFCA.
- AFCA can exclude a complaint by a wholesale client.
- AFCA will exclude a complaint where an investor has been appropriately classified and consented.
- AFCA will consider a complaint if the complainant has been wrongly classified as **sophisticated** i.e. no reasonable basis that the client has the requisite experience, failed to give a statement and get acknowledgement.
- Other categories may be considered because they cannot be assumed to have forgone retail client protections.
- [2021 Treasury Review of AFCA](#) found that it would be inappropriate to exclude wholesale client complaints. The Review suggested AFCA should use its discretion when appropriate (nil to date)

DETERMINING THE LICENSEE STANDARD

Advice Process

- Do not treat the client as a retail client
 - Do not provide an FSG
 - Do not provide an SoA
 - No PDS
 - No FDS

Obligations

- Complete AML requirements
- Disclose conflicts of interest
- Obtain privacy consent
- Obtain TFN consent

Licensee Standards

- Consider the risk of acting as the accountant and adviser
- Consider the risk of unsophisticated clients being treated as wholesale
- Consider documentation requirements e.g. Confirmation letter
 - Privacy consent and TFN consent
 - Consent to being treated as wholesale
 - Acknowledges reduced consumer protections



OVERSEAS CLIENTS

- Understanding the applicable laws
- Considerations when determining your licensee standard
- Case study

UNDERSTANDING JURISDICTION

Location

- In some countries (including Australia) the **location of the client** is relevant in determining jurisdiction.
- In other countries the location of the **adviser or the client's assets** is relevant in determining jurisdiction.

Carrying on Financial Services in Australia and Overseas

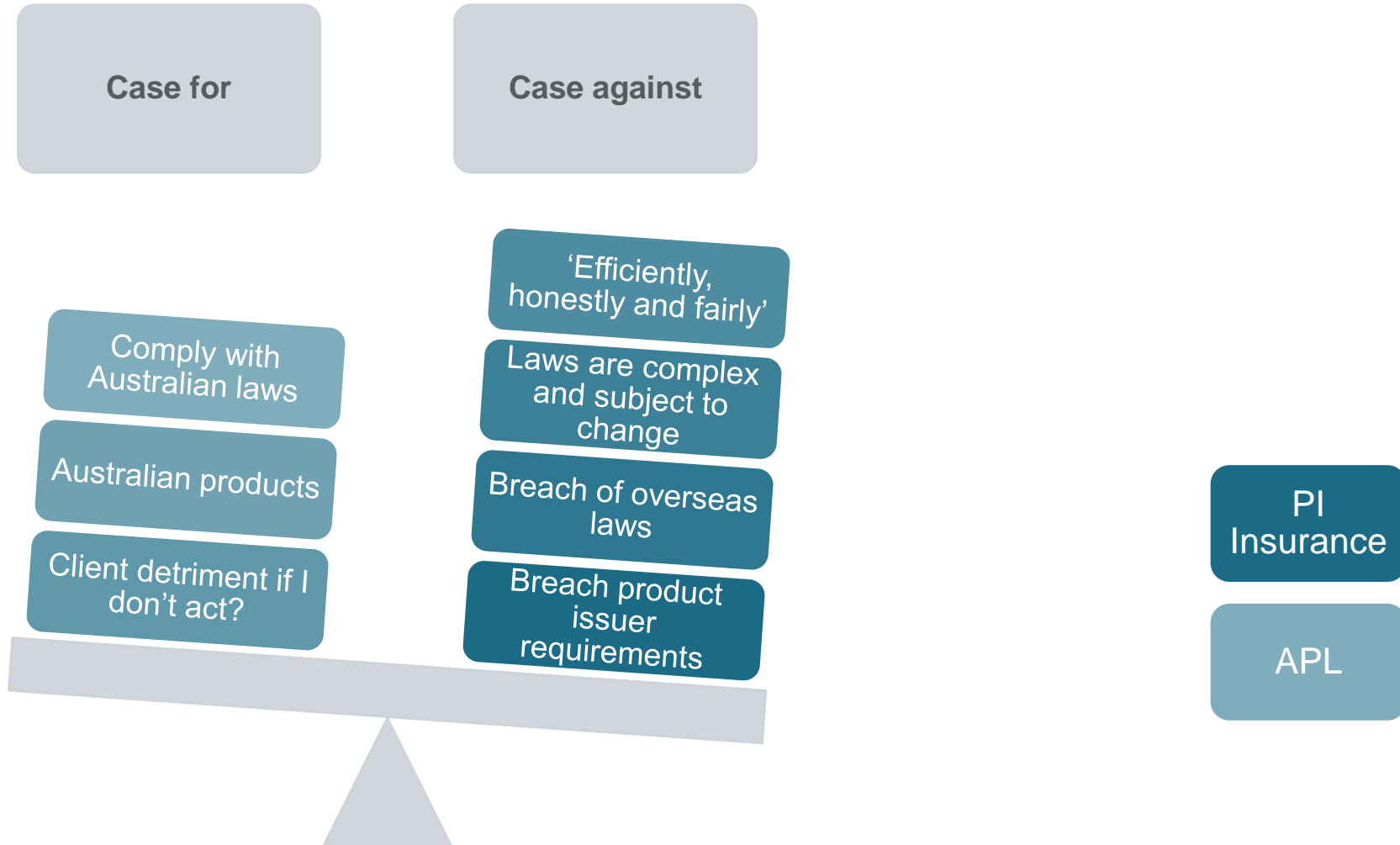
- In Australia the Corporations Act states that anyone carrying on a financial services business **in this jurisdiction** must hold an Australian Financial Services Licence.
- ASIC regulates foreign providers of financial facilities, services and products that operate in Australia.
- Other countries require compliance with regulatory requirements in those jurisdictions.

WHO IS AN OVERSEAS CLIENT?

- Any client who is permanently or temporarily overseas, including on holidays
- Any client not physically present in Australia (even if providing advice via Zoom or Teams)
- They may or may not be a tax resident of the overseas jurisdiction
- Even if attending an Australian embassy or consulate in another country



WEIGHING UP THE CONSIDERATIONS



DETERMINING THE LICENSEE STANDARD

1. Present advice and complete applications while the client is in Australia
2. Utilise an Australian based power of attorney
3. Permit financial services to be provided while the client is overseas
4. Permit advice with restrictions



CASE STUDY

One of your advisers, Peter, has just returned from a holiday in Thailand.

Peter had a great holiday and met a lot of interesting people, including an Australian couple Jill and Mark.

Jill and Mark have been living in Thailand for the past 10 years. They have superannuation in Australia and savings in Thailand. They mentioned that they need advice on retirement planning. Jill and Mark are planning a visit to see family in Australia in a month.

Peter is keen to help Jill and Mark. He calls the licensee and asks if he can take on Jill and Mark as clients?

CASE STUDY

What questions do you ask Peter?

- Do Jill and Mark have Australian POAs?
- How long will they be in Australia for?
- Do they visit regularly?
- What ongoing advice do they need?

Jill and Mark do not have POAs. They will only be in Australia for 1 week. Peter is worried he won't have enough time to provide advice while they are in Australia. They usually visit once a year and would want advice on making contributions to super and planning to retire in 5 years.

CASE STUDY

What do you decide?

You agree Peter can give advice when Jill and Mark are in Australia. Peter wants to know:

- Can he sign a Terms of Engagement with Jill and Mark now?
- Can he complete a fact find meeting with Jill and Mark via Zoom?

What restrictions apply?

Peter can only advise on their Australian products.

Peter begins preparing his advice. He wants to know if he can recommend that Jill and Mark make contributions to super using their savings in Thailand?

CASE STUDY

How do you handle a change of plans?

Peter has prepared an SoA. Unfortunately, Jill and Mark have had to cancel their planned visit. They don't know when they will be in Australia next. They ask Peter to meet via Zoom.

Peter asks if he can present the SoA and complete applications over Zoom?

What do you say?

What other options should you consider?

APPOINTING A POA WHILE OVERSEAS

- A legal professional in Australia can advise and prepare documents remotely
- Need to sign all relevant documentation in the presence of an appropriate witness
- A notary public will certify the document
- Typically, an Apostille Stamp will be required on the documentation to authenticate the notarisation in Australia
- DFAT provides notarial services via Australian embassies and consulates
- For further information visit: [Notarial services overseas | Smartraveller](#)

CASE STUDY

Business opportunity

Jill and Mark have also said they have friends from the ex-pat community they would refer. Peter thinks there is an opportunity to advise ex-pats in Thailand and wants to explore this further. He suggests a page on his website specifically for ex-pats.

He proposes that he could visit Thailand for 3 months each year to service these clients. He would also continue to service his Australian based clients

He asks the licensee for help.

What questions would you ask?

What would you allow?

WHAT WOULD YOU ALLOW?

1. Peter has a client Jerry who is on an overseas cruise. Jerry was late returning to the ship from a port in Italy and has contacted Peter in urgent need of some additional funds. Peter wants to assist Jerry.
2. Peter has a client Elaine who has an Ongoing Fee Arrangement. Elaine moved to Myanmar earlier this year. She is due for her annual review. Peter intends to recommend 'no change'. He calls to ask if this is permitted.
3. Peter has an elderly client George who lives in the UK. George has been returning to Australia annually but due to his advancing age he can no longer travel. He is originally from the UK and has no family here in Australia. Peter provides advice on George's ABP. Peter asks for guidance.
4. Peter has a client Kramer who lives in Germany. Kramer has been injured and needs to make a claim on his insurance. He asks Peter for assistance. Peter wants to know if he can assist.

Morning tea





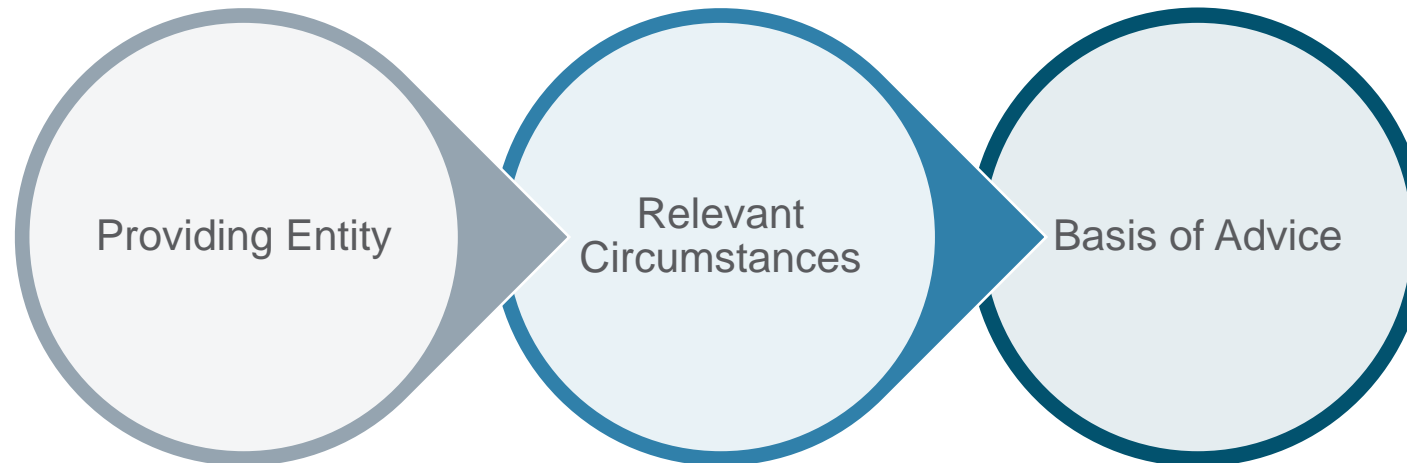
RECORDS OF ADVICE

- When an SoA is not required
- Providing entity
- Significant different relevant circumstances
- Significant different basis of advice
- Case Study

WHEN IS AN ROA ALLOWED?

An SoA is not required when providing further advice where:

- The providing entity has previously given the client a SoA setting out the client's relevant circumstances; and
- The client's relevant circumstances (objectives, financial situation and needs) are not significantly different from when the client received the previous advice; and
- The basis on which the advice is given is not significantly different.



FSCP OUTCOMES



Home / News / FSCP warns adviser over SOA failings

FSCP warns adviser over SOA failings

The FSCP has issued a warning to an adviser for failing to provide a statement of advice to a client.

NEWS | August 20, 2024 | By Keith Ford | 2 comments



After an almost three-month gap between determinations, the Financial Services and Credit Panel (FSCP) has delivered its second ruling in less than a week.

The latest decision relates to a relevant provider, anonymised as “Mr L”, who the FSCP found to have breached the *Corporations Act* because he relied on statements of advice (SOA) from a third party.

The sitting panel opted to issue a warning to Mr L, however, the FSCP took no further action.

[Warning issued under s921T\(1\)\(b\) of the Corporations Act 2001](#)

The Sitting Panel has issued a warning under s921T(1)(b) of the Corporations Act 2001 to the relevant provider because the relevant provider contravened s946A(1) of the Corporations Act by failing to give a Statement of Advice to a client. The circumstances of the contravention were that between February 2022 and November 2022, the relevant provider gave Records of Advice to clients in reliance on Statements of Advice that had been given to the clients by a different providing entity.

WHO IS THE PROVIDING ENTITY?

The providing entity who gave the previous SoA does not have to give an SoA for further advice.

Where financial product advice is provided by:

- a licensee (e.g. through one of its employees) – the licensee is the providing entity. Representatives, such as employed advisers that are not authorised representatives, are not providing entities.
- an authorised representative – the authorised representative is the providing entity. Authorised representatives can be individuals or corporate authorised representatives.

John Smith Authorised Representative of
Financial Planning Pty Ltd Corporate Authorised Representative of
Licensee Co. Pty Ltd AFSL

SAME PROVIDING ENTITY?

| Example | Adviser (AR) | CAR | Licensee | RoA |
|-------------------------|--------------|------|-----------|-----|
| CAR joins your Licensee | Same | Same | Different | ? |

SAME PROVIDING ENTITY?

| Example | Adviser (AR) | CAR | Licensee | RoA |
|--------------------------------|--------------|------|-----------|-----|
| CAR joins your Licensee | Same | Same | Different | Yes |
| New adviser joins existing CAR | Different | Same | Same | ? |

SAME PROVIDING ENTITY?

| Example | Adviser (AR) | CAR | Licensee | RoA |
|---|--------------|------|-----------|-----|
| CAR joins your Licensee | Same | Same | Different | Yes |
| New adviser joins existing CAR | Different | Same | Same | Yes |
| Adviser joins licensee – doesn't have a CAR | Same | Nil | Different | ? |

SAME PROVIDING ENTITY?

| Example | Adviser (AR) | CAR | Licensee | RoA |
|---|--------------|-----------|-----------|-----|
| CAR joins your Licensee | Same | Same | Different | Yes |
| New adviser joins existing CAR | Different | Same | Same | Yes |
| Adviser joins licensee – doesn't have a CAR | Same | Nil | Different | Yes |
| Book buy from within the licensee | Different | Different | Same | ? |

SAME PROVIDING ENTITY?

| Example | Adviser (AR) | CAR | Licensee | RoA |
|---|--------------|-----------|-----------|-----|
| CAR joins your Licensee | Same | Same | Different | Yes |
| New adviser joins existing CAR | Different | Same | Same | Yes |
| Adviser joins licensee – doesn't have a CAR | Same | Nil | Different | Yes |
| Book buy from within the licensee | Different | Different | Same | No |
| Book buy from within the licensee. The adviser joins the CAR. | Same | Different | Same | ? |

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| Adviser joins licensee – doesn't have a CAR | Same | Nil | Different | Yes |
| Book buy from within the licensee | Different | Different | Same | No |
| Book buy from within the licensee. The adviser joins the CAR. | Same | Different | Same | Depends |
| Book buy from another licensee | Different | Different | Different | ? |

SAME PROVIDING ENTITY?

| Example | Adviser (AR) | CAR | Licensee | RoA |
|---|--------------|-----------|-----------|---------|
| CAR joins your Licensee | Same | Same | Different | Yes |
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| Book buy from another licensee | Different | Different | Different | No |
| Book buy from another licensee. The adviser joins the CAR | Same | Different | Different | Depends |
| Individual AR sets up CAR/AR structure | Same | New | Same | ? |

SAME PROVIDING ENTITY?

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| Book buy from another licensee. The adviser joins the CAR | Same | Different | Different | Depends |
| Individual AR sets up CAR/AR structure | Same | New | Same | Yes |

In limited circumstances, ASIC has granted relief to providing entities from the requirement to give an SOA to existing clients for further advice where there was a change of providing entity, but the adviser remained the same.

SIGNIFICANTLY DIFFERENT RELEVANT CIRCUMSTANCES

| Significantly different | Not significantly different |
|---|--|
| A client earning an annual income of \$50,000 has a change in annual income of \$20,000. | A client earning an annual income of \$200,000 has a change in annual income of \$20,000. |
| A client has a consistent increase of 5% in their annual income over four years, resulting in a 22% increase in base salary from when the client received the previous SOA. | A client has a consistent increase of 2% in their annual income over six years, resulting in a 13% increase in base salary from when the client received the previous SOA. |
| A client in their late seventies has a fall which impacts their ability to care for themselves. The client's family is considering supportive living arrangements. | A father of two falls off his son's skateboard and breaks his ankle. His work allows him to continue working from home until his ankle is healed. |

Note 1: The examples in Table 4 are just examples. Each client's relevant circumstances will be different and you will need to exercise your professional judgement.

- Are the client's relevant circumstances significantly different from those set out in the previous SoA?
- Exercise professional judgement.
- ASIC gives examples of significance – but they don't explain what a 'relevant' circumstance means.
- Examples address where the change is cumulative over time – note it refers to change since the previous SoA not the last RoA.



CASE STUDY

Gavin received an SoA 8 years ago. Gavin was 58 and a self-employed builder with assets of \$600k including super of \$110k. The goals were to reduce insurance costs and superannuation fees.

In 2024 a new fact find was completed. Gavin now 66, has assets of \$1.2 million, including super valued at \$170k, savings of \$100k and liabilities of \$40k. His goals were noted as 'maintain super'.

Are Gavin's relevant circumstances significantly different?

CASE STUDY

An RoA was provided.

Factors considered:

- Approaching retirement age
- Savings of \$100k
- 120% increase in net assets

The Panel felt that the relevant circumstances were significantly different and an SoA should have been given.

SIGNIFICANT DIFFERENCE IN THE BASIS OF ADVICE

What is the '*basis of advice*'?

Tip: If a change in the basis of your further advice introduces a new advice area or strategy, it is likely to be significantly different and an SOA will be required.

If the client's previous SOA provided advice on ... then the adviser cannot provide an ROA for advice on ...

the benefits of investing in superannuation switching to a new superannuation fund
This is because the adviser has not provided previous advice on choosing an appropriate superannuation product. A new SOA addressing switching to a new superannuation fund must be given.

RG 175.191 – 194 The basis on which you believe that the advice is likely to leave the client in a better position.

It encompasses:

- The range of products, classes of products, and strategies considered
- Consideration of alternative options
- Advantages and disadvantages
- Tax considerations
- Risks

If these are significantly different, the reasons why you gave the original advice may no longer be sound and it is no longer appropriate to provide further advice.



CASE STUDY

Emily is 61 and not working. She is expecting to receive an inheritance in the next 12 months. She needs some income, and Gabriel gives Emily an SoA which recommends that she commence an ABP immediately.

Gabriel also recommended to contribute \$100,000 from the inheritance into superannuation. It also noted that upon receiving the inheritance further advice may be given including refreshing the pension.

Emily received the inheritance 6 months later and contributed \$100,000 to super. Gabriel wants to recommend a pension refresh. Can he give an RoA?

CASE STUDY – IS AN ROA ALLOWED?

Are Emily's relevant circumstances significantly different from those set out in the previous SoA?

- Did the SoA include information about the inheritance?
- Was the amount of the inheritance as expected?

Is the basis of advice significantly different?

- Is this a new strategy?

Would your answer change if:

- The amount of the inheritance was different to that expected
- The SOA was 2 years ago
- Emily has gone back to work

FAQS

How long does an SoA last?

There is no time specified. It depends if the relevant circumstances and basis of advice are significantly different since the last SoA.

You need to make reasonable enquiries into the client's circumstances and the file must show that their circumstances are not significantly different.

Can I recommend product replacement in a ROA?

You need to consider if the basis of advice is significantly different. Generally, if you are recommending a product/platform change the basis of your advice has changed.

If the product replacement is limited to underlying fund switches, the basis of advice may not be significantly different. In this case an RoA is used.

WHAT IS REQUIRED IN A (FURTHER ADVICE) ROA?

1. The advice provided
2. A statement that the client's relevant circumstances are set out in a previous SoA (identified by the date) OR a summary of the client's relevant circumstances
3. The consequences of changes to product holdings e.g. costs, lost benefits, fees
4. Information about conflicts of interest - if you can show through other records that you have given the client this information you do not need to include it in the RoA.

WHAT IS REQUIRED WHEN PROVIDING AN ROA?

Giving the RoA to a client

- Not mandatory, but must be given to a client upon request

Signing an RoA

- Keep evidence of client consent – email, file note of verbal consent, or signed RoA



DELIVERING BETTER FINANCIAL OUTCOMES ACT

- Ongoing Fee Arrangements (OFAs)
- Transition arrangements for existing OFAs
- New consent requirements
- OFA vs. FTA
- FSG changes
- Consent for Insurance Commissions

ONGOING FEE ARRANGEMENTS

- Start Day is 10 January 2025
- Removal of Fee Disclosure Statements
- Ability to consent from 60 days prior to the anniversary of the OFA
- Renewal period extended from 120 to 150 days
- Ability to agree with a client to change the anniversary date for future years

TRANSITION ARRANGEMENTS FOR EXISTING OFAS

Current FDS, renewal and consent requirements continue to apply to OFAs:

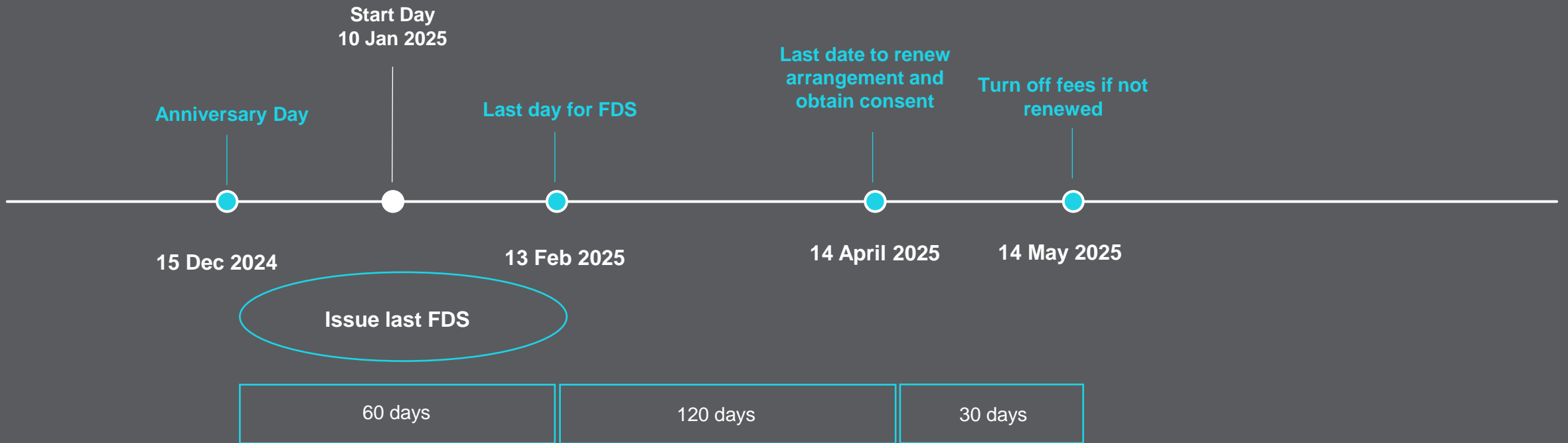
- entered into or last renewed before 10 January 2025 (Start Day), and
- until the first anniversary of the OFA that occurs on or after the start day (Transition Day).

If the anniversary of the OFA **occurs before 10 January 2025**, you must:

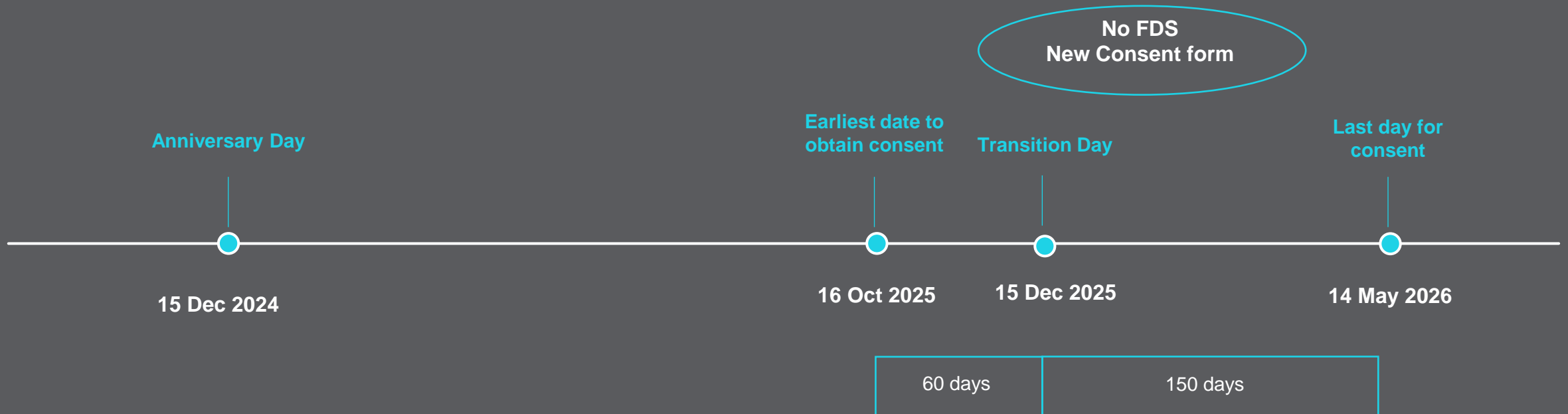
- Issue an **FDS** within 60 days (even if it is issued after 10 January 2025); and
- **Renew** the OFA in writing within 120 days; and
- Obtain **consent** to deduct fee

At the anniversary after the start day, you can obtain consent from 60 days prior to the anniversary day until 150 days after, and no FDS is required.

EXISTING CLIENT PRE-10 JAN 2025



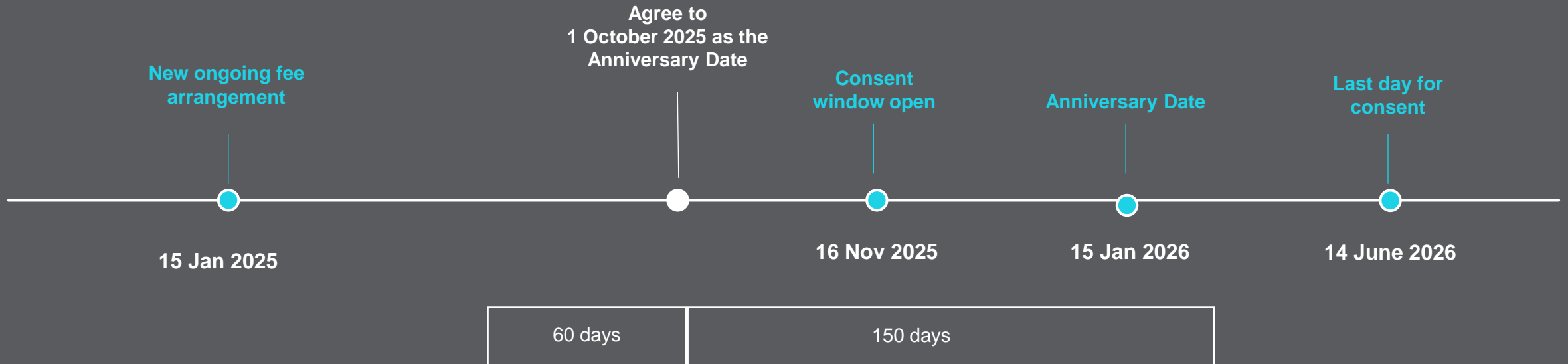
EXISTING CLIENT PRE-10 JAN 2025



CONSENT

- Consent ceases on the OFA anniversary + 150 days.
- Can obtain consent from 60 days prior to the anniversary, but not earlier than 10 January 2025
- Consent forms for an OFA will require information about the services that the client will be entitled to during that period.
- When obtaining consent or renewing, you will be able to agree with the client to 'bring forward' the anniversary day for future years. Benefits include convenience and efficiency.

BRINGING FORWARD THE ANNIVERSARY DATE



FAQS

Do I need to provide the services before I obtain new consent?

Consent forms for an OFA will require information about the services that the client will be entitled to during that period. While it is not explicitly stated, this implies that services should be provided on or before the agreed anniversary day. If you bring forward an anniversary day, you will have less than 12 months to provide the review.

Do I still need the client to sign to renew the OFA and sign the consent form?

No, the client only needs to sign the consent form. The requirement to 'opt-in' or renew the OFA ceased with the removal of the FDS.

OFA (NEW WORLD) VS FTA

| OFA | FTA |
|--|--|
| Enter into an agreement once | Sign a new agreement annually |
| Able to renew agreement from 60 before to 150 days after the Anniversary Date (7-month window) | Can consent up to 60 days before the FTA end date depending on product issuers |
| Can obtain consent at annual review meeting (if meeting is within 60 days prior to the Reference Date) | Can agree to a new FTA at the review meeting (depends on the date the product provider allows) |
| Must switch off fees 150 days post the Anniversary Date | Must switch off fees from the FTA end date |
| Agreement starts on the date you enter into the agreement. Able to bring forward the Anniversary Date with client agreement. | Able to set the start and end dates |
| Subject to Corporations Act e.g. client can cancel the OFA at any time | Subject to Common Law e.g. terms depend on the agreement |
| No requirement for FDS | No requirement for FDS |
| Mandated Consent Form contents | Mandated Consent Form contents |

FINANCIAL SERVICES GUIDE

- From 10 July 2024 you do not have to give an FSG if the providing entity has made website disclosure information available on the website.
- An authorised representative must have licensee authorisation to make website disclosure information available on its website.
- Options include:
 - Keep providing the FSG and Adviser Profile as you do now
 - Have the FSG and Adviser Profile on the adviser's website – link and/or PDF
 - Have website disclosure information on the adviser's website



REQUIREMENTS

- Information must be accessible to the public.
- Can be in a **range of formats** – a PDF or text on a webpage.
- Can be available across **more than one location or page of the website** e.g. FSG in the footer and Adviser Profiles on the 'Meet the Team' page.
- **Lack of Independence statement** must be prominent; in a box under a bold heading; not in a footnote or small font
- Information must be kept up to date and **specify the date on which it was prepared or last updated**.
- There is no explicit requirement to advise or direct a client to the FSG or website disclosure information.
- There is no requirement to discuss the website disclosure information with clients.
- If advisers do not intend to rely on website disclosure information, they will still need to keep records about the provision of the FSG.
- PF209 has been updated – FSGs and **website disclosure information must be kept for 7 years**

CONSIDERATIONS

- Processes, technology and templates may need to cater for each option.
- Licensees need to consider how they will authorise advisers' website disclosure information.
- Licensees will need to consider how they control and monitor compliance by advisers.
- Licensees need to keep records including how compliance by representatives is implemented and monitored. Must keep each version of the FSG or website disclosure information. Licensees will need to consider how this will be managed.
- A breach of the obligation to make website disclosure information available (s943G & s943H) is a reportable situation.

FUTURE GUIDANCE

- New ASIC guidance on OFA and consent expected in November 2024
- Info Sheet will be issued on FSGs and website disclosure information – to replace the section in RG 175 on FSGs

CONSENT FORM FOR INSURANCE COMMISSIONS

- Effective **10 Jul 2025**
- Insurance commission caps to remain unchanged
- Requirement to obtain client's informed consent before accepting commission
- No new forms. Minor changes to existing documentation e.g. ATP
- Must disclose to the client:
 - Name of the insurer
 - The monetary benefit – expressed as a percentage of the premium \ not \$ amount
 - The frequency of the receipt of benefits and period
 - The services you will provide (if any)
 - A statement that the client consent must be obtained before commission can be received
 - That the consent is irrevocable

REQUIREMENTS

- Once-off consent must be obtained before the issue or sale of insurance
- Must have written consent or (if consent is not obtained in writing) a written record of the client's consent
- A copy of the consent must be given to the client as soon as practicable
- Advisers to retain consent – is not required to be given to the insurer
- Not retrospective – only applies to new clients
- Consent is transferred upon the sale or transfer of an advice business
- It is unclear if consent will need to be obtained at the time you become the servicing adviser of an existing policy
- Consent will be required for variations e.g. change of insurer, change of frequency of premium payments

FEEDBACK



Thank you & Lunch

