

ASIC gives temporary relief for urgent advice and early access to superannuation

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Abstract:

The [Australian Securities and Investments Commission](#) (ASIC) has given temporary relief under [ASIC Corporations \(COVID-19—Advice-related Relief\) Instrument 2020/355 \(Instrument\)](#) to facilitate retail clients accessing financial product advice because of the adverse economic effects of COVID-19 (**COVID-19 advice**). This includes temporary licensing relief for registered tax agents and disclosure relief for providing financial advice. The relief has three prongs: an “urgent advice” measure, an “early release of superannuation” measure, and “an ROA for existing client” measure. The relief commenced on 15 April 2020.

ASIC has also issued a temporary [no-action position](#) for superannuation trustees to expand the scope of personal advice that may be provided by, or on behalf of, the superannuation trustee as ‘intra-fund advice’. Intra-fund advice is provided free to the recipient of the advice.

Urgent advice measure

An ‘*Urgent Advice*’ measure gives providing entities more time to provide a Statement of Advice (SOA) to clients in relation to urgent, time-critical COVID-19 advice (Instrument, s 5).

Providing entities have 30 business days to give an SOA to the client after providing the COVID-19 advice instead of the 5 business days required by s 946C of the *Corporations Act 2001* (Cth). The relief applies if:

- the client expressly instructs the providing entity, and the providing entity reasonably considers, that the client requires the COVID-19 advice urgently because of the adverse economic effects of COVID-19; and
- where the COVID-19 advice relates to a financial product subject to a cooling off period for return of the product, the providing entity gives the client a written statement (when giving the advice) explaining the nature of the cooling off rights and that the client may not receive the SOA until after the cooling off rights have expired.

The providing entity must give the client an SOA as soon as practicable after the COVID-19 advice is provided, and no later than 30 business days after the COVID-19 advice is provided.

Early release of superannuation measure

An ‘*Early Release of Superannuation*’ measure allows:

- registered tax agents who do not hold an Australian financial services licence (AFSL) and are not representatives of an AFSL holder to give unsolicited financial product advice to existing clients about the early release of their superannuation product or retirement savings account product without holding an AFSL (Instrument, s 6). This is now an exemption to s 911A(1) of the Corporations Act; and
- providing entities to give unsolicited personal advice to clients about the early release of their superannuation without providing an SOA in certain circumstances (Instrument, s 7). This is now an exemption to s 946B of the Corporations Act, made by modifying *Corporations Regulations 7.7.10AE*.

For this relief to apply, the maximum fee that can be charged is \$300. The tax agent/providing entity must hold a Record of Advice (**ROA**) which meets the contents requirements of the Instrument, and give it to the client when giving the COVID-19 advice or as soon as practicable after, and before giving any further financial service in relation to the early release. The tax agent/providing entity must also disclose any actual or potential conflicts of interest, commissions and remuneration that might reasonably be expected to be, or have been capable of, influencing the tax agent/providing entity in providing the COVID-19 advice.

ROA for existing client measure

Where an existing client of a providing entity (or “associated providing entity” as defined in notional s 946B(18)) needs COVID-19 advice, an ROA can be provided when an SOA would usually be required (Instrument, s 7). This temporary relief aims to address situations where the existing client’s personal circumstances and the basis of the personal advice would have changed significantly, which is likely for many clients due to the adverse economic impact of COVID-19. It also facilitates advice practices to continue to provide timely personal advice to clients where the client is receiving personal advice from another financial adviser, e.g. another financial adviser in the practice or another financial adviser authorised by the AFS licensee who was the original providing entity.

For the relief to apply:

- the client must expressly instruct the providing entity, and the providing entity must reasonably consider, that the client requires the personal advice because of the adverse economic effects of COVID-19; and
- the COVID-19 advice must be in relation to one or more classes of financial products in relation to which the client was previously given personal advice by the providing entity or associated providing entity. (E.g. if the client was previously only given personal advice about managed investment products, they cannot be given personal advice about risk insurance products under this relief).

The providing entity must keep a copy of the record of the COVID-19 advice which meets the content requirements of the Instrument. The providing entity must give it to the client when the COVID-19 advice is provided, or as soon as practicable after the COVID-19 advice is provided, and in any case before giving any further financial service arising out of, or connected with, the COVID-19 advice.

The [Instrument](#) and [explanatory statement](#) are available for download.

ASIC has also published [FAQs on ASIC’s temporary relief measures](#).