



Life after the SoA

November 2009

- **Incorporating by reference - what does it really mean?**
- **Using RoAs to save time and effort**

Probably one of the biggest compliance challenges facing financial planners is the preparation of Statements of Advice. What needs to be included? What can I leave out? How much detail? How long should it be? Why does it take so much time? Should I use a Record of Advice instead?

Despite the federal government's determination to reduce the complexity of SoAs and industry efforts to produce simplified templates, many planners still produce lengthy complex advices when recommending investments, superannuation or life cover. All too often SoAs do not clearly summarise the client's relevant personal circumstances, or unambiguously describe the financial products and strategies the adviser considered for the client, their pros and cons (and risks) and the reasons why the recommended strategy is appropriate.¹

Remuneration is almost always disclosed, but not necessarily in clear terms, or in a way that enables the client to understand exactly what fees and commissions will be coming out of their investment and who will receive them.

Advisers often complain that producing SoAs is a waste of time, usually because the adviser has explained the strategy to the client in detail at their meeting and believes that the client has a clear understanding and buy-in to the strategy which has been recommended.

However, it is easy to overlook that many, indeed most, clients are not as financially literate as their advisers. While they appear to (and probably do) understand what an adviser says during their conversation, most people only retain part of what they hear. And, over time, memory fades.

And that is how complaints and negligence claims are born! The very best defence is a comprehensive, cogent record of the advice which was provided. File notes will assist, but nothing is better than a document which has been provided to - and even better, signed by - the client.

But all that is the subject of another article!

Let's assume for the moment that we live in a perfect world. Advisers have a 100% track record of effortlessly producing clear and concise (but comprehensive) SoAs which their clients find easy to understand. This provides a golden opportunity for advisers to use simpler and shorter disclosure documents to confirm their ongoing interactions with clients.

Two types of disclosure documents can be used in these circumstances: Statements of Advice Where information is incorporated by reference and Records of Advice.

Let's look at incorporating information into an SoA by reference first.

¹ RG 175.126

INCORPORATION BY REFERENCE²

If some of the information that is required to be in an SoA is available in another format, then the SoA does not necessarily need to include that information. However the SoA does need to refer to the statement or information that is not included. It also needs to:

- Provide sufficient detail to enable the client to identify the document (or part) that contains the statement or information by a unique identifier (e.g. a description of the document) and to decide whether to read or obtain a copy of it;
- Offer to provide a copy of the statement or information at no charge.

And even if these issues were dealt with in the earlier SoA or other document that you are referring you, you still need to:

- If necessary, warn the client if the advice is based on incomplete or inaccurate information and that the client consider the appropriateness of the advice;
- If a replacement product is recommended, include information about the cost of disposal/acquisition, any lost benefits and any significant consequences of the replacement;

If you have not previously given the statement or information that is referred to in the SoA to the client, then you must give it to the client at the same time as you provide the SoA³. If you have already provided it to the client, then, you must provide it again at no charge if the client requests it.⁴

TRAP

Ensure that when incorporating by reference that you have access to the reference documents should the client request these.

Authorised representatives can incorporate by reference information which has previously been given to the client by another authorised representative of the same licensee.⁵

TIP

Incorporation by reference can help to keep SoA's concise. It can be used when providing the initial advice or when providing further advice to a client

WHEN TO USE AN ROA

There is no need to use an SoA in the following circumstances:

- When giving personal advice to retail clients regarding small investments;
- where you do not recommend that the retail client purchase a product; and
- In some circumstances where you provide further advice to a retail client.

However, advisers must prepare a Record of Advice in each of these situations and in some circumstances, provide this to the client.

Small Investments

An RoA can be used in place of an SoA where the total investments to which your advice relates is less than \$15,000.

² Reg 7.7.09B

³ Reg 7.7.09B(2)

⁴ Reg 7.7.09B(4)

⁵ Reg 7.7.09B(3)

This does not apply to the following products for which an SoA must still be provided even if the investment is less than \$15,000:⁶

- Derivatives;
- New superannuation and retired savings accounts (i.e. superannuation and RSAs that the client does not already hold); and
- Life risk products (except to the extent that advice about a superannuation product relates to a life risk insurance product).

TIP

You may use an RoA for advice to invest less than \$15,000 in a superannuation product or an RSA that the client already holds.⁷

What is a “Small Investment” - The \$15,000 “contribution threshold” is calculated on the total value of all the financial investments which you recommend to the client in the “small investment” advice.

TIP

If the advice recommends disposal of one or more investments and acquisition of others, then use the higher amount (of the disposal or purchase) to determine if it is a small investment.⁸

For superannuation, managed investment schemes and non-derivative instalment warrants, include the cost of the initial investment and any other amounts that the client is committed to invest.

Instalment warrant: You advise a client to acquire a non-derivative instalment warrant that requires an initial payment of \$10,000, a second payment of \$2,000 in 18 months time and a final payment of \$12,000 in 3 years. The total investment is \$34,000 and you will need to provide an SoA

If the investment is not finite (e.g. it involves an ongoing superannuation contribution) then the threshold is calculated by reference to the initial investment and the amount of the regular contributions within the first 12 months).⁹

Superannuation: You advise a client to switch a \$12,000 superannuation balance to another fund and direct all future superannuation guarantee contributions to the same fund. The total of the SGC contributions in the first year is \$4,500. When added to the \$12,000 initial transfer, the investment exceeds the \$15,000 threshold and you will need to provide an SoA.

TIP

Special rules apply to rights issues, option over unissued share, partly paid shares and the like. The threshold amount must be calculated to include the total amount of all financial investments that the client would commit to: e.g. If the advice related to the purchase of options over unissued shares, the cost would be both the cost to buy the options and the cost of the exercise price on the face of the options; for partly paid shares, the total cost would be calculated as if all calls had been made on the shares.¹⁰

TRAP

If you cannot ascertain the total investment value at the time the advice is provided – then an SoA will be required.¹¹

⁶ S946AA(1), (1A)

⁷ s946AA(1)(c) CA

⁸ S946AA(2)

⁹ Reg 7.7.09A(5)-(9)

¹⁰ Reg 7.7.09A

¹¹ Reg 7.7.09A(8)

When to provide the RoA - You must prepare a Record of the Advice (RoA) and give this to the client when the advice is provided or as soon as practicable after the advice is given and before any further services are provided in connection with the advice (e.g. the investment is acquired by the client).¹²

Content of the RoA - An RoA for small investment advice must include the following:¹³

- A brief description of the recommendations made and the basis on which the recommendations are made;
- If the advice includes a recommendation that the client replace one product with another, information on any benefits the client will lose by accepting the recommendations, any charges the client will incur and other likely significant consequences for the client of following the recommendations. If you do not know or cannot reasonably find out what charges, losses or consequences will occur, include a statement that you do not know this information.
- Information about the remuneration (e.g. commissions and fees) the adviser will receive; and
- Information about any associations and relationships you or the licensee have with the product provider which may influence the advice given.

Personal Advice with No 'Purchase' Recommendation¹⁴

No SoA needs to be given where you provide personal advice which does not:

- Recommend that the client acquire or dispose of a financial product or modify an investment strategy or a contribution level for a product held by the client; and
- Neither you nor your licensee will be remunerated for the advice.

An example could be estate planning advice which does not identify a particular product for purchase

When to provide the RoA - While are not required to give this to the client at the time you provide your advice, you must prepare an RoA. You do not have to give this to the client unless they ask for it. Retain it in the client file until the client asks for it.¹⁵

Content of the RoA - An RoA for this situation must contain:¹⁶

- Details of the investment advice that was given;
- Brief particulars of the recommendations made to the client and the basis on which the recommendations are made;
- Information about any remuneration (e.g. commissions and fees that will be paid) the adviser (or licensee) will receive; and
- Information about any associations and relationships between the adviser (or licensee) and the product provider which may influence the advice given.¹⁷

TIP

It is still good practice to provide an SoA when providing strategic advice, even if no product specific recommendations have been made.

¹² s946AA(4) – (6) CA

¹³ Reg 7.7.08C

¹⁴ s946B(7) CA

¹⁵ S946B(9)

¹⁶ Reg 7.7.10AB

¹⁷ Reg. 7.7.10AAA

Further Advice

No SoA is required when you provide further personal advice to an existing client provided that:¹⁸

- When you originally advised the client, you provided an SoA that set out the client's personal circumstances in relation to that advice
- The client's personal circumstances i.e. objectives, financial situation and needs (so far as they are relevant to the further advice) have not significantly changed; and
- The basis on which the further advice is given is not significantly different to the basis on which the earlier advice was given.

When to provide the RoA - You do not have to give an RoA to the client in this situation. However you must prepare it and keep in the client file. It can be maintained in any form, even a tape recording.¹⁹ Give the RoA to the client if they request it.

Content of the RoA -An RoA for this situation must contain²⁰:

- Details of the advice that was given;
- Brief particulars of the recommendations made to the client and the basis on which the recommendations are made;
- If the advice includes a recommendation that the client replace one product with another, information on any benefits the client will lose by accepting the recommendations, any charges the client will incur and other likely significant consequences for the client of following the recommendations. If you do not know or cannot reasonably find out what charges, losses or consequences will occur, include a statement that you do not know this information.
- Information about any remuneration (e.g. commissions and fees that will be paid) the adviser (or licensee) will receive; and
- Information about any associations and relationships between the adviser (or licensee) and the product provider which may influence the advice given.²¹

FSG TIP

If you give further advice or advice which does not recommend the purchase of a product, then your FSG must:²²

- * State that the client may request an RoA if they do not already have one;
- * Explains how such a record can be requested; and
- * Identifies any time limits within which such a request may be made.

Required Information When No SoA is Required

Even if no SoA (or RoA) is required to be provided to the client (e.g. for further advice, where purchase or sale of a product has not been recommended, basic deposit products or a facility for non-cash payments), the adviser must still give the client a statement in the same communication (verbal, email, writing) as the advice which was given²³ to the client containing the following information:²⁴

- The remuneration information usually included in the SoA; and

¹⁸ Reg 7.7.10AE

¹⁹ Reg 7.7.09(2)

²⁰ Reg 7.7.10AE(3)

²¹ Reg. 7.7.10AAA

²² Reg. 7.7.10AC and 7.7.10AD

²³ s946B(8) CA

²⁴ Reg 7.7.10AE

- Information about any associations or interests that might influence the advice given that would otherwise be disclosed in an SoA.

If the advice recommends the replacement of one product with another, then the information usually included in the SoA in regards to product replacement must be included in the statement as well.²⁵

This must be provided at the time the advice is given (or as soon as practicable afterwards).

TIP

If you communicate the advice orally, then provide the information orally; if you provide the advice in writing, then put this information in writing.

In conclusion, it is a good idea to carefully familiarise yourself with the rules regarding when RoAs can be used as they can save considerable time and effort.

Contact us

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²⁵ Reg 7.7.10AE