

ASIC's COVID-19 Statement of Advice Relief FAQs

Correct as at 28 April 2020.

Background Information

The Australian Securities and Investments Commission (ASIC) has announced three temporary relief measures for **both licensed advisers and registered tax agents** to help consumers receive affordable and timely financial advice during the COVID-19 pandemic.

- **Relief to facilitate advice about early access to superannuation**
- **Relief to extend the timeframe for providing time-critical SOAs**
- **Relief to enable an ROA to be given in certain circumstances**

[Click here to read more information on ASIC's website.](#)

How long will the temporary measures last for?

ASIC will continue to monitor the appropriateness of the relief measures, having regard to the ongoing impact of COVID-19. ASIC will consider market developments and consult with key stakeholders before revoking the Instrument of relief and provide 30 days' notice to the industry.

Advice about early access to superannuation

To assist the provision of affordable advice on early access to super, ASIC has:

- allowed advice providers not to give a statement of advice (SOA) to clients when providing advice about the COVID-19 early access to superannuation scheme;
- permitted registered tax agents to give advice to **existing clients** about the COVID-19 early access to superannuation scheme without needing to hold an Australian financial services (AFS) licence.

What are the requirements for advisers and tax agents?

ASIC's relief and no-action position are temporary and subject to the important conditions, including:

- clients must be provided with a record of advice (ROA), which meets certain content requirements. A ROA is a shorter, simpler document that sets out the advice that is being provided;
- the advice fee, if any, is capped at \$300 (including GST);
- the advice provider must establish that the client is entitled to the early release of their superannuation; and
- the client must have approached the advice provider for the advice.

What are the ROA requirements?

The ROA content requirements are as follows:

- brief particulars of the recommendation and the basis on which the recommendation is made, including:
 - whether the client satisfies an eligible ground for the early release of superannuation;
 - based on the client's relevant personal circumstances, whether the client should apply for early release of superannuation and the reasons why; and
- if the advice provider recommends an early release of superannuation, the name of the superannuation or retirement savings account (RSA) product to which the recommendation relates and the implications for the client in releasing their benefits early.
 - For example, these implications might include, but are not limited to, any consequences the early release would have on the client's insurance cover and the impact of the withdrawal on retirement benefits.

The advice provider must also give the client the following:

- information about remuneration or benefits that the advice provider or an associated entity will receive which might reasonably be expected to be capable of influencing the advice; and
- information about any conflicts of interest which might reasonably be expected to be capable of influencing the advice.

What clients does it apply to?

The early release measures apply for new clients of licensed advisers. For registered tax agents, this measure only applies to their existing clients.

What is the recommended price to be charged for advice relating to relief measures?

There is no recommended price to be charged for advice relating to relief measures. The cap of \$300 for advice related only to the provision of advice for the early access of superannuation under hardship provisions.

What if an SMSF member wants to access this \$10,000 relief, however it is better for them to retire and set up a full pension. Would you do a SOA in this case?

Advice that extends beyond purely recommendation to access super requires an SOA.

What happens if SMSF receives a determination to release funds however the Deed doesn't allow early release?

The Deed must be checked to ensure that it allows release under compassionate grounds and may need to be amended if the existing provisions do not allow for such a release.

Is there any guidance on what the funds drawn out via early release need to be used for? I.e. can the funds drawn be used as part of a contribution strategy back into the fund?

The relief measure only extends to the recommendation on whether to access superannuation or not.

We advise caution against recommendations of a re-contribution strategy as that may indicate the individual is not affected by COVID-19.

How about for those advisors who have a Limited AFSL but haven't provided an SOA to one of our existing SMSF clients, and the client specifically wants advice only for the COVID-19 early super access. Does this mean we can't issue a ROA as we first of all need to issue a SOA first?

No, if you are only providing COVID-19 early release advice you do not need to have issued a SOA first. The relief specially allows you to provide a ROA only.

If you are providing broader advice on a class of product advice that you have previously provided before to a client, you may be able to access relief which allows you to provide an ROA instead of an SOA. **See “Provision of ROA in certain circumstances” section below.**

[Am I allowed to provide factual information under this relief?](#)

Factual information is not considered as financial advice.

General factual information which does not solicit advice should not be considered hawking. However, it is important to ensure that your client has approached you for any advice under the relief.

[Some clients have called to ask if they qualify only, do I need a ROA?](#)

Providing advice on whether a client satisfies the eligibility of the scheme would usually require a ROA.

[I would have thought a reasonable investigation on client circumstances would include consideration of any automatic investment sell profile and appropriateness of that?](#)
You should detail all the potential implications where possible for the client in releasing their benefits early. These include, but are not limited to capital balances, insurance, crystallisation of assets, and future effect on balances.

Time frame extension for SOAs

Temporary relief to give advice providers up to 30 business days (instead of 5 business days) to give an SOA after time-critical advice is provided.

An advice provider may only rely on this temporary relief measure in circumstances where:

- the client expressly instructs the adviser that they require the COVID-19 advice on an urgent basis because of the adverse economic effects of COVID-19;
- the advice provider reasonably considers this advice is required on an urgent basis because of the adverse economic effects of COVID-19; and
- if the advice involves a recommendation to acquire a financial product and a cooling off period applies, the relevant written statement must be given about the client's rights when the client is given the advice.

[How is 'urgent basis' defined?](#)

Urgent basis is a term defined in the Legislative Instrument, that is also commonly referred to as time-critical advice i.e. your client requests implementation of your recommendations prior to the provision of the SOA/ROA in writing.

Provision of ROA in certain circumstances

Temporary relief to allow the provision of Record of Advice (ROA) to existing clients even though clients' personal circumstances have changed as a result of COVID-19 and the client sees another adviser from the same AFS licensee or practice, not their original adviser.

This relief measure is temporary and subject to the following conditions:

- the client expressly instructs the financial adviser that they require the advice due to the economic effects of COVID-19;
- the financial adviser reasonably considers that the client needs this advice due to the economic effects of COVID-19;
- the client sees the same financial adviser or a financial adviser from the same AFS licensee or practice, but not their original financial adviser; and
- the present advice is in relation to a class of financial product(s) that the client was given advice in relation to previously by the providing entity (or the associated providing entity).

A financial adviser may only rely on this relief if they keep a record of the advice and give this ROA to the client.

The ROA must set out:

- a brief explanation of the changes in the client's relevant personal circumstances in relation to the COVID-19 advice (determined having regard to the client's objectives, financial situation and needs as currently known to the providing entity). This is the change since the previous advice was provided;
- brief particulars of the recommendations being made and the basis of those recommendations; and
- if the financial adviser gives financial product replacement advice, information about any charges the client incurs and the consequences of implementing the advice (as required by s947D of the Corporations Act).

What events could be reasonably considered as 'adverse economic effects of COVID-19'?

As COVID-19 advice is not strictly defined in the legislative instrument, we recommend satisfying the criteria for being affected by 'adverse economic effects of COVID-19'.

Examples of adverse economic effects could reasonable include:

- Loss of employment
- Reduction in regular work hours or income
- Early access to superannuation benefits
- Early retirement
- Reduction in pension payments
- Losses on investment portfolio
- Negative impact on investment properties, tenants unable to pay rent under Government eviction moratorium

- Significant reduction in business turnover (greater than 20%)
- Claiming on or varying a life insurance product due to COVID-19 related health issues (physical or mental) or financial reasons.

Remain up to date with the SMSF Association's COVID-19 response webpage which is regularly updated as more information and resources come to light.

Visit:

<https://www.smsfassociation.com/the-smsf-associations-covid-19-response/>