

# Advice Types

InterPrac / Libertas Business Principle



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Description	<b>Factual, General and Personal Advice; Product and Strategic Advice; Holistic and Limited Advice; Wholesale and Sophisticated Investors and documentation</b>
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## Purpose

To determine Types of advice that ARs may provide and the responsibilities attached to the advice and services provided.

## Scope

Distinguishing Personal and non-personal advice

Further identifying specific examples of non-personal advice

Identifying specific examples of factual SMSF advice that does not require an AFS licence

Delineation between Product and Strategic advice

Identifying Holistic and Limited advice

Further identifying specific examples of limited advice

Highlighting IFPs supporting templates and tools

Distinguishing advice documentation requirements for Retail and non-retail investors

## Policy

At a high level, it is important to understand what Advice you, as an Authorised Representative (AR) of InterPrac Financial Planning (IFP), may provide.

Practically, there are three broad types:

- Personal Advice
  - Financial product advice
  - Holistic strategic advice
- General Advice
- Advice to Sophisticated/Wholesale investors

Additionally, an Adviser can provide Factual Information

## 1. Financial Product Advice

The InterPrac Licence provides an authorisation for you to 'carry on financial services as agents of the licensee'. The InterPrac licence routinely allows representatives to deal in a financial product or provide financial product advice for the following classes of financial products:

- Deposit products.
- Debentures, stocks or bonds issued (or proposed to be issued) by a government.
- Life products including:
  - Investment life insurance products, as well as any products issued by a registered life insurance company that are backed by its statutory funds.
- Life risk products, as well as any products issued by a registered life insurance company that are backed by its statutory funds
- Interests in managed investment schemes including investor directed portfolio services.
- Retirement Savings Accounts,
- Securities.
- Standard margin lending facilities.
- Superannuation products.

Legal precedent supports that financial product advice may be overt or implied. However, advertising or marketing materials will not meet the definition of financial product advice if the content:

- is merely superficial and lacks detail
- cannot meaningfully be described or characterised as advice.

InterPrac's licence does not allow a recommendation for any 'managed discretionary account'.

This means, as an example, that you cannot solely make decisions on a share portfolio (say) on behalf of a client.

All recommended actions must be accompanied by the appropriate Advice Document on each and every occasion prior to any transaction unless the client refuses advice and comprehensively Directs an implementation (aka Implementation Only).

Such direction should, by its nature, be uncommon ie. clients frequently coming to an adviser but refusing advice.

A client Direction is not binding upon an adviser if it is not in the:

- client's best interest
- adviser's business interests, or align with the adviser's professional values incl. FASEA's adviser Values (fairness, trustworthiness, competence, honesty, diligence)

**Or**

- represents unacceptable business risk to the adviser or the licensee.

An 'Execution only' (Transaction Record) document must be provided when a client directs an implementation. This document cannot be advice by definition. It is simply a record that a service was offered at the request of the client and that the adviser had no material input into further specifying the client requirement.

*InterPrac supplies a suitable template.*

For more detail, review the appropriate guidelines *Demonstrating Best Interest in the SoA* on the Adviser Resource Centre.

## 2. Holistic Strategic Advice

Putting aside whether 'products' are involved or not, then advice that:

- evidences coordinated actions
- sets future constraints upon client financial & lifestyle behaviours
- discontinues current financial practices
- identifies opportunities to materially advance the client's financial situation
- plans for taxation implications or anticipates social security benefits
- considers the transfer of wealth amongst family members or entities
- compares & selects appropriate services that support the client's relevant circumstance services
- manages financial risk

.... together act as a working definition of Holistic Strategic advice.

Alternatively, the distinction might be understood:

A packaged margin lending 'product' is quite different from a 'sustainably affordable' geared investment strategy. The latter is more holistic/strategic & may involve the former as appropriate.

Recommending a specific super platform 'product' (e.g. Hub24) is quite different from a 'strategic solution for the provision of ongoing income'.

The latter is more holistic/strategic and may involve the former as appropriate.

Strategic Advice (holistic or not) must be supported by relevant research or calculation. Evidence of these are to be kept on the client file as a minimum requirement.

It is expected under Best Interests duty, that advice will address the relevant Goals and Objectives of the clients. The practical problem is that a client may not always have clearly articulated, or unambiguous, goals and objectives. It is therefore both necessary and desirable to educate the client sufficiently so that both client and adviser can negotiate clear milestones for the advice Recommendations to address.

If these mutually agreed milestones cannot be achieved by the Recommendations (eg. a future investment capital balance), the advice document should transparently show why the adviser came to that conclusion and the alternative strategic options that might be available.

### 3. Limiting Personal Advice

Practically, the retail Client will limit advice on the basis of what he/she wishes to achieve and pay for.

The client's decision to/reasons for limiting the advice, and any justifiable reasons that the Adviser might have for limiting advice, should be recorded in a file note and subsequently reflected in the advice document.

The FASEA Code of Ethics (Standard 6) states:

You must take into account the broad effects arising from the client acting on your advice and actively consider the client's broader, long-term interests and likely circumstances

The adviser may only proactively limit the subject matter of the advice when:

- The adviser has not the expertise, or authorisation, to give all the required advice
- Incomplete information cannot be determined after reasonable enquiry
- A portion of more holistic advice is time critical.
- Professional judgement of the client's relevant circumstances indicates that it does not contravene the Best Interests duty. This must not be contrived to simply multiply advice documents and thus increase advice preparation fees.
  - eg. holistic advice may be too lengthy & complicated to be included in one document and may justify segmentation
  - eg. advice scope may cover too large a timeframe to provide reliable recommendations at the outset

Some adviser's specialise in particular areas of advice. In that case, Limited Advice can be justified if:

- the adviser transparently promotes a particular advice 'expertise', or 'investment philosophy' (say), that the client knows, can demonstrably understand, and therefore give free & informed acceptance prior to the SoA being prepared. (Reference FASEA Code of Ethics Standard 4).

#### 3a. Personal Advice: SMSF Establishment Only

*This type of advice may be provided, in appropriate circumstances, by fully licenced ARs; not just Limited ARs. InterPrac supplies a Model template.*

InterPrac has traditionally maintained a "hard" minimum SMSF establishment amount of \$200k – lesser amounts require specific compliance approval.

Whatever initial SMSF balance you anticipate, industry & regulatory expectations support that you further justify the cost/benefit of the SMSF product vs a suitable, alternative retail option.

Such justification to include a comparison of all initial and all ongoing expenses of SMSF Establishment versus any initial and ongoing expenses of creating (or maintain) a retail fund.

<https://download.asic.gov.au/media/1336058/cp216-RiceWarner-cost-of-operating-smsfs.pdf>

<https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-costs/>

Should the relative 'costs' not materially support the establishment of the SMSF then the Client's goals/objectives need to be sufficiently clear and material to support an establishment.

The advice must be informed by a comprehensive fact-finding process that allows that Adviser to give recommendations that do not conflict with broader client goals, objectives and circumstances.

*InterPrac provides a generic fact-finding tool and a separate, supplementary SMSF fact-finding addendum.*

To distinguish the sub-types of SMSF advice that might be offered under the financial planning vs accounting 'hats'; see Table in the Appendix.

### 3b. Personal Advice: Risk Only

*This type of advice may be provided, in appropriate circumstances. InterPrac supplies a Model template.*

The AR must be informed by a comprehensive fact-finding process that allows that Adviser to give recommendations that do not conflict with broader client goals, objectives and circumstances.

Broader material issues, identified in that comprehensive fact-finding process, should not be ignored just because they are not specifically related to insurance product recommendations. These must at least be disclosed and referred to a suitably qualified adviser.

InterPrac expects that a comprehensive fact-finding tool, equivalent to the standard fact find prepared by InterPrac, will be used by the AR.

*InterPrac supplies a suitable Fact Find tool.*

### 3c. Personal Advice: Retention Advice (No change)

When an existing portfolio, pre-existing insurance or broader strategy is reviewed, an adviser might decide that it remains in the best interest of the client to maintain the current situation.

This is deemed to be 'advice to retain'. It is personal advice of its very nature.

Such advice must be explicitly disclosed in either the Statement of Advice (SoA) or Record of Advice (RoA) as appropriate.

## 4. General Advice & Factual Information

An adviser may be authorised to only provide General Advice.

General Advice must be accompanied by a specific disclaimer that essentially establishes:

- the advice is general
- it is given without full consideration of the client's personal circumstances
- it may not be appropriate to the client's personal circumstances
- the client must decide whether it is appropriate to his/her personal circumstances
- the client is invited to seek out personal advice if there are concerns, or they require advice that is specifically tailored to their personal circumstances

Otherwise InterPrac recognises no other material distinction in these 2 terminologies:

- General Advice, & Factual Information, are both not personal advice
- Both may be provided orally, online, digitally or in writing

Legal precedent has further tightened the standards around general advice. In determining whether general advice has overstepped into personal advice, the considerations are:

- Whether the 'reasonable customer', would have expected that he/she was being offered advice in his/her Best Interest
- And that advice had taken into account the client's current financial situation or was based upon any past advice relationship

### 4a. Options Paper

- In the context of a first meeting between a potential client and the AR, numerous strategic scenarios (excl. specific product advice) might be discussed.
- If it is in the client's best interest, the adviser may provide an *Options Paper* prior to a Statement of Advice being written. The legitimate aim of this paper being to enable the potential client to better determine the Scope of any subsequent written advice.
- Such a document reflects, in a General Advice context, personal advice Options yet to be provided. It may contain factual information as well.
- An *Options Paper* cannot replace an advice document and it cannot of itself justify the implementation of advice services.
- It may be prepared in any mix of text, calculation or graphical format.
- As General Advice, it is subject to the General Advice rules and legal precedent.

## 5. Sophisticated and Wholesale Investors

Definition: A sophisticated / wholesale client is 'not a retail client'.

The term sophisticated is used in the context of an offer of debt or shares; the term wholesale, in the context of any other financial product (excl. general insurance, superannuation or RSA) that is not used in a business.

<https://asic.gov.au/regulatory-resources/financial-services/financial-product-disclosure/certificates-issued-by-a-qualified-accountant/>

Notwithstanding exemptions that are detailed below, the sophisticated/wholesale client is still subject to a general Duty of Care and the Best Interests duty applies as well.

### 5a. Disclosure Documentation Required

- Wholesale Client Certificate
- Most current Financial Services Guide
- AML / CTF documentation completed and on file
- Scoping / Fact Find documentation evidencing reasonable enquiry of client's position
- Comprehensive file notes and communications (emails, phone calls etc) which are to be maintained to evidence the personal advice and professional services provided
  - It is expected that a wholesale client is to be given sufficient information to make an informed choice about the subject matter or products that are being advised.
- Implementation document(s) in native format
- Evidence of disclosure of fees and any conflicts of interest and any other relevant matters.
- A PDS or prospectus is not mandatory unless the client requests one.

**If there is any doubt whether a client is eligible to be treated as a sophisticated/wholesale investor, then that client must be afforded the retail investor protections; most relevantly a formal advice document (SoA).**

**Moreover, if an otherwise eligible wholesale client is issued an SoA, then that client must be afforded the protections and processes that apply to a retail client in regard to that advice.**

- An exemption from the provision of a SoA, FDS/Renewal Notice is available to:
  - investors formally certified by an accountant as sophisticated
  - investors having a gross income of \$250k pa and net assets of \$2.5m
    - .... the assets and income of 'controlled' entities may be included in the determination; SMSF assets are not included.
- investors assessed by IFP as having sufficient experience and knowledge
  - .... such licensee assessment may choose to consider any of
    - the type of investment products
    - the amount to be invested
    - familiarity with industry products and jargon
    - familiarity with investment risks and product risks
    - relevant employment in the financial services industry.

An exemption from the provision of a SoA, FDS/Renewal Notice In is available to Wholesale investors who have been determined to have met at least one of several statutory tests. These include:

- investing \$500k or more in a product or class of products from the same product issuer

If advice services are to be offered to Trustees of a SMSF, the Trustees are by default retail clients unless the fund has net assets of \$10m or more; or IFP recognises some other reasonable basis for an exemption. For example, all trustees/members are individually certified as sophisticated investors in their personal capacity.

In the situation of an AR advising an Employer (or employee representative) about a superannuation Default Fund, the employer must be treated as a retail investor unless the Default Fund has assets of \$10m or more.

## Consequences

Failure to comply with these requirements may result in:

- Failure to demonstrate Best Interests Duty
- Revocation of Licensee Authorisation
- Licensee imposed remedial activities
- Regulatory penalties

## Compliance Support

Contact your respective Compliance Manager if anything is unclear or you have further questions. Otherwise, general queries can be sent via: [compliance@interprac.com.au](mailto:compliance@interprac.com.au).

A full list of contact names, phone numbers and emails can be found on the Libertas Portal and InterPrac Adviser Resource Centre -> Admin -> Contact List: InterPrac Financial Planning Team.

## Tools

Found on the Adviser Resource Centre website:

- InterPrac Standard SoA template (incl. Strategy / Appendix text libraries)
- InterPrac specialist & model advice templates (RoA, SMSF, Risk Only)
- InterPrac Transaction Record (Implementation/Execution Only)
- Individualised FSG (Adviser Profile Addendum)
- AML/CTF guidance and proformas
- InterPrac Ongoing Service Agreement template
- InterPrac Fee Disclosure Statement (FDS) and Renewal Notice template

We have software tools available or approved for use which include: AdviserLogic, XPLAN and Midwinter software (our preferred providers and these are managed / maintained by the Licensee) and we have approved the use of Astute Wheel. These providers offer engagement tools, CRM functions, access to product research and comparison tools, cashflow modelling and advice documentation systems.

## Associated Documentation

Further guidance in support of Best Interest Duty and advice process development can be seen in additional business rules and guidance documents including:

- Business Principles - Best Interest Duty
- Business Principles - Advice Documentation
- Business Principles - SMSF Advice
- Business Principles - Investment Gearing
- Business Principles - Insurance
- Demonstrating Best Interest in the SoA\_Guidelines
- Corporations Act 2001
- ASIC Regulatory Guide 121 – Doing financial services business in Australia
- ASIC Regulatory Guide 175 – Licensing: Financial product advisers – conduct and disclosure
- ASIC Regulatory Guide 244 – Giving information, general advice and scaled advice
- ASIC Information Sheet – INFO 216: AFS Licensing requirements for accountants who provide SMSF Services



Type of SMSF service	What you may do without being covered by an AFS licence	Relevant legislation
Establishing, operating, structuring or valuing an SMSF, including advice and assistance on administrative and operational issues, and the process of winding up or exiting an SMSF	<p>You <b>may</b> provide advice on establishing, operating, structuring or valuing an SMSF, as long as you give your client the appropriate warnings. This includes:</p> <p>advice provided for the sole purpose of, and only to the extent reasonably necessary for, ensuring compliance with the superannuation legislation advice on the process of winding up or exiting an SMSF.</p> <p>You <b>may not</b> recommend that your client acquires or disposes of an interest in an SMSF.</p> <p>For further information, see <a href="#">Establishing, operating, structuring or valuing an SMSF</a>.</p>	Regulation 7.1.29(5)
Asset allocation and investment strategy	<p>You <b>may</b> provide a recommendation or statement of opinion on how your client should distribute their available funds among different categories of investments.</p> <p>You <b>may not</b> advise your client to make particular investments through the SMSF.</p> <p>For further information, see <a href="#">Asset allocation and investment strategy</a>.</p>	Regulation 7.1.33A
Tax advice on SMSFs and other financial products	<p>You <b>may</b> provide tax advice on financial products, such as an interest in an SMSF and underlying investments held by the SMSF, as long as you do not receive a benefit as a result of your client acquiring a financial</p>	Regulation 7.1.29(4)

Type of SMSF service	What you may do without being covered by an AFS licence	Relevant legislation
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product (or a financial product that falls within the class of products) mentioned in the advice and you give your client the appropriate warnings.

For further information, see [Tax advice on SMSFs and other financial products](#).

Tax agent and BAS services	If you are a registered tax agent or BAS agent, you <b>may</b> provide advice that is given in the ordinary course of the activities of such an agent and that is reasonably regarded as a necessary part of those activities.	Section 766B(5)(c)
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Referring clients to an AFS licensee or representative

You **may** refer clients on to an AFS licensee or representative for financial product advice, as long as you make the appropriate disclosures.

Regulations 7.6.01(1)(e)–(ea)

For further information, see [Referring clients to an AFS licensee or representative](#).

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