

Overview of Advice-Related Exclusions and Exemptions from Chapter 7 of the Corporations Act 2001 (Cth)

Sources of exemptions/exclusions	Summary of advice-related exclusions/exemptions
<p>I am providing financial product advice</p> <p>Unless... → Excluded by s 766B</p>	<ul style="list-style-type: none"> s 766B(1A) – Provision of exempt document or statement <ul style="list-style-type: none"> See reg 7.1.08 for included/excluded documents, information and statements s 766B(5) – Advice given by lawyers and registered tax or BAS agents s 766B(6), (7) – Telling an inquirer information about cost/estimated cost/rate of return on a financial product s 766B(7A) – Advice that could reasonably be regarded as a necessary part of providing claims handling and settling service <ul style="list-style-type: none"> Cf. reg 7.1.08AA – Advice that is not regarded as a necessary part of providing claims handling and settling service
<p>I am providing a financial service</p> <p>Unless... → Excluded by regulations made under s 766A(2)</p>	<ul style="list-style-type: none"> Reg 7.1.06A – Financial product advice to debtor or representative in relation to certain financial products that are not credit facilities Reg 7.1.29 – Advice provided in the course of an exempt service (eg tax advice) that is reasonably necessary and integral to the exempt service Reg 7.1.30 – Information and advice about voting rights attaching to securities or interests in MISs Reg 7.1.31 – Passing on a prepared document that contains financial product advice Reg 7.1.32 – Advice in relation to structuring of remuneration packages for employees Reg 7.1.33A – Recommendation or statement of opinion in relation to allocation of funds for investment among different products Reg 7.1.33B – General advice prepared by a product issuer who is not an AFS licensee, but provided by a licensee Reg 7.1.33E – Advice about the existence of a custodial or depository service Reg 7.1.33F – Provision of general advice intended to influence a decision in relation to a school banking product Reg 7.1.33G – Certain general advice that does not attract remuneration Reg 7.1.33H – Certain general advice given by product issuer <p><i>Cf express inclusion for financial product advice to employer about default super fund (reg 7.1.28AA)</i></p>
<p>I must hold an AFS licence to carry on my business</p> <p>Unless... → Exempted by regs made under s 911A(2)(k)</p> <p>Exempted by s 911A(2)(a)–(j)</p> <p>Exempted by ASIC instrument made under ss 911A(2)(l), 926A</p>	<p>Exemptions in the Act:</p> <ul style="list-style-type: none"> s 911A(2)(ea)–(ec) – General advice provided in newspaper, periodical, information service or sound/video/data recordings which is generally available to public and whose principal or sole purpose is not the provision of financial product advice. Conditions may apply per reg 7.6.01B. s 911A(2)(ed) – General advice provided by corporation in connection with offer under eligible employee share scheme <p>Activities/persons covered by exemptions in the regulations:</p> <ul style="list-style-type: none"> Reg 7.6.01(1): <ul style="list-style-type: none"> (na) Provision of financial product advice by person not in jurisdiction who is related to a financial services licensee; (o) General advice by product issuer provided in media with disclosures equivalent to general advice warning; (oa) Advice by actuary to wholesale client, exempt public authority or the Commonwealth or a State/Territory in ordinary course of actuarial services; (s) General advice to an AFSL holder by product issuer; (t) Advising in relation to medical indemnity insurance; (ta) Financial product advice in relation to a friendly society funeral product by funeral services entity in ordinary course of business; (u) Advice consisting of an opinion on matters other than financial products included in document issued in connection with a takeover bid or offer of financial product if certain disclosures provided. Reg 7.6.02AG (notional 911A(2E)) – Advice on derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units provided to a professional investor by a person outside the jurisdiction. <p>Activities/persons covered by exemptions in ASIC instruments:</p> <ul style="list-style-type: none"> CO 11/1227 – Financial product advice in a retirement estimate statement that meets certain conditions CO 11/927 – Financial product advice by money management service provider in relation to a basic deposit product CO 14/1001 – General advice by unlisted body or wholly-owned subsidiary in connection with an offer under an employee incentive scheme CO 14/1000 – General advice by listed body or associated body corporate in connection with an offer under an employee incentive scheme LI 2015/1049 – General advice to a vendor by licensed real estate agent in relation to an offer for sale of eligible shares in a real estate company LI 2015/539 – General advice in the form of an advertisement from the product issuer if the advertisement indicates that a person should consider whether or not the product is appropriate for the person LI 2016/207 – Financial product advice provided through, or through making available, a financial calculator (subject to conditions) LI 2016/356 – General advice in a document that complies with certain conditions or by self-dealers to wholesale clients about own securities LI 2016/813 – General advice provided by wholesale charitable investment fundraisers in an offer document of debentures or interests in an MIS LI 2016/869 – General advice provided by operator of a strata scheme or real estate agent in relation to interests in strata scheme LI 2016/1109 – Financial product advice to wholesale clients by CSSF-regulated financial services provider LI 2017/616 – Financial product advice by an 'Eligible Company' (registered under cl 3 of Sch 4 to the Act) in relation to issue of member shares LI 2017/792 – Financial product advice provided by financial counselling agencies in certain circumstances LI 2017/794 – Financial product advice provided by eligible person in relation to derivatives that are factoring arrangements LI 2017/795 – Financial product advice relating to a mortgage offset account LI 2018/99 – General advice by an operator of sale facility or related purchase facility in relation to an interest in the facility LI 2018/751 – Financial product advice by group purchasing body in relation to a risk management product or an interest in a risk management scheme operated by the body where provided as a result of giving information or statements required for reliance on exemption from s 601ED(5) LI 2020/199 – Financial product advice in relation to offshore fund financial products or under a portfolio management services mandate
<p>I must comply with AFS licensee obligations</p> <p>Unless... → Exempted by regs made under ss 926B, 941C(8) 951C, 992C</p> <p>Exempted under the Act</p> <p>Exempted by ASIC instrument made under ss 926A, 951B, 992B</p>	<p>Exemptions from Divs 2, 3 & 4 of Pt 7.7:</p> <ul style="list-style-type: none"> CO 11/1227 – Financial product advice in a retirement estimate statement that meets certain conditions LI 2016/207 – Financial product advice provided through, or through making available, a financial calculator (subject to conditions) LI 2016/356 – General advice provided in a document that complies with certain conditions (exemption from Divs 2 & 4) LI 2017/616 – Financial product advice by an 'Eligible Company' (registered under cl 3 of Sch 4 to the Act) in relation to issue of member shares LI 2015/539 – General advice in the form of advertisement of issue of securities to be listed by the licensee if the advertisement indicates that a person should consider whether or not the securities are appropriate for the person (exemption from Divs 2 & 4) <p>Exemptions from obligation to provide a Financial Services Guide:</p> <ul style="list-style-type: none"> s 941C(4) – General advice provided to the public, or a section of the public, in the manner prescribed by the regs [reg 7.7.02(2)]; but must provide information required by sub-s (5) [see further reg 7.7.01] s 941C(6) – Financial product advice about a basic deposit product or a related facility for making non-cash payments, or a product prescribed by the regs [see reg 7.7.02(1)]; but must provide information required by sub-s (7) s 941C(8) – Circumstances prescribed in regulations <ul style="list-style-type: none"> Reg 7.7.02(4) – General advice by product issuer or related body corporate, or product distributor or authorised rep not provided in a meeting or during a telephone call (except in certain circumstances); but must provide information required by sub reg (5) Reg 7.7.02(5A) – General advice in the form of advertising on billboard, poster or in the media by product issuer if advertisement indicates that a person should consider whether or not the product is appropriate for the person LI 2015/541 – General advice in a report or statement included in a document prepared by or on behalf of another person <p>Exemptions from obligation to provide a Statement of Advice:</p> <ul style="list-style-type: none"> s 946AA – Small investment advice [see regs 7.7.08C, 7.7.09A] s 946B [replaced by reg 7.7.10AE] – 'Further advice' or advice in relation to certain basic deposit and other products [see reg 7.7.10] but must keep record of advice [see reg 7.7.09] <p>Exemptions from obligation to provide general advice warning:</p> <ul style="list-style-type: none"> s 949A(1)(c) – General advice provided in circumstances prescribed in the regs [see regs 7.7.20, 7.7.02(5A) – advertising on billboard, poster or in the media by product issuer if advertisement indicates that a person should consider whether or not the product is appropriate for the person] Reg 7.7.14 – Exemption from 949A(2)(c) for general advice in relation to a financial product for which a PDS is not required under Pt 7.9 LI 2015/540 – General advice provided orally, if an oral warning is given that the advice is general advice and may not be appropriate for the client <p>Other exemptions:</p> <ul style="list-style-type: none"> s 916F(1AA) [Replaced by reg 7.6.08] – Exemption from obligation to notify ASIC of authorisation of a representative to provide, inter alia, general advice relating to fin products set out in regs [see reg 7.6.04A] or personal advice about basic deposit products, and other conditions are met Exceptions from the requirement for provider to prove they have taken steps mentioned in 961B(2)(d)–(g) [best interests duty] <ul style="list-style-type: none"> Reg 7.7A.05 – advice by agent or employee of Aus. ADI in relation to basic banking products, general insurance, consumer credit insurance Reg 7.7A.06 – advice relating to a general insurance product LI 2018/751 – Exemption from Divs 2, 3 & 4 of Pt 7.7 and Divs 2, 3, 5 & 6 of Pt 7.8 for financial product advice by a group purchasing body in relation to a risk management product or an interest in a risk management scheme operated by the body where provided as a result of giving information or statements required for reliance on exemption from s 601ED(5) s 1200F – Exemptions from Pts 7.6, 7.7 and 7.8, other than s 992AA, for general advice contained in any offer document or advertisement for a 'recognised offer' (foreign offers that are recognised in this jurisdiction) by or on behalf of the offeror

* NB: Does not include exclusions in relation to Pt 7.9 or ss 992A & 992AA, as the application of these obligations is not limited to licensees.