

QoN Number	022
Topic	Financial advice
Committee member	Mr Falinski
Reference	31 and 32

### Question

**Mr FALINSKI:** Thank you. I appreciate that. I've written to you previously about news stories that were appearing on all broadcast media—and that have continued to appear, including on the taxpayer funded ABC—regarding the Industry Super association, and its CEO presenting himself as a financial expert, giving financial advice on whether people should access their superannuation early. You indicated to me that that was not something that ASIC was willing to investigate or to take up. How does that sit in the circumstances where you are able to pursue real estate agents, with, as the chair has pointed out, scant evidence for it? You have an industry body presenting themselves as independent financial advisers and financial experts, giving advice on whether people should access their super in an early fashion.

**Mr Shipton:** Again, I'm wary to draw comparisons between different case studies, but I will say this in response: we have been very clear about inappropriate financial advice, and we have a task force that is looking into this. If there are other sectors or other entities or other parts of the business community that appear to be conducting unlicensed or illegal advice, then we will certainly act accordingly. Again, on the discussion around our response with the real estate agents, one must keep in mind that this was a warning. We have actually not prosecuted or investigated anybody in relation to this. We have, in the regulatory pyramid as regards tools, actually used one which is much lower down the threshold. We deliberately did that, because, with the circumstances which were emerging at the time—we now know more in retrospect—we wanted to respond quickly and accordingly. Things were moving fast. If circumstances warrant—and you raised other circumstances, and if those warrant—our warning and public statement, we will certainly do that and be open-minded to do that. We are not intending to just pick on one sector over another. We are on the lookout for where things could go wrong. I deliberately used the expression 'drift into financial advice' earlier in my response, because we want to avoid good-minded, well-meaning people drifting into providing financial advice where they ought not to.

**Mr Day:** There are a couple of things that are worth understanding. If it's the entity and the individual you talk about in relation to the media, they're different than real estate agents because the organisation that person's representing has a licence. The second thing is there's a carve out for certain media as well in relation to that. If you'd like, we can give you more information on notice about that, just to clarify the position.

**Mr FALINSKI:** Thank you, Mr Day.

### Answer

There are exemptions that can apply to the requirement to hold an Australian Financial Service (AFS) licence. Where an entity falls under an AFS licence exemption, they are generally exempted from conduct and disclosure obligations that AFS licensees are required to comply with when providing financial product advice.

s911A(2)(eb) of the Corporations Act provides that entities providing *general advice* as part of a broadcasting service are exempt from the requirement to hold an AFS licence.

There are two types of financial product advice under the Corporations Act – *personal advice*, and *general advice*.

Personal advice is financial product advice that is provided to a person in circumstances where the provider of the advice has considered the person's individual circumstances or a reasonable person might expect that the provider has considered the person's individual circumstances. Financial product advice that is not personal advice is deemed *general advice*.

ASIC considered real estate agents writing to tenants, with knowledge of individual circumstances of tenants could be deemed personal advice.