



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Record-Keeping Requirements for Australian Financial Services Licensees when Giving Personal Advice) Instrument 2024/508

I, Jane Eccleston, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 23 September 2024

Jane Eccleston

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Record-Keeping Requirements for Australian Financial Services Licensees when Giving Personal Advice) Instrument 2024/508*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under paragraph 926A(2)(c) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

5 Record-keeping: personal advice

Part 7.6 of the Act (except Divisions 4 and 8) applies in relation to financial services licensees (and former financial services licensees) and authorised representatives (and former authorised representatives) as if Division 3 of that Part were modified or varied by, after section 912F, inserting:

“912G Record-keeping: personal advice

- (1) This section applies in relation to the provision of personal advice to a person (the *client*) as a retail client by a financial services licensee (the *provider*) or a representative (the *provider*) of a financial services licensee.
 - (2) The financial services licensee must ensure that records of the following matters are kept in relation to the provision of the personal advice:
 - (a) the information relied on and the action taken by the provider that indicates the provider has, in accordance with subsection 961B(1), acted in the best interests (the *best interests duty*) of the client in relation to the advice; and
 - (b) if subsection 961B(2) is being relied on to prove that the best interests duty has been satisfied—the information relied on and the action taken by the provider that satisfies the steps in that subsection;
- Note: The keeping of records that satisfy the record-keeping obligation in paragraph (b) will satisfy the record-keeping obligation in paragraph (a).
- (c) the advice given, including the reasons why, under section 961G, it would be reasonable to conclude that the advice is appropriate to the client, had the provider satisfied the best interests duty;
 - (d) where the provider knows, or reasonably ought to know, that there is a conflict between the interests of the client and the interests of a person mentioned in any of the paragraphs in subsection 961J(1)—the information relied on and the action taken by the provider to indicate that the provider has given priority to the client’s interests when giving the advice.
- (3) The financial services licensee must ensure the records required to be kept by this section:

- (a) are kept for 7 years after the day the personal advice was provided to the client; and
- (b) are accessible by the licensee at all times during that period in a way that enables the licensee to produce the records.

This obligation continues to apply even if the financial services licensee ceases to be a financial services licensee during the period that the records are required to be kept and accessible.

- (4) If the provider is an authorised representative of a financial services licensee and the records required to be kept by this section are kept by the authorised representative, the authorised representative:
 - (a) must give the records to the licensee if requested by the licensee, provided the request is made:
 - (i) in connection with the obligations imposed on the licensee under this Chapter; and
 - (ii) within 7 years after the day on which the personal advice was provided to the client; and
 - (b) unless the records have been given by the authorised representative to the licensee—must keep the records for a period of 7 years after the day on which the personal advice was provided to the client.

This obligation continues to apply even if the authorised representative ceases to be an authorised representative of the financial services licensee during the period that the records are required to be given or kept.

- (5) Nothing in subsection (4) limits the operation of subsections (2) and (3).
- (6) This section does not apply to the provision of personal advice given in relation to a financial product in circumstances where the provider satisfies the duty in subsection 961B(1) in relation to the advice given in relation to the financial product if the provider takes the steps mentioned in paragraphs 961B(2)(a), (b) and (c).
- (7) This section (other than paragraph (2)(d) and subsection (3) as it relates to that paragraph) does not apply to the provision of personal advice covered by either of the following circumstances:

- (a) the provision of personal advice for which a Statement of Advice is not required to be given to the client;
- (b) the provision of personal advice for which a record of the advice is kept in accordance with subsection 946B(3A).

Part 3—Repeal

6 Repeal

This instrument is repealed at the start of 1 October 2029.