

**Parliamentary Joint Committee on Corporations and Financial Services Australian
Securities and Investments Commission
Responses to Questions on Notice from Senator Paterson**

Regarding [ASIC's letter to the Real Estate Institute of Australia dated 3 April 2020 on unlicensed financial advice by real estate agents](#):

QoN 001-06 - Unlicensed advice – Real estate agents informing tenants about the existence government policy

- a) Are real estate agents allowed to inform tenants of the existence of the federal government's early access to superannuation policy without providing unlicensed advice?
- b) If yes, in what form can real estate agents inform tenants of the existence of this policy without offering unlicensed financial advice?
- c) If not, are other groups alerting consumers to the existence of the policy at risk of offering unlicensed financial advice? For example federal members of parliament and their staff?

Answer

- a) Yes.
- b) Factual information about the existence of the Federal Government's early access to superannuation policy can be provided to a tenant without offering unlicensed financial product advice, if that information does not amount to an actual or implied recommendation or statement of opinion that is intended to influence the tenant in making a decision about their superannuation, or a reasonable person would not regard that information as being an actual or implied recommendation or statement of opinion intended to have such influence.

'Financial product advice' is broadly defined in s 766B, *Corporations Act 2001* as "a recommendation or a statement of opinion, or a report of either of those things, that:

- a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or
- b) could reasonably be regarded as being intended to have such an influence."

Consequently, real estate agents (and other persons) are generally able to provide factual information about the existence of the Federal Government's early access to superannuation policy without providing unlicensed advice. However, if that factual information is presented in a manner that may reasonably be regarded as suggesting or implying a recommendation to withdraw superannuation savings, the real estate agent may be providing unlicensed financial product advice: see ASIC Regulatory Guide 36 *Licensing: Financial product advice and dealing*.

c) See (b) above.

Annexure A

1. Real Estate Institute of Australia
2. Real Estate Institute of New South Wales
3. Real Estate Institute of Victoria
4. Real Estate Institute of Queensland
5. Real Estate Institute of Western Australia
6. Real Estate Institute of South Australia
7. Real Estate Institute of Tasmania
8. Real Estate Institute of the Northern Territory
9. Real Estate Institute of the Australian Capital Territory
10. Estate Agents Co-operative
11. Department of Mines, Industry Regulation and Safety (Consumer Protection) (DMIRS) (WA)
12. NSW Department of Customer Service (NSW)
13. Department of Justice - Victoria (VIC)
14. Northern Territory Consumer Affairs - Darwin (NT)
15. Access Canberra (ACT)
16. Office of Fair Trading (QLD)
17. Department of Justice (TAS)
18. Attorney-General's Department (SA)