

# Most advisers to declare 'not independent'

3 June 2021

<https://www.moneymanagement.com.au/news/financial-planning/most-advisers-declare-not-independent>

Only 2% of advisers and advice firms are 'independent' under section 923A of the Corporations Act, meaning most financial advisers are subject to the new Financial Services Guides (FSG) disclosure obligations that will commence on 1 July, 2021.

An analysis by The Fold Legal said only advisers/firms that satisfied a list of strict criteria were free to name themselves as "independent", "impartial", and "unbiased", and everyone categorised as "not independent" were subject to the new obligations.

However, advisers could qualify as "independent" if they or their Australian financial services licensee (AFSL) and all authorised representatives:

- Did not receive insurance commissions (or rebate them back to clients in full);
- Did not receive any gifts or benefits from product providers;
- Had no restrictions regarding the products you can recommend; and
- Did not own, are not owned by, and did not have any interest or association with any product providers.

"If you don't qualify as independent, you must specifically disclose that you are not independent, impartial or unbiased and explain why. There are also requirements about how this disclosure must be displayed in the FSG," it said.

"In terms of explaining why you are not independent, impartial or unbiased, the Australian Securities and Investments Commission [ASIC] has chosen not to issue any prescribed wording as it considers that advice firms are best placed to describe their business model to their clients.

"This means there is flexibility to develop a statement that reflects your firm's circumstances and will be easily understood by your clients."

From 1 July, 2021, the key changes to the obligations were:

- FSGs must include written disclosure that you are not "independent, impartial or unbiased" (assuming you are not independent within the meaning of section 923A of the Corporations Act);
- FDSs must include forward-looking disclosure as well as the current backward-looking disclosure; and
- All Ongoing Fee Arrangements must be renewed by the client each year (including pre-1 July, 2013, arrangements).