



FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA

HELPING YOU UNDERSTAND THE  
**FASEA CODE OF ETHICS**

April 2019 | Version 1



# Table of contents

- Message from the CEO ..... 4
- Introduction ..... 5
- Important information ..... 6
- The FASEA Code of Ethics..... 8
- FASEA Standard 1** ..... 9
- FASEA Standard 2** ..... 10
- FASEA Standard 3** ..... 19
- FASEA Standard 4** ..... 22
- FASEA Standard 5** ..... 25
- FASEA Standard 6** ..... 29
- FASEA Standard 7** ..... 34
- FASEA Standard 8** ..... 38
- FASEA Standard 9** ..... 39
- FASEA Standard 10** ..... 45
- FASEA Standard 11** ..... 47
- FASEA Standard 12** ..... 48
- APPENDIX 1: Considering your client’s financial planning needs..... 50
- APPENDIX 2: Questioning techniques ..... 53
- APPENDIX 3: Trigger events ..... 60

**Disclaimer**

This document was issued in April 2019 and is a point in time statement based on the Financial Planners and Advisers Code of Ethics 2019 Legislative Determination and the accompanying Explanatory Statement. This document does not constitute legal advice. The FPA encourages you to seek your own professional advice on how the FASEA Code of Ethics may apply to you. Examples and tips in this booklet are purely for illustration; they are not exhaustive and are not intended to be binding on the FPA or practitioners. Further guidance may be released by FASEA and may change the illustrations and/or interpretations within this point in time statement.

# Message from the CEO

The Financial Planning Association of Australia (FPA) has believed in the importance of ethics and professionalism within the financial planning profession and beyond, since it was established in 1992. It is the foundation upon which trust is built and the journey towards professionalism was always going to lean heavily on the development of ethical standards.



The FPA welcomes the introduction of the Financial Adviser Standards and Ethics Authority (FASEA) Code of Ethics starting from 1 January 2020, as it will bring all advice providers a step closer to the ethical standards FPA members have maintained since our first Code was introduced almost three decades ago in 1992. Importantly, the FPA Code of Professional Practice is still relevant and sets higher standards specific to the client-financial planner engagement, than the requirements of the FASEA Code.

We appreciate the challenges of meeting the requirements of different ethical obligations, particularly within the complex legislative framework that governs financial advice, so we have produced this publication to help you understand the key differences in the FASEA Code with practical tips on how to meet the new requirements.

One of the most important things to highlight is that adherence to the Code of Ethics is the responsibility of every individual, regardless of the structure of the organisation within which you work. Should an ethical issue arise, you will not be able to defend yourself because the licensee structure permitted or required you to act in any given way. You are ultimately responsible for your own actions so becoming familiar with the Code will be imperative in order to adhere to its requirements.

The introduction of the FASEA Code of Ethics is an opportunity for the entire profession to lift to higher ethical standards, which members of the FPA have always strived to maintain. It is the tide that can lift the entire profession higher.

A handwritten signature in black ink, appearing to read 'Dante De Gori'. The signature is stylized and written over a large, faint circular watermark or background element.

**Dante De Gori CFP®**  
**Chief Executive Officer**  
**FPA**

April 2019

# Introduction

The financial planning profession has undergone significant and continual changes over the past ten years, most notably the introduction of the Future of Advice reforms and the new education and professional standards set by the Financial Adviser Standards and Ethics Authority (FASEA).

The new FASEA Code of Ethics ('FASEA Code' or 'Code') under these reforms commences on 1 January 2020. This means you have the remainder of 2019 to understand the requirements of the new FASEA Code and any new obligations it creates. While it may seem like a long time until the FASEA Code commences, some elements of the Code introduce new requirements that will require you to adapt some of your advice processes and systems in order to comply. It is important you start thinking about the Code now and reviewing your current practices to ensure you can meet the standard from 1 January 2020.

This is an ethical Code. Therefore it is up to you to use your professional and ethical judgement to determine exactly how you will meet the standards of this Code. The key is to demonstrate you have taken all reasonable steps to meet your ethical obligations.

The purpose of this booklet is to help you with this process – to help you understand the requirements of the new Code, particularly the elements that are different to the current obligations you meet under the Corporations Act, TASA Code of Conduct, and FPA Code of Professional Practice. This booklet is not an official legal guidance, rather an FPA member tool suggesting the types of advice practices that may help you meet the new Code requirements.

The role of a Code of Ethics is to set requirements that go further than the legal requirements and expectations of the Regulator. To understand the Code it is helpful to consider the intent of each of its standards. However, the standards cannot be understood in isolation - it is critical to read and understand the conduct and actions FASEA has set in its Explanatory Statement; consider the potential consumer detriment those requirements are trying to address; and how the standards interact with each other.

This booklet considers the provisions in the Corporations Act, FPA Code of Professional Practice (FPA Code), TASA Code, and FASEA Code of Ethics, to identify the differences in the obligations and the elements of the FASEA standards that place new requirements on financial planners. The FPA Code is a helpful comparison point given you must already have a thorough understanding of your ethical duties and the FPA's Code requirements as well as systems and processes to help you to meet your professional obligations.

This booklet incorporates practical tips and tools first introduced in our 2015 member resource *'Taking other steps - Best interest advice in a strategic world'*, updated and expanded to include the FASEA Code requirements. This provides advice solutions to help you understand and put into practice the new requirements.

You already have tools and processes embedded within your advice business, either through your licensee or at a practice level. This booklet aims to complement these and help you meet your obligations as a financial planner as required in the FASEA framework.

## Concerns with the FASEA Code of Ethics

Please note the FPA believes some of the standards and requirements set out in the new FASEA Code of Ethics and Explanatory Statement are unclear as to how FASEA expects these to work in practice, based on the information available at this time.

The FPA has asked FASEA to release formal guidance to clarify the standards, particularly those relating to your best interest duty and the conflicts of interest requirements under this Code. We are also concerned about how the FASEA Code applies to scaled advice. Hence, the information in this booklet may change or be updated if more information is made available by FASEA, ASIC or code monitoring bodies in the future.

This booklet presents tips and tools based on FASEA's final Legislative Determination and Explanatory Statement for the Code of Ethics only, as this is the only information available at this point in time.

# Important information

## DEFINITIONS

---

The FASEA Code includes specific definitions that are different to those in the law. Please note the following expanded definition of 'benefits' (section 4(1) of the new Code):

*'Benefits' includes both monetary and non-monetary benefits, but not any fixed component of remuneration.*

*Note: Variable components of remuneration (for example, performance bonuses) are benefits under this definition.*

*'Principal' of a relevant provider is the financial services licensee who has authorised the provider to provide, on its behalf, personal advice to retail clients.*

*Note: Your employer may be your principal. If you are a financial services licensee, you will not have a principal.*

Under Standard 7 of the Code you may only receive benefits from a third party, other than your principal, where such benefits are expressly permitted by the Corporations Act 2001. This relates to grandfathered commissions and the Life Insurance Framework.

## DOCUMENTING YOUR CLIENT DISCUSSIONS AND ADVICE

---

Clear, thorough and accurate documentation is key to meeting your FASEA Code obligations.

When looking to 'document' your engagement, advice and interactions with your clients, you should seek to demonstrate to a reasonable third party what factors you have taken into account when formulating the terms of your arrangement with your client and in your advice. It should be clear, the reasons for seeking advice, what the advice is looking to achieve, and why a certain course of action has been deemed more favourable than another.

Subject to licensee requirements, consider your file note format. Review your advice processes and systems and assess the pros and cons of leveraging technology to document your interactions with your client. For example, utilising a voice recording / dictaphone, or voice recognition software. When considering options for documentation, keep in mind the dual role of documentation:

- As a communication tool between you and your clients - to improve your client's understanding of your advice so they can clearly see your considerations and recommendations to enable them to make an informed decision about their financial affairs
- To provide evidence of your compliance with your legal and professional obligations

This booklet presents tips on documentation. In this context, the form of the documentation is not defined. The tips highlight the need for clear and accurate documentation.

## CLIENT COMMUNICATION

---

A fundamental intention of the FASEA Code is to improve planner engagement with clients to enhance the advice experience, understanding and financial capability of consumers.

Clear communication with your client and client-friendly documentation is key to proactively eliciting information from your client and ensuring your client has understood your arrangement and your advice. This will help you demonstrate that you have met your ethical obligations under the FASEA Code.

You provide financial advice and assistance to your clients every day. You spend the majority of your time thinking about financial advice, financial products, investment options, and the ins and outs of financial services in great detail. It is a common pitfall to overlook the following considerations that can greatly improve your client's ability to provide free, prior and informed consent.

- Do not assume a level of knowledge of your client
- Start with the basics
- Only use technical terms where necessary
- Avoid using jargon, acronyms or legal compliance driven explanations
- Use language that relates to your client's circumstances in all your interactions and communication with your client
- Separate instructions from explanations:
  - » It is important that you explain issues concerning the advice being provided, however, state the instruction or action first, and then the explanation
- Keep the instructions positive. They are more likely to be read than negative ones
- Use dollars not percentages where possible as they are easier for your client to relate to their own circumstances:
  - » For example, if you invest in XYZ there is a risk you could lose \$10,000
- Consider the financial literacy, understanding and concerns of all the parties affected by your advice in your communications and interactions with your clients
- Consider the medium in which you provide your advice, your clients visual, auditory and kinesthetic learning styles and whether the use of icons, symbols, graphics, audio and video can better help your client understand the advice you are providing.

## STRUCTURE OF THIS BOOKLET

---

This booklet presents:

- Each standard in the FASEA Code of Ethics and the obligations set in the Explanatory Statement
- The provisions of the FPA Code of Professional Practice and TASA Code of Conduct that relate to the new FASEA requirements
- Factual information on the key differences between the three codes, highlighting the elements of each FASEA standard that set new obligations which you must adhere to
- Practical tips and examples that may assist you in meeting these new obligations based on the information known about the FASEA's Code requirements at this time
- Tools that may assist you in meeting the new FASEA standards.

### **Please note**

Throughout this document we have used 'aged care' as an example to illustrate how your advice extends to your client's broader, long-term interests and likely future circumstances. This would equally apply to the funding of any trigger event that may arise for your client or your client's family members, which may impact your client's circumstances. See Appendix 3 for more information about trigger events.

# The FASEA Code of Ethics

## THE VALUES

---

You must always act in a way that demonstrates, realises and promotes the following values.

### **TRUSTWORTHINESS**

Acting to demonstrate, realise and promote the value of trustworthiness requires that you act in good faith in your relationships with other people. Trust is earned by good conduct. It is easily broken by unethical conduct. Trust requires you act with integrity and honesty in all your professional dealings, and these values are interrelated.

Acting ethically, with trustworthiness, promotes trust in the profession of financial advice by consumers, enabling the community to feel confidence in accessing and utilising professional financial services.

### **COMPETENCE**

Acting to demonstrate, realise and promote the value of competence requires you to have regard to the knowledge, skills and experience necessary to perform your professional obligations to each of your clients. It requires you to assess the professional services required by each client with regard to their individual needs, priorities, circumstances and preferences, expressed or implicitly identified as the subject matter of the financial advisory engagement. While it may be possible to supplement your professional competence by accessing the expertise of others, the duty of competence is ultimately personal and cannot be outsourced to others.

### **HONESTY**

Acting to demonstrate, realise and promote the value of honesty requires that you conduct yourself with complete integrity in all your professional dealings with your clients and with all others that you engage with in a professional setting. It requires transparency, frankness and fairness to each of your clients, even where this may cause you personal detriment.

### **FAIRNESS**

Acting to demonstrate, realise and promote the value of fairness requires that you bring professional objectivity to the task of engaging with clients professionally, and when recommending financial products and professional services. It requires you to properly investigate, evaluate and diagnose a client's need for professional services, and to self-reflect on the limits of your professional competency.

### **DILIGENCE**

Acting to demonstrate, realise and promote the value of diligence requires that you perform all professional engagements with due care and skill. It requires you to manage your time and resources to deliver professional services in a timely, efficient and cost effective way to each client.

**It is important that you understand these overarching values of the Code as they explain FASEA's expectations of an ethical professional.**



# FASEA STANDARD 1

YOU MUST ACT IN ACCORDANCE WITH ALL APPLICABLE LAWS, INCLUDING THIS CODE, AND NOT TRY TO AVOID OR CIRCUMVENT THEIR INTENT.

## FASEA Explanatory Statement requirements

This Standard requires, as an ethical duty, that you comply with your legal obligations and not seek to avoid them. This is a minimum ethical obligation.

## Overview of key differences

- **Commonwealth laws** - require you to comply with the law
- **FPA Code** - requires you to provide professional services in accordance with legal, regulatory and the FPA's requirements
- **TASA Code** - requires you to comply with the law focusing on the taxation laws (which include income tax, superannuation and insurance laws) and in relation to the tax (financial) service you provide
- **FASEA Code** - extends your legal obligation to comply with the law, to also include any actions you take to avoid your legal obligations or the intent of the law.

## TIPS

The wording of this standard implies that you must not deliberately or knowingly attempt to avoid or work around the intent of applicable laws. Examples of attempting to avoid the intent of the law include:

- Michael (aged 55) is leaving his current employer and wants to access his superannuation. He engages financial planner Tom and instructs him to help him access his super. Tom is aware that Michael has no intention of retiring and has another job lined up with a new employer. Tom should advise Michael accordingly and should not act in accordance with Michael's instructions
- Whilst there is room to utilise disclaimers in some scenarios, such disclaimers should not be used to excuse you from your requirement to give advice that is in your client's best interest. This would be counter to the intent of the laws permitting the use of disclaimers
- Utilising superannuation to fund insurance may be appropriate for a client. However, the primary purpose of superannuation is to fund retirement, therefore there must be a balance between funding premiums and the intent of the superannuation system which is providing for your client's retirement in the longer term.

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 2: Integrity
- Principle 5: Professionalism

#### Practice Standards

- Practice Standard 7.1 - Members conduct themselves in a professional and ethical manner.

#### Rules

- Application of Practice Standards (pg 9)

#### Client service

- FPA Rule 7.6

### TASA CODE OF CONDUCT

#### Standards

1. You must act honestly and with integrity.
2. You must comply with the taxation laws in the conduct of your personal affairs.
4. You must act lawfully in the best interests of your client.
10. You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.
11. You must not knowingly obstruct the proper administration of the taxation laws.
12. You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax (financial) advice services you provide.

# FASEA STANDARD 2

YOU MUST ACT WITH INTEGRITY AND IN THE BEST INTERESTS OF EACH OF YOUR CLIENTS.

## FASEA Explanatory Statement requirements

This Standard requires, as an ethical duty, that you act with integrity. It also requires you to act in the best interests of each client.

Acting with integrity requires openness, honesty and frankness in all dealings with clients. These qualities underpin the trust that clients should have in you as a professional. It also requires you to keep your promises (explicit and implied) and honour the commitments you or your principal make to your clients.

Each of the duties to act with integrity and in each client's best interests is fundamental.

You act in a client's best interests if what you do - the advice you give, the products and services you recommend - are appropriate to meet the client's objectives, financial situation and needs, taking into account the client's broader, long-term interests and likely future circumstances. The test is, in short: will your advice and recommendations improve the client's financial well-being?

Section 961B of the Act imposes an obligation on persons who provide personal advice to a retail client to act in the best interests of the client in connection with the advice. That section, together with sections 961C, 961D and 961E, have the effect that the person satisfies the section 961B duty if the person:

- Identifies the retail client's objectives, financial situation and needs, as disclosed to the person; and
- Identifies and completes any reasonably apparent gaps in the information; and
- Conducts a reasonable investigation of potential financial products; and
- Bases his or her judgements on the client's relevant circumstances.

The ethical duty in Standard 2 - to act with integrity is a broad ethical obligation. It is based on a more professional relationship between the relevant provider and the client, where the relevant provider has a duty to look more widely at what the client's interests are.

This means that you will need to work out - and, if necessary, help the client to work out - what the client's objectives, financial situation, needs, interests (including long-term interests), current circumstances and likely future circumstances are. To comply with the ethical duty, it will not be enough for you to limit your inquiries to the information provided by the client; you will need to inquire more widely into the client's circumstances.

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 1: Client First
- Principle 2: Integrity
- Principle 4: Fairness Principle
- Principle 5: Professionalism
- Principle 7: Confidentiality

#### Practice Standards

- Practice Standard 1 - Engagement
- Practice Standard 2 - Collecting the client's information
- Practice Standard 3 - Analyse and assess the client's financial status
- Practice Standard 4 - Identify suitable Financial Planning strategies and develop the Financial Planning recommendations
- Practice Standard 5 - Implement the client's Financial Planning recommendations
- Practice Standard 6 - Review the client's situation
- Practice Standard 7.1 - Members conduct themselves in a professional and ethical manner
- Practice Standard 7.4 - Professional judgement
- Practice Standard 7.5 - Conflicts of interest and prioritisation

#### Rules

##### Pre-engagement:

- Rule 1.1

##### Requirement to document terms of engagement:

- Rule 1.7

##### Understanding client circumstances:

- Rule 2.1
- Rule 2.2
- Rule 2.3
- Rule 2.4

You are not relieved of the ethical duty merely because the client does not provide enough information, even when asked.

The ethical duty in Standard 2 to act in the client's best interests is not identical to the duty in section 961B of the Act. Sections 961B(2) to (4) describe a series of steps that a relevant provider may take; if those steps are taken, the relevant provider will have satisfied the "good faith" duty in section 961B(1). This Code does not have any equivalent provisions. So, even if you follow the steps set out in section 961B of the Act, you may still not have complied with the duty under the Code to act in the client's best interests.

Other aspects of the duty to act in the client's best interest include:

- You must keep confidential all information about the client that you are given or obtain in connection with you or your principal acting for the client. You must not use or disclose this information for any purpose other than advising the client unless the client has specifically agreed or the law requires you to;
- You must treat all clients in a respectful and professional way;
- You must treat all clients fairly, as between themselves. You should provide professional services to all clients, managing your business so that each client has a fair share of your attention, skills and time.

You should take into account your client's express wishes but these do not override your duty to give advice that is in the client's best interests.

### Overview of key differences

This best interest duty goes further than ASIC requirements and the safe harbour steps in s961B of the Corporations Act. Even if you comply with the 'safe harbour' steps in s961B, you may still not have complied with the duty under this Code to act in your client's best interests.

Based on the information available in the Code and Explanatory Statement, it is our understanding that this Code:

- Creates a requirement for you to proactively elicit information from your client about, and to consider, the broader, long-term needs and likely future circumstances of your client
- Requires you to keep your promises (explicit and implied) and honour the commitments you or your principal make to your clients
- Obliges you to act with integrity and apply this to your best interest duty
- Introduces a test of client 'financial well-being' to show that your advice is in your client's best interest
- Includes the confidentiality of client information in your best interest obligations

## FPA CODE OF PROFESSIONAL PRACTICE

Analyse and assess client circumstances:

- Rule 3.1
- Rule 3.2
- Rule 3.3

Identifying suitable strategies:

- Rule 4.1
- Rule 4.2
- Rule 4.4

Development of suitable financial planning recommendations:

- Rule 4.5

Identifying products and services for implementation:

- Rule 4.6
- Rule 4.7
- Rule 4.9
- Rule 4.10

Document administration and confidentiality:

- Rule 7.23
- Rule 7.25

## TASA CODE OF CONDUCT

### Standards

1. You must act honestly and with integrity
4. You must act lawfully in the best interests of your client.
6. Unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission.

**Overview of key differences (continued)**

- Obliges you to manage your business so that each client has a fair share of your attention, skills and time

Standard 6 also includes requirements for your best interest duty (see Standard 6 for more information). Standard 6 requires you to consider:

- The impact of your advice on your client and on other family members of your client
- Whether your product recommendations should be “ethical” or “responsible”
- Likely future trigger events such as the need for your client or your client’s family members to move into aged care accommodation in the near future

It is currently unclear as to if and in what circumstances Standard 6 extends your best interest obligations to your client’s family members if such a family member(s) is also a client of yours or your Principal (see Standard 6 for more information).

**TIPS**

*Please be aware some elements of the best interest requirements in this Code are currently unclear. The FPA is seeking clarity from FASEA on the best interest requirements and the practical implementation of some elements of Standards 2, 5 and 6.*

*Based on the information currently available, we believe the following tips will help you meet this standard.*

**Broader long-term interests and likely future circumstances**

To meet the FASEA Code best interest duty obligations you must take into account your client’s broader, long-term interests and likely future circumstances, which may include trigger events like the potential aged care needs of your client and their family members, assistance given to children to purchase a home, or assistance for grandchildren:

- Review your advice engagement and fact finding processes to explicitly require you to ask your client about specific subjects to ensure that you are proactively seeking and eliciting information from your client to identify their broader interests and possible future circumstances.
- Appendix 1 and 2 provide example questions to ask your client to help you work out with your client the broader, long-term interests and potential future circumstances they may have. Consider how these examples questions may be helpful in your processes.
  - » Encourage your client to think of potential longer-term aspects that will impact their financial well-being, rather than relying on the information your client provides you
  - » Ask your client, and ensure your client thinks about the potential future needs of their family members, such as their aged care or debt assistance needs. (Appendix 3 - Trigger Events may be helpful for this purpose.) The needs of family members may have a financial impact on your client that you will need to consider in your advice strategies and the financial structures and products you recommend for your client, particularly in relation to the accessibility of funds.
- Clearly document your discussions with your client, the specific enquiries you have made regarding the longer-term needs of your client and your client’s family members.
  - » Use this discussion as the basis of the services you agree to provide your client and include in your letter of engagement
- Clearly document how the long-term needs of your client and their family members will be met if your client acts on your advice. For example (using aged care as an example):

- » Does your client or your client's family members have health, mobility or other concerns that may require them to move into an aged care facility in the future? Has your client discussed the potential aged care needs (your client's and your client's family members) with an appropriate medical practitioner? If so, how long in the future would the medical practitioner expect aged care to be needed?
- » If your client or your client's family members are expected to have aged care needs in the future, how will these needs be met financially? If these needs will be met by financial arrangements outside your advice, clearly specify the alternative financial arrangements your client has set aside for aged care needs in your documentation
- » If aged care needs are to be financed by your client, detail how the liquidity of the financial structures and products recommended in your advice enable your client to access the necessary funds for future aged care, versus other products and structures with restricted access to capital for example
- » Document your consideration of the long-term needs of your client and their family members (for example, in relation to aged care) in your SOA
- » Consider other trigger events that may be impacted by your client acting on your advice. Document your discussion with your client and your consideration in your SOA (see Appendix 3 for Trigger Events).

## Integrity

You must be open, honest and frank in all dealings with your client.

This standard requires you to look more widely at what your client's interests are.

- You must be proactive in your enquiries about your client's objectives, financial situation, needs, interests and circumstances are, and what they are likely to be in the future
- Review your advice engagement and fact finding processes to explicitly require you to ask your client about specific subject matter relevant to common short, medium and long term financial planning needs
- See Appendix 1 and 2 for a helpful list of questions for you to consider to ask your client in relation to their potential short, medium and long-term cash flow, investment, debt management, risk management, structures, and estate planning needs

You are not relieved of the ethical duty merely because your client does not provide enough information, even when asked. Therefore, it is important to review your processes and client fact find to help you identify:

- The gaps in the information your client has provided – what is not being said or disclosed by your client
- The potential reasons the requested information is not being provided by your client
- The issues this missing information may create for your client and your ability to provide advice in your client's best interest
- The likely risks and consequences of not addressing these potential issues

It may be necessary to terminate the engagement if your client has not provided enough information

Common reasons for gaps in information provided by clients include:

- Inaccurate cashflow and budgeting / expenditure records
- Unrealistic goals prioritised over financial needs
- A lack of understanding of the trade-offs in relation to financial decisions, or a conscious decision to accept the trade-offs of prioritising goals over financial needs
- Your client's tolerance to risk
- Possible estate issues
- Your client's financial experience, literacy and capability

Ensure your fact find process allows you to identify and capture the reasons for gaps in the information provided by your client. Use this to elicit such information and clearly document.

Acting with integrity requires you to take all reasonable steps to obtain information that makes up your client's circumstances. Under Standard 6 of this Code, your client's circumstances includes giving consideration to the broader, long-term interests and likely future circumstances, for example trigger events such as children's education and the aged care needs of your client and their family members.

- Demonstrate you have acted with integrity by documenting that you have made these enquiries, including making appropriate enquiries of a client if they refuse to provide information necessary for you to be able to appropriately consider your client's circumstances including giving consideration to the broader, long-term interests and likely future circumstances, including possible trigger events such as the aged care needs of your client and their family members
- Document that you have explained to your client the potential implications (positive and negative) of not supplying such information
- In the instance that the information is critical to the advice, if your client does not provide the information you should decline to give the advice.

### **Confidentiality**

- Prior to providing advice, and in your SOA, clearly and thoroughly disclose to your client those parties (including third parties) involved in the process of providing advice and implementing your advice recommendations
- Gaining your client's consent to provide information about your client to identified third parties, as necessary, is a specific requirement under the TASA Code of Conduct
  - » Review your privacy policy to ensure it details appropriate processes and client approvals for disclosing client information to other parties, including third parties involved in the provision of advice to your client.

### **Treat all clients fairly**

This standard requires you to ensure that each client has a fair share of your attention, skills and time.

Ensuring you have adequate business policies and planning procedures to address these requirements is fundamental to meeting this standard.

Review your business planning and policies to consider and incorporate your capacity to serve your clients. For example, consider:

- The type, needs and size of your client base
  - » Can these be split into sub-categories to help you determine your capacity to serve their needs?
- The number of financial planners servicing your client base
  - » Are they part-time or full-time?
  - » Do they have specialisations limiting the type of advice they can provide? If so, does this require other financial planners or specialists to fill this gap?
- The number of in-house and external support services assisting in the provision of your advice services
  - » If external, do they have other clients reducing their capacity to provide services to you that impact on your clients?

(Also consider the tips on the 'value of your advice' under Standard 7.)

### Keep your promises (explicit and implied)

- Open and honest communication with your client is key to ensuring a consistent understanding of the promises and commitments made to your client
- Review your processes to enable open communication and the clear documentation of your discussions with your client
  - » At the end of each interaction with your client, seek agreement from your client by listing and stating to your client the promises and commitments you will deliver
  - » Ask your client if they believe you had implied any additional promises or commitments. Resolve any differences in understanding
  - » Similarly, ask about your client's understanding of any promises they believe your licensee may have made
  - » Provide a copy of the agreed promises to your client

### Treat your clients in a respectful and professional way

- You must treat all clients in a respectful and professional way

### Scaled advice

*It is currently unclear how the best interest requirements in this Code apply in relation to scaled advice. The FPA is seeking clarity from FASEA on the practical implementation of this element of Standards 2, 5 and 6.*

*Based on the information currently available, we believe the following tips will help you meet this standard when providing scaled advice:*

- You should take into account your client's express wishes, including in relation to scaling your advice, but these do not override your duty to give advice that is in your client's best interests
- You cannot follow your client's wishes if it is not in your client's best interest to do so. This includes consideration of your client's broader, long-term interests and likely future circumstances, for example trigger events such as a child's wedding or the aged care needs of your client and their family members
- This is in line with Rule 2.4 of the FPA Code of Practice:
  - » *Note: Upon investigation of the client's circumstances, integrity may require the Member to discontinue a limited scope engagement and instead offer comprehensive financial planning services to the client. Should the client decline such further services, professional integrity may require the Member to discontinue the engagement.*
- Planners should retain evidence of the advice to clients they determine they are not able to assist under these circumstances

See Standard 6 for more tips and information on scaling advice under this Code.

### Client's financial well-being

The best interest test under this Code is whether your advice and recommendations improve your client's financial well-being.

Improving your client's financial well-being is not a measure based on the lowest priced product.

In line with ASIC's requirement to put your client in a 'better position', and the standards of this Code, you should consider the aspects of your client's broader, long term needs and likely future circumstances, and the impact of your advice on your client and on other family members of your client (Standard 6).

- Detail the position your client would be in if they do not follow your advice:
  - » Would your client be able to meet their short, medium and long-term needs and goals by continuing their current action?
  - » If not, state why not (e.g. too high risk; no savings strategy; poor liquidity of assets)
  - » What is needed to put them on track?
- Consider your client's broader interests and circumstances, including your client's tolerance for risk and preferences:
  - » Does your client prefer to sacrifice investment return for lower risk?
  - » Is your client price sensitive on products?
  - » Does your client prefer certain conditions or services in a product such as quality online services?
  - » Capture this information in your documentation
- Detail the impact of your advice on:
  - » Your client
  - » Other family members of your client
- Clearly document in your SOA your assessment and consideration of your client's current strategy (or approach to managing their finances) against your clients goals, objectives and needs over the short, medium and long-term. Include your consideration of your client's broader long-term interests and likely future needs, for example trigger events such as care of a grandchild or the aged care needs of your client and their family members.

Client education and financial capability are strong indicators of financial well-being.

- Explain and clearly document if and how your advice and interactions with your client have:
  - » Improved your client's understanding of their financial position
  - » Improved your client's ability to manage their finances, particularly in relation to cash flow, budgeting, and planning for their future needs
  - » Aligned their financial position with their appetite for risk
  - » Increased their confidence to save, spend, donate or invest their money
- This could require documenting conversations with your client that demonstrate the above improvements in your client's understanding:
  - » For example, have the questions your client asks increased in the level of sophistication since you commenced your engagement with your client? This could demonstrate an improved level of understanding of their financial affairs and enhanced financial literacy.

### **Documentation**

To clearly show your understanding of your client's circumstances, including their 'broader, long-term needs and likely circumstances', your consideration of likely trigger events such as the aged care needs of your client and their family members, include in your SOA:

- Details of your client's current circumstances:
  - » Current income
  - » Financial position - e.g. debt, expenditure
  - » Insurances
  - » Wills and Powers of Attorney
  - » Discharge / resignation / retirement entitlements



- Details of your client's broader, long-term needs and likely circumstances:
  - » Income required in retirement if applicable
  - » Retirement lifestyle aspirations
  - » Trigger events such as aged care needs of your client and those of family members, and anticipated timeframes
  - » Additional financial arrangements ear-marked to finance such costs (e.g. family member's pension set up to fund their aged care needs)
  - » Health considerations and potential medical needs of your client
  - » Financial needs of your client's dependents
  - » Potential life events that may occur in the future such as a child's wedding or first home. (See Appendix 3 for a list of aged related trigger events)
  - » Answers to the example questions in Appendix 1 and 2
- Details of the broader long-term needs and likely circumstances of your client's family members:
  - » Relationship between your client and the family member, and any dependency
  - » Aged care needs of your client's family members including anticipated timeframe
  - » Financial arrangements considered for funding aged care needs of your client's family members
  - » Other identified trigger events likely to impact your advice and any potential financial arrangements for these needs
  - » Any known health care needs of your client's family members, where applicable (for example, where a medical condition is already known to your client)
  - » Answers to the example questions in Appendix 1 and 2
- Any questions you asked your client in relation to their specific broader, long-term needs and potential future circumstances (such as those listed above), and those of your client's family members, to elicit information and encourage your client to consider the financial implications of such needs.
- How any potential future needs and circumstances of your client and their family members you have identified with your client will be met financially, and impact your client's financial goals and the advice you provide
  - » for example, funding aged care needs and other life trigger events may require consideration of product recommendations that provide liquidity of assets
- A list of all the relevant information provided by your client
- Behavioural information you have derived from discussions with your client, such as investment preferences, appetite for risk, desired product features, financial capability, attitudes to managing their finances
- Your analysis of your client's needs detailing your client's short, medium and long-term goals
- Environmental factors which may influence your advice – for example, changes in superannuation tax rules
- Your client's ability to tolerate risk
- Other client information gained through your enquiries
- Client information you believe to be inaccurate or incomplete

You should clearly document your client's broader, long-term needs and likely future circumstances in your SOA to:

- Show your client your understanding of their circumstances, and
- Enable you to clearly demonstrate how your advice considerations, strategy and recommendations are based on your client's circumstances (current and likely future), including consideration of trigger events such as the aged care needs of your client and their family member(s)

See Standards 5 and 6 for more information and tips in relation to your best interest obligations under this Code.

**Financial literacy and behavioural considerations**

- Ask your client if there are any environmental, social or ethical considerations that are important to them
- Consider how your client makes financial decisions and their attitude to money

# FASEA STANDARD 3

YOU MUST NOT ADVISE, REFER OR ACT IN ANY OTHER MANNER WHERE YOU HAVE A CONFLICT OF INTEREST OR DUTY.

## FASEA Explanatory Statement requirements

The primary ethical duty in this Standard is that, if you have a conflict of interest or duty, you must disclose the conflict to the client and you must not act. If the client wishes, you may refer the client to another relevant provider if neither you nor your principal will receive any benefits from the referral.

You will not breach Standard 3 merely because you recommend to a client financial products offered by your employer or principal. However, you will breach Standard 3 if a variable component of your remuneration depends on the amount or volume you recommend of those products, because your interests will or may conflict with your duty to act in the client's best interests.

Disclosing to the client any advantages you would receive, and obtaining your client's consent (see, for example, Standard 7), will not relieve you of the duty to comply with this Standard.

Also see examples on page 6 of the Explanatory Statement.

## Overview of key differences

This standard differs to the conflict of interest requirements in law.

- **Corporations Act** - requires you to disclose your conflicts of interest (and those of related third parties), gain client consent, and prioritise your client's interests above your own and those of third parties.
- **FPA Code** - requires you to identify, avoid, manage, disclose and gain client consent in relation to conflicts of interest. Your client's interest must always be prioritised ahead your interest and those of third parties. You must provide professional services under the 'client first' principle.
- **TASA Code** - requires you to:
  - » Have adequate arrangements for managing conflicts of interest
  - » Conflicts which cannot be managed by a combination of internal controls and disclosures, should be avoided or you should refrain from providing services in those circumstances
  - » Not to promote your personal interest in circumstances in which there is a conflict (or likely conflict) between your personal interests and those of your clients
  - » Not to use your position to make a personal profit or gain unless authorised to do so by your client

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 4: Fairness

#### Practice Standards

- Practice Standard 1.2 - Determine whether the member can meet the client's needs
- Practice Standard 1.3 - Define the scope of the engagement
- Practice Standard 4.4 - Present the financial planning recommendations to the client
- Practice Standard 5.1 - Agree on implementation responsibilities
- Practice Standard 7 - Professional obligations
- Practice Standard 7.5 - Conflicts of interest and prioritisation

#### Rules

##### Pre-engagement:

- Rule 1.1

##### Requirement to document terms of engagement:

- Rule 1.8

##### Agreed Financial Planning recommendations or directions to implement

- Rule 5.2

##### Conflicts of Interest - Continuous disclosure

- Rule 7.10
- Rule 7.11
- Rule 7.12

### TASA CODE OF CONDUCT

#### Standards

4. You must act lawfully in the best interests of your client.
5. You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent.

**Overview of key differences (continued)**

- **FASEA Code** - the conflicts of interests requirements in this Standard are currently unclear. The FPA is seeking clarity from FASEA on the types of conflicts that can be effectively managed under Standard 3 versus those conflicts that should be avoided or require you not to act for your client. It is clear that Standard 3:
  - » Prohibits you from providing advice or acting for your client if you have a conflict of interest where a variable component of your remuneration depends on the amount or volume you recommend in relation to products. For example, volume payments.
  - » Other prohibited conflicts include referral fees if referring a client to a different service provider for a fee; and a conflict in your duty between one client and another client.
  - » Standard 3 focuses on the conflicts of interest you or your principal may have with your client.

**TIPS**

*Please be aware some elements of the conflicts of interest requirements in this Code are currently unclear. The FPA is seeking clarity from FASEA on the types of conflicts that can be managed under Standard 3 versus those conflicts that should be avoided or require you not to act for your client.*

*Based on the information currently available, we believe the following tips will help you meet this standard.*

**Identify your conflicts of interest**

This standard is very broad and should cover all conflicts of interest. That is, it is not limited to conflicts in relation to remuneration.

- Review your documented policies and procedures in relation to conflicts
- Businesses should think about common conflicts that are highly likely to arise and have documented processes and standards to address these

Identify, list and include in your SOA, any conflicts of interests you and your principal may have with your client's interests:

- Who are the parties involved in the conflict? For example:
  - » Is there a conflict between your duty to one client and your duty to another client?
  - » Is there a conflict between the type of advice you are competent in or authorised for versus the advice services / subject matter your client needs?
  - » Is there a conflict between your licensee's policies and the advice that is in your client's best interest?
- A fee for service model can reduce the potential for real or perceived conflicts around remuneration

As each client's circumstances, needs and financial situation is unique, the conflicts you may have may also be unique to that client. Remember to review your identified conflicts for each client.

**Managing and disclosing conflicts of interest**

*It is currently unclear under this standard if you are permitted to manage and disclose to your client your conflicts of interest, and still provide advice to your client. The FPA is seeking clarification from FASEA in this regard.*

**Examples of conflicts that would not meet this standard**

Examples of common conflicts that can arise in the provision of advice that would not meet this standard include:

- If the type of advice you provide, or are authorised to provide, prevents you from developing relevant and suitable strategies and recommendations for your client, under Standard 3 you should not act for your client
- If your ability to evaluate or recommend products, such as your client's existing product or other products suitable for your client, is restricted by your licensee or employer, under Standard 3 you should not act for your client
- If your client is a couple, who decide to separate, under Standard 3 you should not act for both parties
- If your licensee insists your client be changed to the licensee's preferred platform for commercial reasons, under Standard 3 you should not act for your client
- You must provide a level of service commensurate with your client's needs and must not 'over-service' the client to generate more remuneration for you or your principal. For example:
  - » Avoid recommending an unduly complex strategy if your client is unlikely to seek ongoing advice
  - » Consider recommending strategic advice solutions relevant to the client's situation, such as advice on debt reduction, estate planning and / or Centrelink benefits, where appropriate, even if this means the client is less likely to need financial advice in the future.

# FASEA STANDARD 4

YOU MAY ACT FOR A CLIENT ONLY WITH THE CLIENT'S FREE, PRIOR AND INFORMED CONSENT. IF REQUIRED IN THE CASE OF AN EXISTING CLIENT, THE CONSENT SHOULD BE OBTAINED AS SOON AS PRACTICABLE AFTER THIS CODE COMMENCES.

## FASEA Explanatory Statement requirements

This standard requires that you only act for a client with the client's free, prior and informed consent.

This means that, before you start to act, you must have explained to your client, clearly and simply:

- what services will be provided; and
- the terms on which they will be provided; and
- the records that will be made of the services, and the privacy and confidentiality arrangements applicable to them.

Existing clients' consent must be obtained as soon as practicable after the Code commences. Section 2 of the Code states when it commences (1 January 2020).

"Informed" consent requires that the client understands and agrees to the arrangements. You will need to be satisfied of this, and have reasonable grounds to be satisfied.

## Overview of key differences

- **Commonwealth laws:**
  - » You must gain your client's informed consent to implement your advice recommendations
  - » You are legally entitled to charge fees and costs for your services
- **TASA Code** - you must gain informed consent to share client information with third parties in relation to the provision of your advice (for example, licensee, paraplanners, product providers)
- **FPA Code** - client informed consent is required:
  - » For any limitations to the scope of the advice engagement
  - » To vary the scope of the engagement due to insufficient client information
  - » Before implementing any financial planning recommendations
  - » For the services to be provided before charging your client for a service
  - » To profit from the client engagement

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 5: Professionalism
- Principle 8: Diligence

#### Practice Standards

- Practice Standard 1 - Engagement
- Practice Standard 1.3 - Define the scope of the engagement
- Practice Standard 5.1 - Agree on implementation responsibilities

#### Rules

Requirement to document terms of engagement

- Rule 1.7

Agreed financial planning recommendations or directions to implement

- Rule 5.2

### TASA CODE OF CONDUCT

#### Standards

4. You must act lawfully in the best interests of your client.
13. You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.

**Overview of key differences (continued.)**

- **FASEA Code:**
  - » You may only act for a client with the client's free, prior and informed consent
  - » This is a retrospective requirement that requires you to obtain the consent of your existing clients
  - » Requires you to have reasonable grounds that your client understands and agrees to the arrangements.

**TIPS****Services to be provided**

Determining the services to be provided should not be limited to what your client tells you they want and need. Use your professional judgement to determine if the services or scale of the advice your client is seeking is in their best interest.

Identify the services your client needs and are in their best interest by clearly identifying:

- Your client's short, medium and long-term needs for:
  - » Cash flow
  - » Debt management
  - » Investment
  - » Risk management
  - » Estate planning
  - » Structures
  - » See Appendix 2 for example questions relating to these needs
- This should include your client's broader, long-term interests and likely future circumstances, as required under Standards 2 and 6 of this Code
- Your client's personal strengths / weaknesses, capabilities and preferences in the way your client manages money
- What your client does not understand about their current situation and future financial needs
- How your client responds to risk and loss of capital
- Whether your client is comfortable using financial tools and technology
- Your client's level of financial literacy and understanding of their financial position
- How your client sets and plans their financial goals
- If it is in your client's best interest to be provided with advice on difficult or challenging issues, do not scope such issue out of your advice. This would be in breach of Standard 2 – best interest, and Standard 3 – conflicts of interest.
  - » If the issue is outside your competence area, under the Competence value of this Code you may access the expertise of other competent professionals. Alternatively, you may refer your client to a professional with the necessary competencies
- Detail your services that are in your client's best interest and document this in your letter of engagement and SOA.

Document your discussion with your client to provide evidence on reasonable grounds that your client understands your advice arrangement.

The tips under Standard 7 in relation to the value of your services may also be helpful.

### Terms of your advice services and arrangement

- Discuss with your client:
  - » The advice and services to be provided to your client based on your client's best interests (as identified under 'services to be provided' tips)
  - » The parties involved in the provision of your advice and services
  - » The cost of the advice and service to be provided
  - » The timeframe for providing the advice
- Ask questions of your client to ensure your client understands your proposed arrangement. (See tips for 'reasonable grounds' under this standard for more information.)
- Document the terms of the arrangement in your client engagement letter
- Do not provide advice or act for your client prior to receiving your engagement letter signed by your client

### Advice records

- Clearly explain to your client the records that will be made of your services, and the privacy and confidentiality arrangements applicable to them
  - » Consider the forms of documentation you may use during your client engagement. For example, if you usually use a dictaphone during client meetings, ask your client if they are comfortable for this to occur.
  - » Advise your client of other parties who will require access to your client's information in their capacity of assisting you with your advice
  - » The TASA Code of Conduct requires you to gain client consent to share client information with related parties. For example:
    - Licensees
    - Supervisors
    - Paraplanners
    - Suppliers such as other professionals involved in the provision of the advice
    - Software providers
    - Product providers
    - Provisional financial planners

### Reasonable grounds to be satisfied

The purpose of a reasonable grounds test is to show that ticking a box that your client understands the terms and services under your advice arrangement is not sufficient or acceptable.

- You must demonstrate that you have engaged with your client and discussed with your client:
  - » What services will be provided; and
  - » The terms on which they will be provided; and
  - » The records that will be made of the services, and the privacy and confidentiality arrangements applicable to them
- Document information and evidence to show the substance of the interaction with your client where you explained your advice arrangement, including the services to be provided, costs and parties involved, and that your client has understood
- Include examples that demonstrate your client's understanding. For example, was your client able to follow your discussion? Was your client able to repeat or summarise the proposed arrangements?

This is a subjective test that will change for each client so documenting evidence of the substance of your interaction with your client is vital.



# FASEA STANDARD 5

ALL ADVICE AND FINANCIAL PRODUCT RECOMMENDATIONS THAT YOU GIVE TO A CLIENT MUST BE IN THE BEST INTERESTS OF THE CLIENT AND APPROPRIATE TO THE CLIENT'S INDIVIDUAL CIRCUMSTANCES.

YOU MUST BE SATISFIED THAT THE CLIENT UNDERSTANDS YOUR ADVICE, AND THE BENEFITS, COSTS AND RISKS OF THE FINANCIAL PRODUCTS THAT YOU RECOMMEND, AND YOU MUST HAVE REASONABLE GROUNDS TO BE SATISFIED.

## FASEA Explanatory Statement requirements

This standard elaborates on the “best interest of the client” duty in Standard 2 and also ensures that you satisfy yourself that the client understands your advice and the products and services you recommend. This requires detailed engagement with and assistance to the client.

The discussion of Standard 2 above addresses when advice and recommendations will be in the “best interest of the client”. This Standard emphasises the need for advice and recommendations to be appropriate to the client's individual circumstances (which will require you to take into account the client's broader, long-term interests and the client's likely future circumstances).

This Standard also emphasises the importance of the client properly understanding the advice and recommendations you give, and their implications. It requires you to be satisfied that the client understands:

- the advice and recommendations you give; and
- the benefits of the recommended products; and
- the costs involved in acquiring, holding and disposing of the recommended products; and
- the risks involved in acquiring, holding and disposing of the products, and how you recommend they be managed.

This means that your advice must be clear and simple.

This Standard expressly requires that you have reasonable grounds to be satisfied.

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 1: Client First
- Principle 3: Objectivity
- Principle 4: Fairness
- Principle 5: Professionalism
- Principle 8: Diligence

#### Practice Standards

- Practice Standard 1 – Engagement
- Practice Standard 2 – Collecting the client's information
- Practice Standard 3 – Analyse and assess the client's situation
- Practice Standard 4 – Identify suitable financial planning strategies and develop the financial planning recommendations
- Practice Standard 5.1 – Implement the client's financial planning recommendations
- Practice Standard 7.4 – Professional judgement
- Practice Standard 7.5 – Conflicts of interest and prioritisation

#### Rules

##### Pre-engagement:

- Rule 1.1

##### Requirement to document terms of engagement:

- Rule 1.7
- Rule 1.8

##### Understanding client circumstances

- Rule 2.1
- Rule 2.2
- Rule 2.3

##### Analyse and assess client circumstances

- Rule 3.1
- Rule 3.2
- Rule 3.3

### Overview of key differences

- **Corporations Act** – your advice must be: in your client's best interest and appropriate for your client's circumstances; and be clear, concise and effective
- **FPA Code** - your advice strategies and recommendations must be suitable to your client's personal circumstances and confirmed objectives, needs and priorities
- **TASA Code** - you must act lawfully in the best interests of your client
- **FASEA Code:**
  - » Your legal obligation to ensure your advice and recommendations are in the best interest of and appropriate to your client's individual circumstances, is expanded to require you to take into account your client's broader, long-term interests and the client's likely future circumstances
  - » This includes the specific requirement in Standard 6 to consider trigger events and possible future circumstances such as the aged care needs of your client and your client's family members
  - » Requires you to have reasonable grounds to be satisfied that your client understands your advice and recommendations, its benefits, costs and risks
  - » Your advice must be clear and simple

## TIPS

*Please be aware some elements of the best interest requirements in this Code are currently unclear. The FPA is seeking clarity from FASEA on the best interest requirements and the practical implementation of some elements of Standards 2, 5 and 6.*

*Based on the information currently available, we believe the following tips will help you meet this standard:*

(See Standards 2 and 6 for further information and tips on meeting your best interest obligations under this Code.)

### Appropriate advice

- The key to demonstrating that your advice is appropriate for your client is clearly documenting your client's current circumstances as well as their likely future needs:
  - » As detailed in the tips for Standard 2, clearly document your client's current circumstances, broader, long-term needs and likely future circumstances
  - » Detail how your advice will enable your client to meet their likely future needs, and
  - » Detail the position your client would be in if they do not follow your advice

## FPA CODE OF PROFESSIONAL PRACTICE

### Identifying suitable strategies

- Rule 4.1
- Rule 4.2
- Rule 4.4

### Development of suitable financial planning recommendations

- Rule 4.5

### Identifying products and services for implementation

- Rule 4.6
- Rule 4.7
- Rule 4.9
- Rule 4.10

### Document administration and confidentiality

- Rule 7.23
- Rule 7.25

### Client Service

- Rule 7.8

## TASA CODE OF CONDUCT

### Standards

1. You must act honestly and with integrity
4. You must act lawfully in the best interests of your client.

- Map your advice back to your client's needs, including their broader long-term interests and likely future circumstances:
  - » Would your client be able to meet their short, medium and long-term needs and goals by continuing their current action?
  - » If not, state why not (for example, too high risk, no savings strategy)
  - » What is needed to put them on track to meeting their short, medium and long-term needs, including their broader interests and likely future circumstances?
  - » If the current strategy does meet their needs, and you recommend an alternative strategy, you must clearly document your reasons
- Clearly document in your SOA your assessment and consideration of your client's current action against your clients goals, objectives needs, and circumstances over the short, medium and long-term
- Ensure you include the broader, long-term interests and likely future needs of your client and your client's family members, including in relation to trigger events such as aged care (see Standards 2 and 6 for details)

### **Relevant client circumstances for financial product advice**

Where advice relates to financial products with an investment component, your client's relevant circumstances may include your client's:

- Need for regular income (for example, retirement income)
- Need for capital growth
- Desire to minimise fees and costs
- Tolerance for the risk of capital loss
- Tolerance for the risk that the advice (if followed) will not produce the expected benefits. For example, in the context of retirement advice, this may include considering longevity risk, market risk and inflation risk
- Existing investment portfolio
- Existing debts
- Investment horizon
- Need to be able to readily 'cash in' the investment - this may be particularly important in relation to trigger events such as the need for aged care for your client and their family members
- Capacity to service any loan used to acquire a financial product, including the client's ability to respond to any margin call or make good any losses sustained while investing in leveraged products
- Tax position, social security entitlements, family commitments, employment security and expected retirement age
- Preferences around ethical or socially responsible investments.

These circumstances should be considered in relation to your client's broader, long-term interests and potential future needs, such as the aged care needs of your client and their family members, in your advice and particularly when making product recommendations.

### **Clear and simple advice**

See tips on client communication at the beginning of this booklet. These tips will help you ensure your interactions with your client, and your advice documentation, are clear and simple.

- Executive summaries, icons, symbols, graphics, audio, video, flow charts and diagrams all written in plain English are a great way to communicate how your advice will be of benefit to your client
- Linking the advice back to the goals of the client and clearly stating the result will help your client to easily understand your advice

### **Reasonable grounds to be satisfied**

The purpose of a reasonable grounds test is to show that ticking a box that your client understands your advice is not sufficient or acceptable.

- You must demonstrate that you have engaged with your client and discussed with your client:
  - » Your advice and recommendations, how these are appropriate for your client's circumstances, broader, long-term interests and likely future needs
  - » The benefits, costs and risks of your advice
- Document information and evidence to show the substance of the interaction with your client where you explained your advice and recommendations, including benefits, costs and risks, and that your client has understood
- Include examples that demonstrate your client's understanding. For example, consider:
  - » Was your client able to follow your discussion?
  - » Was your client able to repeat or summarise your advice, the costs, benefits and risks accurately and confidently?
  - » Consider using (subtle) testing questions with your client on the costs, benefits, and risks of your advice
  - » Ask your client if they clearly understand your advice (though this on its own may not be sufficient)

This is a subjective test that will change for each client so documenting evidence of the substance of your interaction with your client is vital.

- The level of engagement and communication you have with your client will help you ensure your client truly understands your advice and recommendations, costs, benefits and risks, and will assist in demonstrating reasonable grounds under this standard

Use your professional judgement as to whether your client truly understands your advice and recommendations including the costs, benefits and risks.

# FASEA STANDARD 6

YOU MUST TAKE INTO ACCOUNT THE BROAD EFFECTS ARISING FROM THE CLIENT ACTING ON YOUR ADVICE AND ACTIVELY CONSIDER THE CLIENT'S BROADER, LONG-TERM INTERESTS AND LIKELY CIRCUMSTANCES.

## FASEA Explanatory Statement requirements

This standard expressly requires you to take into account the broad effects of the client acting on your advice. These effects are not limited to effects on the client. For example, your advice may have implications, not just for the client personally, but also for other family members of the client. These will need to be taken into account, although you will not have a duty to act in the best interest of the family members if they are not clients of you or your principal. You will also need to consider whether your product recommendations should be limited to "ethical" or "responsible" investments.

This standard expressly requires you to take into account the broader, long-term interests and likely circumstances of your client, (reflecting section 961B of the Act). For example, any potential need for the client or one of the client's family members to move into aged care accommodation in the near future would need to be factored into any financial advice you give the client.

## Overview of key differences

- **Corporations Act** - the best interest obligations requires you to consider of all aspects of the impact of the advice. For example, tax or social security consequences.
- **FPA Code** - you must:
  - » Identify and assess your client's objectives, needs and priorities
  - » Consider the likely impact of your recommendation(s) on your client's ability to meet his or her objectives
  - » Strategies and recommendations must be suitable for your client's objectives, needs and goals
- **TASA Code** - you must take reasonable care in ascertaining your client's state of affairs.

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 5: Professionalism
- Principle 6: Competence
- Principle 8: Diligence

#### Practice Standards

- Practice Standard 1.3 - Define the scope of the engagement
- Practice Standard 2.2 - Collect quantitative information and documents
- Practice Standard 2.3 - Collect qualitative information

#### Rules

##### Pre-engagement:

- Rule 1.1

##### Understanding client circumstances

- Rule 2.1
- Rule 2.2
- Rule 2.3

##### Analyse and assess client circumstances

- Rule 3.1
- Rule 3.2
- Rule 3.3

##### Identifying suitable strategies

- Rule 4.1
- Rule 4.2
- Rule 4.4

##### Development of suitable financial planning recommendations

- Rule 4.5

**Overview of key differences (continued)**

- **FASEA Code** - extends your obligations to:
  - » Consider the broad effects of your client acting on your advice, on your client and their family members
  - » In developing your advice, you must take into account the broader long-term interest and likely future circumstance of your client
  - » For example you must consider likely trigger events such as the aged care needs of your client and their family members

The intent of this standard is to ensure you proactively seek and elicit information from your client, and encourage your client to think of potential longer-term trigger events and aspects that will impact their financial well-being, rather than relying on the information your client provides you.

**TIPS**

*It is currently unclear how some elements of the best interest requirements in this Code will apply in practice. The FPA is seeking clarity from FASEA on the practical implementation of Standards 2, 5 and 6.*

*Based on the information currently available, we believe the following tips may help you meet this standard when providing scaled advice.*

Standards 2, 5 and Standard 6 all relate to your best interest obligations under this Code. Also see tips to Standards 2 and 5 above.

**Broad effects of your advice**

You will need to demonstrate that you have considered the implications of your advice beyond just your client.

- List, document and clearly discuss with your client, the implications for your client and their family members of your client acting on your advice:
  - » For example, will it impact on the availability of funds for aged care purposes for your client or their family members? Will this be an issue for your client or their family members, or have they established and disclosed alternative funding options available for aged care?
  - » Will it impact on the financial arrangements for other trigger events that are likely to arise for your client or your client's family members? Have alternative funding options been put in place for such future needs?
  - » What are the benefits and risks of your advice?
  - » Will it have tax or social security consequences for your client or their family members?

**TASA CODE OF CONDUCT****Standards**

4. You must act lawfully in the best interests of your client.
7. You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.
12. You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide.

- Document your considerations and discussion with your client, including in your SOA
  - » Documentation is not limited to physical documents but could be emails, voice recordings or recording of a meeting. There are both legal and licensee requirements that govern these. The adviser should consult with their licensee / principal to ensure that they are adhering to all standards necessary.

### **Broader, long-term interests and likely circumstances**

This Standard expressly requires you to take into account the broader, long-term interests and likely circumstances of your client.

- The trigger events and questions in Appendices 1, 2 and 3 will help you to identify and consider the needs of your client and your client's family members, such as aged care needs
- See tips under Standards 2 and 5 above

### **Family members who are clients of you or your principal**

*It is currently unclear under what circumstances you will have a duty to act in the best interest of your client's family member(s) if they are clients of you or your principal. It is also unclear how any potential best interest duty to your client's family member(s) would interact with the best interest duty you have to your client.*

*The FPA is seeking clarity from FASEA on the practical implementation of Standards 2 and 6 in this regard.*

### **Competence**

- Standard 6 requires you to consider the long-term needs of your client and their family members in the provision of advice. This standard includes aged care needs as an example
- In this context, you should ensure you have the skills and competencies to provide advice on aged care in a professional way in order to provide advice to your client
- Maintaining your competence will continually improve your awareness of the elements that would constitute 'broader, long-term interests and likely future circumstances' of your client and those of your client's family members
  - » Review your CPD plan to ensure it will help you develop a new and deeper understanding of client issues you are likely to encounter (for example, trigger events such as aged care needs)

### **"Ethical" or "responsible" investments**

- Review your advice processes to ensure you consider limiting your recommendations for your client to "ethical" or "responsible" investments
- This consideration should be based on the broader long-term interests and likely future circumstances of your client and their family members
- When researching products, always start with your client's needs and goals - short, medium and long-term client needs
- Research and consider ethical or responsible investments available that meet your client's desired specifications (for example, risk level, cost, returns, features, benefits, and disadvantages)
  - » Will the ethical or responsible investment option meet your client's broader long-term goals?
    - If yes, explain and document how
    - If no, explain and clearly document why not
    - Does the investment fit in your advice strategy?
  - » Consider the 'trade-offs' in relation to your client's preferences

- Ensure any products you consider fit within your advice strategy
- Give careful consideration to your client's appetite for risk and capacity to tolerate the risk of capital loss
- Clearly document your consideration of your client's risk tolerance in relation to your product considerations
- Ensure your client truly understands the features, risks, benefits, disadvantages and costs of the products you recommend. This is paramount to meeting the requirements of this Code
- Discuss with your client and document the following points of any product recommendations and how these meet their broader, long-term needs and likely future circumstances:
  - » **Investment type** – including ethical / responsible investment
  - » **Risks** – the amount of money they could lose – are they comfortable with this risk? What are the alternatives?
  - » **Features** – services, investment options, additional offerings within the product – are they happy with these features? Are there other features that are important to them?
  - » **Benefits** – higher returns, strength of the product provider or the preferred features
  - » **Disadvantages** – include the 'trade-off's' such as higher return presents a higher risk and more product features usually have higher fees. Are they comfortable with the trade-offs?
  - » **Costs** – fees

Provide clear evidence of your consideration of product recommendations, including your consideration of ethical or responsible investments, in your SOA.

- Clearly document evidence of your consideration of ethical or responsible investments and how they are in / not in the best interest of and appropriate for your client
- Clearly document how the products you have recommended are in the best interest of and appropriate for your client

### Scaled advice

*It is currently unclear how the best interest requirements in the Code apply in relation to scaled advice. The FPA is seeking clarity from FASEA on the practical implementation of Standards 2, 5 and 6 in this regard. Based on the information currently available, we believe the following tips may help you meet this standard when providing scaled advice.*

You must consider the broad effects of your advice on both your client and family members of your client.

In providing scaled advice, you will need to:

- Consider the broader and possible future circumstances of your client to ensure your advice is in your client's best interest, even where these circumstances are outside the scope of your advice engagement:
  - » That is, while you may not provide advice strategies and recommendations on all your client's needs and circumstances, they should be considered in your process to determine the appropriate advice being provided under a scaled advice engagement
- Consider the broad effects of your advice strategies and recommendations on your client and on other family members of your client:
  - » Your consideration of the impact of your client acting on your advice when scaled advice has been provided, should look at circumstances that may be outside the scope or subject matter set in your client engagement letter
  - » For example, you should consider the effect of your advice on your client's ability to meet potential trigger events such as the need for aged care for themselves and their family members, particularly if there are no known alternative funding arrangements for such needs



- Clearly document all aspects of your client's circumstances that you considered to identify your advice strategies and recommendations, and the broad effects of your client acting on your advice that you have identified

**Example of a scaled advice scenario that would meet this standard**

Based on the information currently available, we would expect that evidencing a well-rounded discussion in conjunction with a refinement of scale of the advice to be provided would go a long way of meeting this standard. For example:

- A wealth accumulator couple seek out an adviser for advice on investments. During the client / adviser discussions and fact finding process, the adviser discovers that the clients have elderly parents. The adviser explores living and funding requirements for the clients' parents. This is discussed during the clients initial meeting. The clients inform the adviser that their parents expect they will need to move into aged care within 5 to 10 years. Their parents are self-funded retirees and have structured their financial affairs to finance this change in housing. Based on this information the clients and the adviser agree that the clients do not need to support their parents' aged care needs and therefore the scope of engagement will be limited to wealth accumulation and investments at this time. A clear and effective discussion should be documented to demonstrate why the adviser has restricted the scope.

# FASEA STANDARD 7

THE CLIENT MUST GIVE FREE, PRIOR AND INFORMED CONSENT TO ALL BENEFITS YOU AND YOUR PRINCIPAL WILL RECEIVE IN CONNECTION WITH ACTING FOR THE CLIENT, INCLUDING ANY FEES FOR SERVICES THAT MAY BE CHARGED. IF REQUIRED IN THE CASE OF AN EXISTING CLIENT, THE CONSENT SHOULD BE OBTAINED AS SOON AS PRACTICABLE AFTER THIS CODE COMMENCES.

EXCEPT WHERE EXPRESSLY PERMITTED BY THE CORPORATIONS ACT 2001, YOU MAY NOT RECEIVE ANY BENEFITS, IN CONNECTION WITH ACTING FOR A CLIENT, THAT DERIVE FROM A THIRD PARTY OTHER THAN YOUR PRINCIPAL.

YOU MUST SATISFY YOURSELF THAT ANY FEES AND CHARGES THAT THE CLIENT MUST PAY TO YOU OR YOUR PRINCIPAL, AND ANY BENEFITS THAT YOU OR YOUR PRINCIPAL RECEIVE, IN CONNECTION WITH ACTING FOR THE CLIENT ARE FAIR AND REASONABLE AND REPRESENT VALUE FOR MONEY FOR THE CLIENT.

## FASEA Explanatory Statement requirements

This Standard requires the client's free, prior and informed consent to all relevant remuneration arrangements for you and your principal. To meet this Standard, the client must be given a clear and simple explanation of the fees and charges, and the benefits you or your principal will receive, that are attributable to you or your principal acting for the client. There is an extended definition of benefits in subsection 4(1), to include monetary and non-monetary benefits. The explanation can be given by you or someone else.

Existing clients' consent must be obtained as soon as practicable after the Code commences. Section 2 of the Code states when it commences.

You must also be satisfied that your client understands and agrees to these arrangements, and you must have reasonable grounds to be satisfied.

This Standard prohibits you receiving "third party" benefits for acting for a client (unless the Act expressly allows). This also applies to a relevant provider who is an individual financial services licensee. However, it does not prevent a corporate

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 1: Client First
- Principle 2: Integrity
- Principle 3: Objectivity
- Principle 4: Fairness

#### Practice Standards

- Practice Standard 5.1 – Agree on implementation responsibilities
- Practice Standard 7.5 – Conflicts of Interest and Prioritisation

#### Rules

Agreed financial planning recommendations or directions to implement

- Rule 5.2

#### General Conduct

- Rule 7.2
- Rule 7.3

#### Client Service

- Rule 7.5
- Rule 7.6
- Rule 7.7
- Rule 7.8

### TASA CODE OF CONDUCT

#### Standards

4. You must act lawfully in the best interests of your client.

financial services licensee from deriving third party benefits because one of its authorised representatives provides advice to clients. Corporate financial services licensees are not relevant providers subject to the Code.

This standard also requires that all fees and charges payable to you or your principal, and benefits you or your principal receive, for acting for the client are fair and reasonable, and represent value for money for your client. This is an integral part of your duty to deal fairly with your client, and in his or her best interests. There is an extended definition of 'benefits' in subsection 4(1), to include monetary and non-monetary benefits.

Part 7.7A Divisions 3 and 4 of the Act includes detailed requirements about remuneration arrangements, including "conflicted remuneration". The Code does not remove the need to comply with the requirements of these Divisions.

### Overview of key differences

- **Corporations Act** - conflicted remuneration is defined under the Act; you must disclose to your client all remuneration you receive in relation to the provision of your advice
- **TASA Code** - you must not to use your position to make a personal profit or gain unless authorised to do so by your client
- **FPA Code** - prior informed consent to:
  - » Conflicted remuneration
  - » Profit from the client engagement
  - » The services to be provided before charging your client for a service
- **FASEA Code:**
  - » Your client's free, prior and informed consent to all benefits you and your principal receive that are attributable to you or your principal acting for your client
  - » *Benefits* include monetary and non-monetary benefits
  - » This is a retrospective requirement that requires you to obtain the consent of your existing clients
  - » Requires you to have reasonable grounds that your client understands and agrees to these benefits
  - » Prohibits you receiving "third party" benefits for acting for a client (unless the Corporations Act expressly allows)

## TIPS

This standard is an extension of Standard 4, but it relates specifically to conflicts of remuneration.

### Conflicted remuneration

The intent of this standard is to minimise the risk to clients of advice they receive being influenced by conflicted remuneration practices.

- Review your remuneration model to remove actual or perceived conflicts where possible
- A fee for service model will help you meet this standard

This standard prohibits you from receiving "third party" benefits for acting for your client (unless expressly permitted under the Corporations Act).

- If you are an individual AFSL holder, you are also prohibited from receiving "third party" benefits for acting for your client (unless expressly permitted under the law)

## Value for money

All monetary or non-monetary benefits you or your principal receive for providing advice to your client, must be fair and reasonable and represent value for money for your client.

Value for money is used in reference to something that is well worth the money spent on it. Value for money is often seen as the most advantageous combination of cost, quality and sustainability to meet customer requirements.

This is a subjective test. Your perspective of what is value for money may differ to that of your client.

To evidence that your fees represent value for money for the services provided to your client, identify the value of your advice service to qualify and quantify to the fees you charge:

- Consider the key needs of your target client profile, and align this with the capabilities and services that you can deliver. In the instance where your practice may have more than one target client profile, consider a separate proposition for each client segment. Though the end result may still be one single proposition, building one for each segment will ensure that there are no significant gaps or conflicts left unaddressed.
- Consider the following points from your clients' perspective:
  - » **Relevant** - are your value proposition and services relevant to your target client profile? ("Does this matter to your clients?")
  - » **Meaningful** - are your value proposition and services meaningful enough to elicit interest from your target client profile? ("Does this matter enough to your clients to spend their time and attention on?")
  - » **Tangible** - do your value proposition and services offer something of tangible and direct value? ("What will your client achieve out of this?")
  - » **Consistent** - are your value proposition and services consistent with how your business is positioned? ("Is this consistent with what your clients expect from this business?")
  - » **Realistic** - are the value proposition and services realistic and achievable, or is it overselling the impossible? ("Can your business really deliver on its promise?")
- Based on the answers from the points above, for each of your identified client segments:
  - » Identify the key qualities / attributes / traits that those segments are looking for in terms of financial planning
  - » Identify the most common types of financial planning services they are most likely to require
- Can you meet the needs of your clients? Are you delivering the services they need and want? Are you providing services that are not relevant or meaningful for your clients?
- Detailing your services and fees upfront to your client (for example, in a similar manner to your Fee Disclosure Statement) will help demonstrate the value your client will gain from your services and the appropriateness of your fees
- A fee schedule may be helpful to explain to your clients the cost of your advice
  - » In developing a fee schedule, consider your clients (single versus couple), the scale / subject matter and complexity of the advice to be provided, the time required to efficiently and thoroughly complete the advice process to provide such advice, and your level of expertise and experience
- Ensure the services you offer your client meet their particular needs and are in their best interest
- Clearly detail the services to be provided to your client, and those that your client received
- Avoid providing services to your client that they do not need or that are not in your client's best interest
- Consider detailing the time spent on providing those services to your client

### Benefits you or your principal receive

- As previously stated, a fee-for-service model will help you meet this standard
- All monetary or non-monetary benefits you or your principal receive for providing advice to your client, must be clearly disclosed, discussed and agreed to by your client prior to acting for your client
  - » Your Financial Services Guide (FSG) is an appropriate document to use to disclose to your client how you are remunerated. However, you should talk your client through your fees and charges, how you are remunerated, and any non-monetary benefits you or your principal may receive, in your initial meeting and prior to commencing an advice engagement with your client
  - » Use the tips for determining value for money (above) to demonstrate to your client that any monetary or non-monetary benefits you or your principal receive for providing advice to your client, are fair and reasonable and represent value for money for your client
  - » The disclosure of your fees and charges, how you are remunerated, and any non-monetary benefits you or your principal may receive, should not be limited to providing a copy of your FSG to your client for them to read
- Clearly document your discussion with your client about the benefits you or your principal will receive in relation to your advice
  - » Include any questions your client may ask in relation to the benefits you or your principal may receive
  - » Confirm that you have discussed with your client the remuneration information in your FSG and a copy has been provided to your client
- Prior to providing advice to your client or acting for your client, any known fees paid by the client need to be agreed to in writing (Authority to Proceed)
- Detail any known additional costs your client may incur for your advice (such as specialist fees if used, or product fees)

### Reasonable grounds to be satisfied

The purpose of a reasonable grounds test is to show that ticking a box that your client understands your fees and charges is not sufficient or acceptable.

- You must demonstrate that you have engaged with your client and explained to your client in clear and simple language, your fees and charges, and any benefits (monetary and non-monetary) that you or your principal will receive for acting for your client
- Document information and evidence to show the substance of the interaction with your client where you explained your fees, charges and any benefits (monetary and non-monetary) that you or your principal will receive
  - » This explanation can be given by you or someone else

This is a subjective test so documenting evidence of the substance of your interaction with your client is vital.

- The level of engagement and communication you have with your client will assist in demonstrating reasonable grounds under this standard

Standard 8 (see page 38) will assist you in meeting this standard.

# FASEA STANDARD 8

YOU MUST ENSURE THAT YOUR RECORDS OF CLIENTS, INCLUDING FORMER CLIENTS, ARE KEPT IN A FORM THAT IS COMPLETE AND ACCURATE.

## FASEA Explanatory Statement requirements

This Standard requires that a relevant provider keep complete and accurate records of advice and services provided.

## Overview of key differences

The Corporations Act, the FPA, TASA and FASEA codes, all in practice have the same outcome. If delivering personal advice, the advice needs to be explained, and records of your client arrangement, advice and services, must be accurate and complete.

## TIPS

Complete and accurate record keeping is key to demonstrating that your arrangements and the advice you provide your client meet the standards in the law, the TASA Code, the FPA Code and the FASEA Code.

- Review your record keeping processes and systems to ensure you are able to capture documentary evidence of your interactions and communication with clients in order to meet all the standards of the FASEA Code
- Checklists in your advice process may help to ascertain the records that should be included in your client's file
- Documentation may not be limited to physical documents but could be emails, voice recordings or recording of meeting. There are both legal and licensee requirements that govern these. You should consult with your licensee / principal to ensure that you are adhering to all standards necessary.
- See information and tips under all standards of this booklet, particularly in regard to documentation

## National Privacy Principles (NPPs)

- Ensure your Privacy Policy and record keeping practices are consistent with the National Privacy Principles - visit [www.oaic.gov.au/privacy-law/privacy-archive/privacy-resources-archive/national-privacy-principles](http://www.oaic.gov.au/privacy-law/privacy-archive/privacy-resources-archive/national-privacy-principles)
- Review your processes and systems to:
  - » Ensure they comply with the NPPs and protect the confidentiality of your client
  - » Enable accurate recording and reporting of necessary records

While you are responsible for ensuring the records of your clients (current and former) are complete and accurate, the entity with the legal ownership of the client should retain the records.

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 8: Diligence

#### Practice Standards

- Practice Standard 7.4 - Professional Judgement

#### Rules

[Document administration and confidentiality](#)

- Rule 7.25

### TASA CODE OF CONDUCT

#### Standards

2. You must comply with the taxation laws in the conduct of your personal affairs.
14. You must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

# FASEA STANDARD 9

ALL ADVICE YOU GIVE, AND ALL PRODUCTS YOU RECOMMEND, TO A CLIENT MUST BE OFFERED IN GOOD FAITH AND WITH COMPETENCE AND BE NEITHER MISLEADING NOR DECEPTIVE.

## FASEA Explanatory Statement requirements

This Standard requires that all financial product advice, and all financial products, offered to a client be offered in good faith. This means that you must act honestly, and in the best interest of the client, in giving the advice and making the recommendations. You will not be acting in good faith if there is something you are aware of, or ought to be aware of, that would lead to the conclusion that your advice is not in the clients' best interests, taking into account the broad effects arising from the client acting on your advice and the broader, long-term interests and likely circumstances of the client.

The Standard also requires that all financial product advice, and all financial products, be offered "with competence". Among other things, this requires that all relevant providers act efficiently, honestly and fairly. Paragraph 912A(1)(a) of the Act requires licensees to "do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly"; this Standard ensures that a corresponding ethical duty applies to all relevant providers.

Finally, this Standard reflects the current law requiring that financial product advice given, and financial products recommended, not be misleading or deceptive.

## Overview of key differences

- **Corporations Act** - imposes a best interest duty on you and requires you to be competent for the advice you are authorised to provide; it requires licensees to ensure the services provided under their licence are done so efficiently, honestly and fairly
- **FPA Code** - requires you to place your client's interests first and provide your professional services honestly, fairly, objectively, diligently, and with competence
- **TASA Code** - requires you to apply the tax laws correctly and not obstruct the administration of such laws, including advising your client of their rights and obligations under the tax laws and to provide your services honestly, lawfully, competently, with integrity and in your client's best interest (tax laws include taxation, insurance and superannuation laws). It also requires a commitment by you to be truthful and not to deceive or mislead.

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 1: Client First
- Principle 2: Integrity
- Principle 3: Objectivity
- Principle 4: Fairness
- Principle 5: Professionalism
- Principle 6: Competence
- Principle 8: Diligence

#### Practice Standards

- Practice Standard 7.3 - Members present and promote their services fairly and honestly
- Practice Standard 7.4 - Professional Judgement
- Practice Standard 7.5 - Conflicts of Interest and Prioritisation

#### Rules

##### Communication

- Rule 7.14

##### General Conduct

- Rule 7.2

##### Competencies

- Rule 7.33

### TASA CODE OF CONDUCT

#### Standards

1. You must act honestly and with integrity.
4. You must act lawfully in the best interests of your clients.
7. You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.
10. You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.

**Overview of key differences (continued)**

- **FASEA Code:**
  - » Introduces a positive obligation on you to act in good faith
  - » Places a legal duty on you to ensure the services and products offered to your client are offered with competence – while you are permitted to supplement your own competence by assessing the expertise of others, you are ultimately responsible for the competency of the advice
  - » Requires the financial product advice given, and financial products recommended, not to be misleading or deceptive.

**TIPS****Acting in good faith**

This standard places an obligation on you to ensure and prove you have acted in good faith. This requires you to demonstrate that you have taken all reasonable steps to ensure your advice is accurate and in the best interest of your client. For example, you should take all reasonable steps to ensure:

- All information collected in relation to your advice is represented in your documentation accurately and correctly to the best of your knowledge
- Your research is as accurate as possible and is not mis-stated in your advice and documentation

The key to complying with a requirement to act in good faith is using your professional judgement to determine if you have taken all reasonable steps and care to ensure your advice is in the best interests of your client.

- Remember, exercising professional judgement can be very subjective so it is important to document your considerations and how they are linked to your client's best interest
- Consider the following:
  - » **Client engagement** - explain the scale of your advice - set the ground work to 'acting in good faith' from the commencement of your advice relationship with your client:
    - Analyse your client's information
    - Identify and map the short, medium and long-term financial planning needs of your client - consider the broader, long-term interests and likely future circumstances of your client (as required under Standard 6). For example, trigger events such as the aged care needs of your client and your client's family members.

**TASA CODE OF CONDUCT**

11. You must not knowingly obstruct the proper administration of the taxation laws.
12. You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax (financial) advice services you provide.



- Clearly identify the appropriate subject matter and scale of your advice to meet your client's needs over the short, medium and long-term
  - Explain clearly and accurately to your client, and document in your client engagement letter, the advice service that is in their best interest, and what advice is and is not being provided and why. This should also include the costs of your professional services.
  - Document your discussion with your client
- » **Advice strategy must come first** - providing your client with a clear advice strategy must come before any consideration or recommendation regarding a financial product:
- Identify appropriate advice strategies that address your client's prioritised needs, achieves their objectives and is compatible with your client's appetite for risk and capacity to tolerate the risk of capital loss. Your strategy must consider your client's broader, long-term needs and likely future circumstances. For example, trigger events such as the need for aged care for your client and their family members.
  - Questions to ask when selecting a strategy include:
    - Does the proposed strategy secure your client's current financial position?
    - Are there any changes you can make to your client's current position to improve their ability to achieve their goals and broader, long-term needs?
    - What assumptions underlie the proposed strategy and are they reasonable?
    - Does the strategy genuinely reflect your client's needs, goals, values and attitudes, risk tolerance and financial circumstances?
    - Does the strategy address the issues or problems your client may have?
    - Will the strategy definitely achieve your client's objectives, or is this only a probable outcome?
    - Does your strategy address your client's broader, long-term interests and likely future circumstances?
  - Use your professional judgement to determine which and how many alternative strategies you should consider
  - Clearly explain and document how your advice strategy addresses your client's broader, long-term needs and likely future circumstances, and will enable them to meet their goals
  - Remember, there may be more than one strategy that may meet your client's needs so it is important to document your considerations of how your recommended strategy(s) is linked to your client's needs
    - Clearly document your considerations of your client's broader, long-term needs and likely future circumstances
    - Ensure the information you document is accurate
    - Executive summaries, icons, symbols, graphics, audio, video, flow charts and diagrams all written in plain English are a great way to communicate how the advice will be of benefit to your client
  - Consider any competing needs your client may have when determining the strategy that is in the best interest of your client
  - Your licensee may have guidance on how many strategies you should consider
  - Discuss with your client appropriate alternative strategies that you have considered and why these have been discarded

- Keep documentation of your consideration of the alternative strategies and refer to the availability of this documentation in your SOA
- Document your discussion with your client about your advice strategy(s). Include any feedback on your advice strategy(s) your client may have given or questions they may have asked. This will help you demonstrate your reasonable grounds for you to be satisfied your client's understanding of your advice strategy(s), as required under the standards of this Code.
- » **Providing product recommendations** - the strategy should be identified before the product recommendation:
  - Consider product options, including ethical or responsible investments, that may fit within your advice strategy to achieve your client's objectives and address their needs, including your client's broader, long-term needs and likely future circumstances. For example, trigger events such as the need for aged care for your client and their family members.
  - Discuss how your product recommendation(s) is consistent with and fits within this strategy to help your client address their needs, objectives and priorities over the short, medium and long-term
  - This may include a single strategy, multiple strategies or no change to your client's current course of action
  - Ensure you clearly and accurately explain the risks of your strategy and product recommendations, the product features, costs, and benefits, and how your recommended product will enable your client to address their needs and goals.
- » **Client review** - recommend to your client, and document in your SOA, the need for your client to review your advice:
  - Discuss with your client the dynamic nature of financial planning that may require an update on or changes to your advice if there are changes in your client's circumstances or the economic environment
  - Explain how a change in circumstances and the economic environment can lead to a change in your client's needs, impact on your client's risk tolerance and appetite, or the appropriateness of your advice recommendations
    - Your ability to act in good faith will be based on the information available at the point in time that you provide your advice to your client
  - Ensure your client understands the need and commits to adequately reviewing their situation (either themselves or by you)
  - Recommend to your client an appropriate review period based on their current circumstances, broader, long-term needs and likely future circumstances, and your advice strategy and recommendations
    - The review period may vary depending on your advice recommendations, the volatility of any investment returns and the likelihood of a change in your client's circumstances.

## Competence

If you are not trained in a subject matter on which your client needs advice, you are permitted to supplement your own competence by accessing the expertise of others, however you are ultimately responsible for the competency of the advice.

- Under this standard, competence is required to ensure you are knowledgeable and proficient in providing the advice your client requires in order for the advice to be provided:
  - » **In an efficient manner** - this is necessary to deliver value for money to your client
  - » **With honesty** - if you are not competent you may provide incomplete or inaccurate advice. You must be honest about your ability to provide competent advice in your client's best interest
  - » **Fairly** - competence is necessary to be able to provide your client what they are due from your professional relationship with them

- Ensure your education and training are adequate and appropriate to provide the advice that is in the best interest of your client
  - » If you are not trained in the subject matter your client needs, either source an appropriately qualified and experienced specialist in the required subject matter, or decline to provide the advice
  - » Keep up-to-date with regulatory developments that may impact your clients (for example, changes to superannuation tax treatment)
- Maintain accurate records of your education and training including CPD and other ongoing education to ensure you meet this standard.

### Acting efficiently

Providing your advice efficiently is in your client's best interest:

- » For example, if your client has invested in a portfolio that is inappropriate for their circumstances and is waiting on your advice in order to change the investment, it could be detrimental to your client if your advice is not provided efficiently and in a timely manner.
- Establish processes, policies and time management systems to ensure you see your client within the timeframes you have agreed with your client
- Do not rely on outdated information in relation to your client's advice
- Demonstrate your efficiency by providing information, your advice, and responses to enquiries, to your client in a timely manner. For example:
  - » In your client engagement letter consider setting reasonable timeframes for delivering your advice to your client. Ensure the timeframe is reasonable for the type, scale, subject matter, and complexity of the advice.
  - » Review your advice and client engagement processes and policies to include reasonable response timeframes for your clients
    - Consider including in your fee schedule estimated timeframes for delivering your advice to your client
  - » Document the timeframe in your policy against the actual time taken for you to provide your advice, or respond to your client. This documented evidence will demonstrate your efficiency. For example:
    - Consider including in your SOA the promised timeframe for providing your advice as stated in your client engagement letter, and the actual time taken. That is, "In our Letter of Engagement I committed to providing you with a financial plan on your superannuation and investments (the scale of your advice) within 30 days of receiving all the necessary information from you. I have provided you with your financial plan, as including in this SOA, in 28 days of receiving all the necessary information from you."
- Ensure that you have an efficient process or acceptable technology for client approvals and authorities.

### Acting honestly

Competence is key to providing your professional services honestly.

- If you are competent you will know and have confidence that your advice is accurate
- If you are not competent you will not know if, or be confident that, you are providing accurate advice and therefore you are being misleading and deceptive
- Competence includes knowing your limitations and acting honestly in your engagement with your client.

You also have an ethical duty to ensure your clients act honestly:

- Avoid or terminate clients who are determined to engage in unlawful activities
  - » Ensure your Terms of Engagement letters state that your relationship with your client may be terminated by you if you become aware of your client's involvement in an unlawful act.

## Acting fairly

Acting fairly is about managing your client's expectations of the professional service you will provide.

## Financial product recommendations

Key to demonstrating that you have offered product recommendations in good faith, and that your advice is not misleading or deceptive, is to clearly document the due diligence and research undertaken in selecting products that are in your client's best interest.

This must include consideration of the product in the context of your client's broader, longer term interests and future circumstances.

- Review your advice processes to ensure your advice and SOA clearly explain how any product recommendations made are in the client's best interest
- Put documented arrangements in place to show how and why you selected products recommended to the client (e.g. Advice / APL / Platform)
- Keep sound documentation of the analysis, projections and comparisons you have conducted on alternative products, including ethical or responsible investments
- In your SOA make reference to the alternative products and strategies you have considered, and the availability of documentation if requested by your client
- Discuss with your client the alternative products you considered and why they were discarded. Document your discussion in your SOA.

If you are recommending your client change products, it is vital to show:

- How your recommended product fits with:
  - » Your client's risk appetite
  - » Your client's needs over the short, medium and long-term
  - » Your client's broader, long-term interests and likely future circumstances - for example, include consideration of trigger events such as any aged care needs for your client and your client's family members
  - » How it will enable your client to achieve their goals and address their needs
  - » Your advice strategy, and
  - » How your client's existing product does not help your client achieve their goals
- Ensure your client truly understands the features, risks, benefits, disadvantages and costs of the products you recommend

Demonstrating that you have researched all applicable products, be they recommended products or viable alternatives, will help you meet this standard.

# FASEA STANDARD 10

YOU MUST DEVELOP, MAINTAIN AND APPLY A HIGH LEVEL OF RELEVANT KNOWLEDGE AND SKILLS.

## FASEA Explanatory Statement requirements

This Standard imposes, as an ethical duty, a requirement to develop and maintain a high level of relevant knowledge and skills. For example, if you specialise in a particular area, you should not provide advice outside that area unless you have the necessary skills and competencies to do so in a professional way.

Meeting the continuing professional development requirements (part of the education and training standards – see subsection 921B(5) of the Act and the Corporations (Relevant Providers Continuing Professional Development) Standard Determination 2018) – will assist with meeting this duty.

## Overview of key differences

This standard is aligned with the similar requirements in the TASA Code and FPA Code.

However, it is important to assess your competence in relation to the other standards and requirements of this Code to ensure you meet the FASEA standard of:

- developing and maintaining a high level of knowledge and skills, and
- applying this to the advice services you provide to your clients

It is also important to ensure you meet the new CPD requirements set by FASEA.

## TIPS

### Competency goes beyond expertise

Competence requires attaining and maintaining an adequate level of knowledge, skills and abilities in the provision of professional services. Competence also includes the wisdom to recognise one's own limitations and when consultation with other professionals is appropriate or referral to other professionals is necessary. Competence requires you to make a continuing commitment to learning and professional improvement.

- Consider your:
  - » Limitations and authorisations
  - » Education, professional entry
  - » CPD to maintain competence
  - » Experience
  - » Expertise

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 6: Competence

#### Practice Standards

- Practice Standard 7.4 – Professional Judgement

#### Rules

##### Competencies

- Rule 7.32
- Rule 7.33

### TASA CODE OF CONDUCT

#### Standards

7. You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.
8. You must maintain knowledge and skills relevant to the tax (financial) advice services that you provide.
9. You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of a client.
10. You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.

### Start with a professional engagement

To determine whether you have the competence to meet your client's needs:

- Assess your client's needs as required under the standards of this Code
- Use your professional judgement to determine if you have the knowledge, skills and experience to provide advice in your client's best interest
  - » Do you need to supplement your competency with specialists?
- Discuss with your client:
  - » The financial planning process
  - » Your role and services
  - » Information about your licensee
  - » Your competence and experience
  - » The competence and experience of any specialists who may assist you in providing advice to your client.

### Use professional judgement

- Use your professional judgement to determine, with your client, whether:
  - » The services you are able to offer are likely to provide benefit and value for your client
  - » Your expertise and services will enable you to provide advice that meets your clients needs and goals (including their broader long-term interest and likely circumstances), is appropriate, and prioritises the best interests of your client.

### Declining advice

If you are not trained or authorised to provide advice on the agreed subject matter, you must not provide advice on that subject matter:

- Decline the advice, or
- Seek assistance from a specialist competent within your business (or external to your business) in the specific area of advice, or
- Refer your client to a professional who is competent in the specific area of advice. It is prohibited under this Code for you or your principal to receive a referral fee.

Seek your client's permission prior to involving a specialist (internal or external) or referring your client to an alternate professional.

### Continuing Professional Development (CPD)

Implement and adhere to the FASEA CPD policy.

- Ensure your CPD plan includes:
  - » Ethics, including this Code
  - » Technical competencies
  - » Regulatory changes

### Knowledge and skills set in this Code

- Standard 6 requires you to consider the needs of your client and their family members in the provision of advice (for example, financial needs created by trigger events such as aged care)
- You must ensure you and / or the specialists you work with, have the skills and competencies to provide advice (in this example) on aged care in a professional way in order to provide advice to your client

# FASEA STANDARD 11

YOU MUST COOPERATE WITH ASIC AND MONITORING BODIES IN ANY INVESTIGATION OF A BREACH OR POTENTIAL BREACH OF THIS CODE.

## FASEA Explanatory Statement requirements

This Standard is a positive duty to cooperate with any investigation of a breach or potential breach of this Code by a monitoring body or ASIC. This duty applies in addition to the offences in sections 921M and 921P of the Act.

### Overview of key differences

- **Corporations Act** – makes it an offence if you do not cooperate with an investigation of a potential breach of the law
- **FPA Code** – the FPA Disciplinary Regulations require you to cooperate with an investigation of a potential breach of the FPA Code
- **TASA Code** – you must respond to requests and directions from the Tax Practitioners Board (TPB) in a timely, responsible and reasonable manner
- **FASEA Code** – creates a positive professional obligation to cooperate in the event of an investigation
  - » a positive obligation is an obligation to engage in an activity, as opposed to a negative obligation which is to refrain from acting in a way that unjustifiably interferes with the investigation

The law, and the TASA, FPA and FASEA codes all seek to promote cooperation between the adviser and investigating body.

## TIPS

Review your systems and processes to ensure they enable you to draw reports and access relevant information in response to ASIC or a code monitoring body, in a timely manner.

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 5: Professionalism

#### Practice Standards

- Practice Standard 7.1 – Members conduct themselves in a professional and ethical manner

#### Rules

##### Communication

- Rule 7.20

##### Providing Representative Good Fame and Character Information

- Rule 7.37

##### General Conduct

- Rule 7.4

### TASA CODE OF CONDUCT

#### Standards

14. You must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

# FASEA STANDARD 12

INDIVIDUALLY AND IN COOPERATION WITH PEERS, YOU MUST UPHOLD AND PROMOTE THE ETHICAL STANDARDS OF THE PROFESSION AND HOLD EACH OTHER ACCOUNTABLE FOR THE PROTECTION OF THE PUBLIC INTEREST.

## FASEA Explanatory Statement requirements

This Standard deals with relevant providers' professional relationships with each other, emphasising that they need to be supportive and aligned to the profession as a whole – being, and being seen to be, a profession that acts ethically and professionally.

One element of this duty affects relevant providers who are acting as supervisors for provisional relevant providers undertaking the professional year (see the Corporations (Provisional Relevant Providers Professional Year Standard) Determination 2018).

This Standard requires that you must provide supervision that is in the best interest of the provisional relevant provider, that is, supervision that actively assists him or her in getting the full benefit of the professional year.

## Overview of key differences

This standard is strongly aligned with similar requirements in the FPA Code.

Both the FPA and FASEA codes seek to enhance the professionalism of the industry as a whole. The only way to do that is through the positive promotion of ethical principles within the context of relationships within the industry.

The FASEA Code introduces an ethical obligation for supervisors of provisional financial advisers to actively assist the new adviser and provide supervision in provisional financial adviser's best interest.

## TIPS

### Supervisors

This standard introduces a new requirement for you if you undertake the role of supervisor of a provisional financial adviser undertaking their Professional Year.

- To demonstrate you are actively assisting the provisional financial adviser in getting the full potential of the Professional Year, clearly document in the Professional Year Plan:
  - » The detailed activities the provisional adviser will and has participated in

## EXISTING OBLIGATIONS

### FPA CODE OF PROFESSIONAL PRACTICE

#### Code of Ethics

- Principle 5: Professionalism

#### Practice Standards

- Practice Standard 7 – Professional Obligations

#### Rules

##### General Conduct

- Rule 7.1
- Rule 7.3

##### Client Service

- Rule 7.5

##### Members in positions of authority and / or with supervisory responsibilities

- Rule 7.30

### TASA CODE OF CONDUCT

#### Standards

You must be a fit and proper person to register with the Tax Practitioners Board.



- » The amount of time you provide mentoring the provisional financial adviser and the subject matter of your discussions during such sessions
- The role of the supervisor should be to teach, guide and mentor
- The role of the supervisor should be to embrace all of these principles through exemplary conduct

Provide documentary evidence of how you fulfilled your role as supervisor in the provisional adviser's Professional Year Plan.

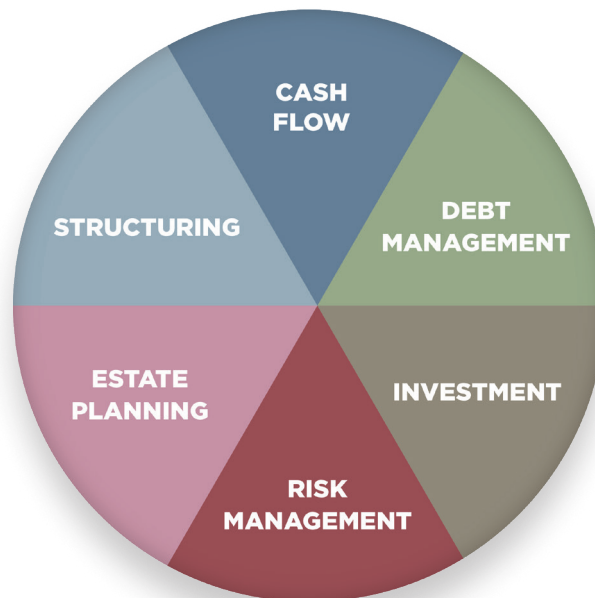
# APPENDIX 1

## CONSIDERING YOUR CLIENT'S FINANCIAL PLANNING NEEDS

**Determining whether you are able to meet your client's needs is a critical first step to meeting your professional obligations under the FPA Code and through it, the FASEA Code of Ethics.**

The six financial planning needs your client is likely to require to be addressed across the short term, medium term and long-term are set out in the client needs wheel diagram below. Consideration of these needs will assist you in working with your client to identify, consider and provide advice on the broader, long-term interests and likely future circumstances of your client and their family members, as required under the FASEA Code of Ethics.

The Client Needs Wheel was included in the FPA's 2015 booklet *'Taking Other Steps - Best Interest Advice in a Strategic World'*.



### CLIENT NEEDS WHEEL QUESTIONS

#### Cash flow

- What does your client's cash flow currently look like?
- How does your client's income compare to their expenditure?
- What changes to your client's cash flow are expected in the short term, medium term and long-term?
- How secure are current sources of income?
- Will those sources and levels of income be maintained or change across short, medium and long-term time horizons?
- Does your client anticipate any significant or regular change to expenditure? For example, what is your client's likely expenditure need in retirement?
- How does your client expect to fund their retirement income needs?
- Does your client expect family or other relationships to impact on their expenditure in the medium or longer term?

## Debt management

- What liabilities does your client currently have?
- Does your client expect any additional liabilities in the future?
- How are debts being serviced?
- How is debt secured, if applicable?
- How does your client expect this might change in the future?
- How is the debt priced?
- Does your client have enough or too little debt?
- How efficiently is your client managing debt?

## Investment

- What assets does your client hold, over what time frame and in what capacity?
- How long does your client expect to hold these assets and in what circumstances could this change? For example, what superannuation or other long-term investments does your client have?
- Does your client own property or other assets?
- What are your client's intentions with these assets over short, medium and long-term? For example, does your client expect to dispose or transfer assets to fund cash-flow needs in or approaching retirement?

## Risk management

### a. Consider your client's risks and capacity to tolerate loss of capital:

- What risks does your client face in relation to cash flow? For example, will your client's income level continue?
- What unexpected expenditure could arise for your client?
- What strategies does your client currently have in place to control or mitigate these risks? For example, how would your client manage an adverse health event that lead to temporary or permanent incapacity to generate income from their current employment?
- How would temporary loss of current salaried employment impact longer term needs such as investment strategy to accumulate retirement savings?
- Could your client afford to pay their mortgage on their family home if they were faced with the risk of loss of income?
- How reliant is your client on the income and continued earning capacity of a spouse to realise medium and longer term goals?
- Is your client taking on too much or too little risk to achieve their needs and goals across short, medium and long-term?

### b. Consider your client's appetite for risk?

- Is your client prepared to take on risk to achieve their needs and goals across the short, medium and long-term?
- Is the risk required in order to achieve a financial goal beyond your clients personal appetite for risk?
- Do you need to change your client's financial goal(s) over the short, medium and / or long-term to cater for their appetite to take on risk?
- Does your client currently have a high risk strategy in place which is beyond their appetite for risk?
- Based on your review of your client's circumstances, do your client's financial needs and goals require them to continue with or change their current level of financial risk?

### **c. Financial literacy and behavioural finance considerations**

- How does your client make decisions about investments?
- Do your client's emotions play a part in their investment decisions?
- What is your client's attitude to money?
- Does your client prioritise their finances? Do they pay off bills and debt before spending?
- Is your client comfortable making decisions about financial matters?
- What past financial experiences has your client had that may impact on their behaviour when making decisions about financial matters?
- Is your client particularly risk averse? Are they irrationally confident with respect to risk?
- Does your client prefer to avoid large, upfront payments over paying in increments? Even where paying in increments might incur a financial disadvantage?
- How does your client feel about incurring losses in the short term to maximise long-term opportunities?
- Is your client capable of basic financial calculations (e.g. calculating interest, understanding ratios)? If not, could your client understand these calculations if you explained them?
- Does your client have any emotional attachments (e.g. dependents) which influence how they think about financial matters? To what extent do these attachments change their perception of financial matters?
- Does your client expect future investment performance to reflect past outcomes?
- To what extent does your client independently seek to understand financial matters and their financial situation? Is your client looking to "set and forget" their financial plan, or are they engaged?
- Has your client come to the engagement with pre-existing ideas about investment strategy or financial planning?

### **d. Consider your client's needs for outsourcing risk:**

- What insurance protection does your client currently have in place?
- Based on your analysis of your client's risk capacity, tolerance and other needs, does their current protection provide adequate cover?

## **Estate planning**

- Who has a potential claim on your client's estate?
- What does your client intend to provide to their estate?
- What are your client's estate and non-estate assets?
- Are wills, powers of attorney and other arrangements in place, including binding nominations within super?

## **Structuring**

- How are your client's affairs currently structured for:
  - » Tax planning
  - » Asset protection
  - » Wealth transfer, and
  - » Government funded benefits
- Are these structures efficient?
- Will these structures enable your client to access funds when needed to cater for potential future needs, such as aged care, health care and potential life events? And the needs of your client's family members?

# APPENDIX 2

## QUESTIONING TECHNIQUES

### PROMPTING QUESTIONS

---

The key to developing and delivering a strong and valued client service proposition, is listening to your client. Making them feel comfortable enough to talk freely about their life and experiences, rather than feel pressure about their role in implementing your financial advice. This will not only assist you in enhancing your client relationship, it will also help you identify circumstances that may influence their goals or attitudes relevant to their financial planning needs. These may include circumstances that your client themselves may not see as relevant to your advice, but that in fact may make a significant difference to their goals, needs and willingness to implement your recommendations.

Showing an interest in your client's life will help build client trust and enhance your relationship. It is trust in you and your services that will encourage your client to be more engaged with your advice (rather than 'set and forget'), enabling you to ensure greater accuracy of their financial plan, enhancing their client experience, and demonstrating the value of your professional services.

Using open questions - that is, conversational style prompting questions - will help your client feel comfortable and encourage them to open up about their lives, their family and lifestyle, providing you with invaluable information about matters that are important to them and their circumstances and attitudes that may impact on their needs and goals.

A key intent of the FASEA Code, particularly the best interest duty in Standards 2, 5 and 6, is to encourage advisers to engage with clients effectively to elicit crucial information about the client, their family, and their current and future circumstances. This includes for example, specific requirements to consider trigger events such as the aged care needs of your client and their family members and other likely future circumstances.

### TIPS

---

- Facilitate an open, conversational discussion with your client using prompting questions
- Listen to your client and prompt them to talk about things that are important to them. This will allow you to gain a valuable insight into the things that matter to your client, attitudes that may affect their behaviour towards financial matters and decisions, and other aspects about your client's life you may need to consider as part of your advice.
- Discover, don't assume, how the important things in your client's life makes them feel. Some life aspects may impact on their motivation or engagement with their finances. That is, their financial goals may become a lower priority over things that may be more important to them at that time. Use your professional judgement on how you can be of greatest assistance to your client.
- Client interests may also lead to interesting investment opportunities
- Ensure you have systems and processes in place to gather and respond to information about your client's circumstances. This will help you develop the evidence necessary to demonstrate to your client that your advice strategies and recommendations are in their best interest, and show you have met the requirements of the FASEA Code.

The following questions may assist in your client discussions to help elicit pertinent information from your client.

Please note that these are example questions and may not be relevant to all clients.

## EXAMPLE QUESTIONS

### CHILDREN

- Q How are your children? (name them if you can)
- Q Are they still at an educational institution / school / university?
- Q Do they still live at home?
- Q Do they have a job?
- Q Do they have a car?
- Q What do they like to do in their spare time?
- Q Are any of them in a serious relationship? Maybe a potential wedding or grandchildren on the horizon?
- Q Do you help them out with expenses?  
(e.g. rent, university fees, car, holiday, sports equipment / training)
- Q Is there anything you would like to help them with in the future?  
(e.g. property deposit / loan guarantor?)
- Q Will you need to fund future education for your children and / or grandchildren?
- Q Will you need to fund travel / gap year for your children?
- Q Do any of your children or grandchildren have special needs which you help support or would like to help support in the future?
- Q Have any of your children been divorced?
- Q Do any of your children run their own business?
- Q Do any of your children have any gambling issues or been declared bankrupt in the past?

#### **AIM**

To help remind clients of any additional expenditure they may have had but not thought of as overly significant or relevant to their goals or circumstances.

Identifying things your client may need to put money aside for.

Identify matters that may impact your client's risks and capacity to tolerate loss of capital.

#### **Client Needs Wheel segments affected**

CASH FLOW

DEBT MANAGEMENT

RISK MANAGEMENT

ESTATE PLANNING

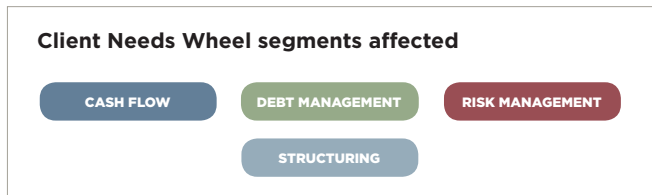
#### **Potentially affected**

STRUCTURING

INVESTMENT

## PARENTS

- Q How are your parents?
- Q How is their health?
- Q Where are they living now?
- Q Is there a chance they may need more care from you in the future?
- Q Will they need assistance in moving into care?



### **AIM**

Gain an understanding of the role your clients may play in the care of aging relatives.

Identifying whether your client anticipates or would like to take on the care of an elderly relative in some capacity (and when this is expected to occur), and any impact on the ability of your client to participate in paid employment.

Identifying things your client may need to put money aside for.

## EMPLOYMENT

- Q Do you have paid employment? Is this full or part-time?
- Q Do you feel your employment is secure?
- Q Are you happy in your current job?
- Q Have you changed your working arrangements recently? Do you plan to change them in the future? (e.g. increased or decreased hours)
- Q Have you taken on any extra work recently?
- Q What age you would like to retire?

### **AIM**

To identify whether your client is considering a change in employment in short to medium term, be it retirement or job / career change, which will affect their income, may change their insurance, investment and superannuation needs.

For couples – ask the above questions of both individuals to determine the earning capacity or income of each person.



## HEALTH

- How is your health and the health of your family members?
- Have you or your family members had any incidents, accidents or health concerns? Are these ongoing?
- Did you have to cover the costs of any health issues? Or were these costs covered by Medicare or your private health insurance?
- Were these costs a one off, or are they ongoing costs to support these health issues? (e.g. regular medication that you or your family members now need to take)
- To your knowledge, has there been any recent changes in your private health insurance, either in the policy cover or your premium?

For couples – ask the above questions of both individuals to determine the healthcare needs of each person.



### AIM

It is important to consider any emerging or worsening health issues (of your client or their family members) and:

- how your client would manage an adverse health event that leads to a temporary or permanent incapacity to generate income from their current employment, and
- the impact of increasing health expenditure on other financial needs.

## HOUSING – INCLUDING AGED CARE NEEDS

- Do you own your own home?
- Do you have a mortgage?
- How long have you lived there?
- Are your hobbies and interests located nearby?
- Do you have any children or other dependents living with you? If yes, do you anticipate they will move out in the near future?
- Have you considered your long-term housing needs? Do you plan to downsize your home in the future? If so, at what age / in how many years? Do you have aspirations of changing the locality of where you live?
- Are there specific health concerns or care needs that you need to consider in regard to your housing, now and in the future?
- Have you discussed your aged care needs in the future? This is something that needs to be planned for financially.

For couples – ask the above questions of both individuals to determine the housing aspirations as a couple and aged care needs of each person.



### AIM

Identifying whether your client anticipates or would like to change their housing, such as downsizing or a sea change, and when this is expected to occur. They may be entitled to tax benefits, which in turn would impact their superannuation contributions in the lead up to their housing change.

Living location can impact on the ability of your client to participate in paid employment, or employment at the same income level, and can change their living expenses.

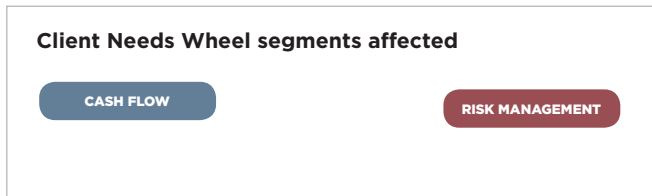
Aged care needs will impact your client's need for liquidity of assets.

Identifying things your client may need to put money aside for.



## PETS

- Q Do you have any pets?
- Q Are you thinking about getting a pet in the future?
- Q Do your pets have health issues?



### **AIM**

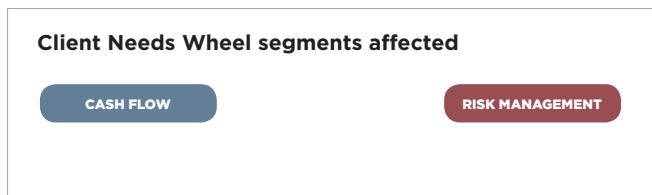
Pets can be more expensive than you think, particularly dogs – vaccinations, initial and ongoing; diet; training; grooming; pet insurance; holiday care; ill health.

Identifying things that your client may need to put money aside for.

## LIFESTYLE

- Q How about hobbies? What activities do you enjoy?
- Q Are there any activities you are keen to try in the future?
- Q Do you have any holidays planned? Do you have aspirations to travel in the future?

For couples – ask the above questions of both individuals to determine lifestyle expenditure needs.



### **AIM**

Lifestyle expenditure can add up over time, or can require a significant lump sum.

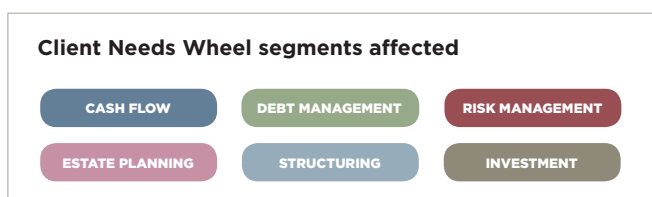
There could also be issues with insurance policies depending on the activities being undertaken.

Client interests may also lead to interesting investment opportunities.

## TAXES

- Q What about your taxes – do you file your tax returns annually?
- Q Do you usually receive a refund or a bill?
- Q If a bill, do you usually pay the bill? Do you know what led to a tax bill?

For couples – ask the above questions of both individuals to determine tax status of each person and as a couple.



### **AIM**

Identify any changes in your client's tax position that may need to be addressed as a priority, or create new opportunities. Enables you to check your client is keeping on top of their tax obligations or if they require professional assistance from a registered tax agent.

## YOUR CLIENT'S APPETITE FOR RISK

- Q Do you expect your income to change in the short, medium or long-term?
- Q How comfortable do you feel about your financial affairs?
- Q Do you pay off your bills as a priority? Or have you been spending and putting off paying your bills?
- Q Has there been any changes you have experienced recently, either in your life directly or in the global / national economy that you are concerned about?
- Q What do you think influences the way you make decisions about your finances or the way you behave when it comes to money? (e.g. spending, paying bills)
- Q Do you feel your attitude to take on risk in your financial plan has changed due to any changes in your circumstances? (e.g. having a baby, buying a house / taking on a mortgage, children starting private school)
- Q How do you feel about the insurance policies you have in place? Are they providing you with comfort that you have them to support you should you need them?

### AIM

Identify any changes in your client's appetite for risk over time, such as:

- capacity to tolerate loss of capital
- level of comfort and acceptance of the risk level in their financial plan
- attitude to financial matters including your advice
- changes in their financial behaviour.

For couples - ask the above questions of both individuals to determine risk management needs.



## FINANCIAL LITERACY / CAPABILITY

Your client's responses to the questions above should give you an indication of their level of financial capability. Exploring this further with your client will help you demonstrate how your advice is appropriate for and in your client's best interest.

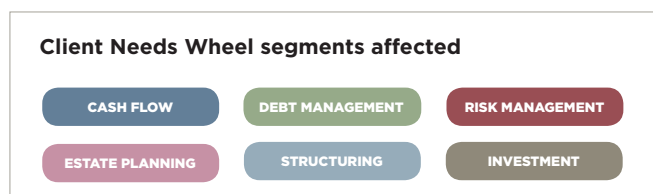
- Q How confident are you in making decisions about your finances?
- Q If you were investing for a time frame of 15-20 years how concerned would you be if your investments fell by 5% in a given day
- Q Can you explain what inflation is?

### AIM

To indicate your client's level of confidence and comfort in making financial decisions.

To indicate your client's level of commitment to implementing your advice.

This is particularly important for ongoing advice.



## EXTERNAL FACTORS

- Q Explain factors in the external environment that may affect your client. For example:
- » Investment performance / economy
  - » Media coverage – that may raise questions or concerns about your advice
  - » Changes in laws that may present new opportunities or impact the effectiveness of your client's current financial plan, such as:
    - Financial planning
    - Superannuation
    - Investment
    - Tax
    - Retirement income
    - Centrelink and social security
    - Product disclosure and development (particularly in the retirement space)
    - Credit
- Q How do you feel about these issues / changes?
- Q Do you have any questions regarding these?

### **AIM**

**To identify any influences on your client's attitudes and behaviours in relation to risk, investment, or other financial matters due to experiences or events. This may include external events such as economic changes, negative media, or changes in the law.**

**Your client's attitude to such issues may impact the appropriateness of your advice.**

#### Client Needs Wheel segments affected

CASH FLOW

DEBT MANAGEMENT

RISK MANAGEMENT

ESTATE PLANNING

STRUCTURING

INVESTMENT

# APPENDIX 3

## TRIGGER EVENTS

**When clients think of their financial adviser they commonly think about their financial plan and finances. They may not readily associate non-monetary matters as circumstances that affect their financial goals. However, to truly understand your client's circumstances and assess their broader, long-term needs and likely future circumstances, it is vital that your client's information goes beyond their financial details.**

The quality and accuracy of your advice is determined by the quality and accuracy of the information you have about your client. This includes both quantitative and qualitative information such as a client's values, attitudes, expectations and financial experiences. Trigger events are easily understood by client's and can elicit information from clients that may help you gain a clear understanding of your client's broader, long-term needs and likely future circumstances.

### LIST OF TRIGGER EVENTS

---

Some trigger events commonly occur at a certain age or life stage, while others may be more regular occurrences or even external to your client. This tool can help educate your client about the impact of life events on their financial planning needs and goals.

#### **Common trigger events (may occur at any age or life stage)**

- Achieving a financial planning goal – that's something to celebrate! It may be time to identify and work towards a new goal.
- Your client's attitude towards financial matters changes or they become anxious about their financial affairs – this could be influenced by an external trigger
- Getting a tax refund / bill or bonus
- Receiving an inheritance / windfall
- Losing a job
- Redundancy
- Changing job and income
- Self-employment – starting or changing your own business
- Business partnership – starting or changing business with someone else
- Divorce or separation
- Losing a partner
- Change in dependent
- Getting a pet
- Changes in lifestyle e.g. hobbies / interests (which may be more expensive)
- Dealing with illness
- Renovations
- Holiday house purchase
- Travel / holidays
- Increased debt

## Age based trigger events

### 20s to 40s

Career and family builder

- Buying a car
- Buying a home
- Getting married
- Starting a career
- Having children
- Increased debt
- Further study
- Change in career

### 40s to 50s

Mid-life

- Children's education
- Family health care
- Becoming a carer of parents
- Thinking about your future retirement

### 50s to 60s

Pre-retirement

- Business / career exit strategy
- Employment payout
- Children move out of home
- Children get a job
- Paying off your mortgage
- Assisting children to purchase property
- Thinking about your future retirement

### 65+

Retirement

- Children getting married / buying a house
- Grandchildren
- Relocating / downsizing / selling your family home
- Considering aged care needs / moving into aged care

### **External / environmental trigger events**

- Investment performance / economy
- Changes in laws that may present new opportunities or impact the effectiveness of your client's financial plan, such as:
  - » Financial planning
  - » Superannuation
  - » Investment
  - » Tax
  - » Retirement income
  - » Centrelink and social security
  - » Product disclosure and development (particularly in retirement space)
  - » Credit
- Media coverage – that may raise questions or concerns about your advice
- Is your client worried about how a change in the external environment may impact their financial plan.

*Please note that this is not a comprehensive list but serves as a guide for you and your clients.*





FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA

ABN 62 054 174 453  
GPO Box 4285  
Sydney NSW 2001

p. 1300 337 301  
e. [policy@fpa.com.au](mailto:policy@fpa.com.au)  
[www.fpa.com.au](http://www.fpa.com.au)