



How to be a compliant Financial Adviser

FASEA disbanded by the government

The government has announced that the FASEA body will be abolished and their functions are to be taken over by the Treasury. Treasury will be setting standards for education and conduct going forward.

All of the FASEA requirements will continue as is. It is only the organisation that is being disbanded.

Single Disciplinary Body

The ASIC Financial Services and Credit Panel (FSCP) which currently administers banning orders will take on the function as single disciplinary body. The FSCP will be expanded and given greater resources to investigate and punish misconduct by Financial Services Providers.

Currently, when advisers come under investigation by ASIC, they tell the licensee to terminate the adviser. It will be compulsory for licensees to do reference checking with the previous licensee before appointing an adviser. So being removed by a licensee can result in an effective ban on an adviser.

FDS & Ongoing Fee Renewals

It has also been announced that Annual renewals will commence on 1 July 2021 and will apply to all clients including pre 1 July 2013 clients who are exempt from the existing opt in requirements. The fee renewal document will be merged with the FDS into a single document.

That makes sense as the FDS will be redundant once annual renewals start but is still an increase in the regulatory burden and not a reduction as presented by the government.

The renewal time for Opting in has been extended:

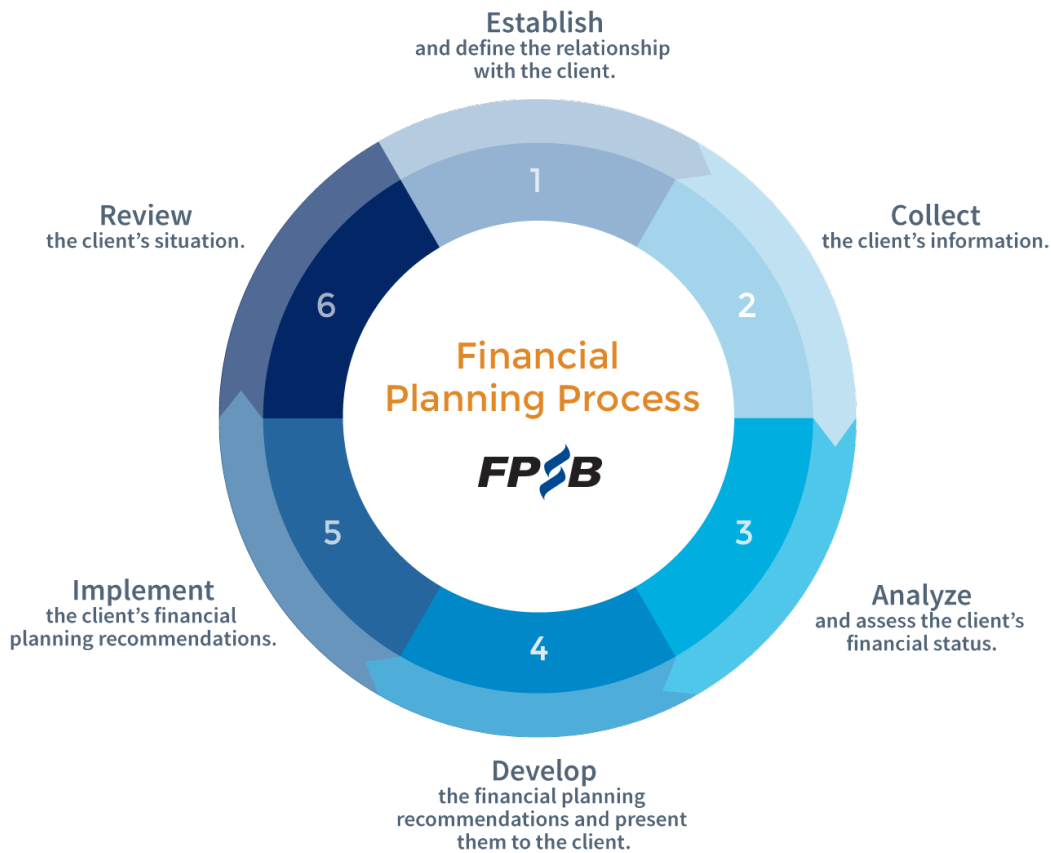
Time limit for providing annual agreement:	60 days after anniversary date
Renewal Period for client to sign annual agreement:	120 days after anniversary date
Time limit for return of signed annual agreement:	150 days after anniversary date

The government has asked the industry to work with consumers to find ways to improve the availability, affordability and quality of advice. In reality, we will need to increase our fees and concentrate our efforts on managing large portfolios for wealthy clients to remain profitable. It is simply not viable to provide one off advice to small clients.

It seems the expectation is that we will charge our fees like lawyers. In that case, the minimum hourly rate you will need to charge for your time will be \$400 per hour and higher for more specialised advice.

Advice procedures

There is a long-standing global advice procedure in place in the industry:



See <https://www.fpsb.org/about-financial-planning/financial-planning-process/>

The Best Interests Duty also identifies the 7 Safe Harbour steps the adviser must undertake:

1. Identifying the subject matter of the advice sought by the client, whether explicitly or implicitly;
2. Identifying the objectives, financial situation and needs of the client that would reasonably be considered as relevant to the advice sought on the subject matter by the client (i.e. the client's relevant circumstances);
3. Making inquiries to obtain complete and accurate information on the client's circumstances;
4. Assessing your competency to advise the client;
5. Making reasonable investigations, research and assessment of a product if you are going to make a recommendation to the client regarding that product (buy/sell/hold);
6. Basing all judgements on the client's relevant circumstances; and
7. Taking any other step(s) at the time the advice is provided that would reasonably be regarded as being in the best interest of the client, given the client's relevant circumstances.

There are severe penalties for failing to follow these procedures.

Code of Ethics

We are now subject to a stringent code of ethics:

Standards of Ethical behaviour	Standards of Client care	Standards of Quality process	Standards of Professional commitment	Our values
<p>Standard 1</p> <p>You must act in accordance with all applicable laws, including this Code, and not try to avoid or circumvent their intent.</p> <p>Standard 2</p> <p>You must act with integrity and in the best interests of each of your clients.</p> <p>Standard 3</p> <p>You must not advise, refer or act in any other manner where you have a conflict of interest or duty.</p>	<p>Standard 4</p> <p>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.</p> <p>Standard 5</p> <p>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.</p> <p>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.</p> <p>Standard 6</p> <p>You must take into account the broad effects arising from the client acting on your advice and actively consider the clients broader, long-term interests and likely circumstances.</p>	<p>Standard 7</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Standard 8</p> <p>You must ensure that your records of clients, including former clients, are kept in a form that is complete and accurate.</p> <p>Standard 9</p> <p>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.</p>	<p>Standard 10</p> <p>You must develop, maintain and apply a high level of relevant knowledge and skills.</p> <p>Standard 11</p> <p>You must cooperate with ASIC and monitoring bodies in any investigation of a breach or potential breach of this Code.</p> <p>Standard 12</p> <p>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.</p>	<p>A relevant provider must always act to realise and promote the values of:</p> <ul style="list-style-type: none"> • Trustworthiness • Competence • Honesty • Fairness • Diligence

A relevant provider is defined in the Corporations Act 2001 (s 910A) as an individual authorised to provide personal advice to retail clients, in relation to relevant financial products.

There is a degree of resistance to some elements of it within the industry. Clients have limited sympathy to this resistance. Advisers need to accept that those are the rules now and find a way to abide by them.

Some practices in the industry will need to change to ensure compliance and we will all need to reflect on our behaviour going forward.

Financial Adviser Exam

All existing Financial Advisers must pass this exam before 1 January 2022.

There has been some resistance to it in the industry however others have viewed it as a great opportunity to prove that they understand the regulations that must be followed to give compliant financial advice.

There are many industry stakeholders (licensees, Professional Indemnity insurers, regulators, clients etc.) who have no other way to determine the basic competence of an adviser.

The fail rate is approximately 10-15% which is low, but many advisers who fail once, struggle to improve. Also there is a time restriction on re-sitting the exam. If you leave it too late to attempt it may not be possible to pass before the deadline arrives.

As we get closer to the deadline, questions will start be asked about the commitment of any advisers who have not yet passed the exam.

Continuous Professional Development

All advisers must have a detailed training plan and undertake training in all of the areas of advice that they are authorised to provide. This is to ensure that they stay up to date and are able to provide advice competently.

It means that advisers will have up to 20 individual training targets to meet each year. Whilst the headline target is 40 hours per year, it is likely that they will need to do 45-50 hours to meet all of the targets. Attendance at a 2-day conference on self-managed super funds or managed investments might only count for 2-3 hours of training targets.

This is an important issue for the industry. We have received significant criticism for lack of commitment to training, cheating on CPD requirements and not staying up to date with changes to legislation. We are in a world where things are constantly changing and it's easy to become out of date. Staying on top of training requires constant commitment.

CPD has become a box ticking exercise but the intent of these requirements is that advisers maintain a high level of relevant knowledge (see FASEA code of ethics standards 1 & 10).

Failure to complete all of the required training will recorded on the publicly available Financial Adviser Register. Advisers should be taking this very seriously.

Education Requirements

The previous standard qualification needed to be appointed as Financial Adviser, was an RG 146 compliant Diploma. This was widely considered to be inadequate. The standard required now, is to hold a FASEA Approved Financial Planning bachelor degree.

Existing advisers must upgrade their qualifications by undertaking additional studies by 1 January 2026.

If they hold a relevant degree and an Advanced Diploma of Financial Planning or equivalent course, the minimum additional study is a course in Ethics for Professional Advisers. This course is demanding and can take 3-4 months of intensive study to complete.

Completing a course in Ethics is a great way to dispel any doubts that outside stakeholders might have about an adviser.

Most existing Advisers will need to complete 3-8 courses to upgrade their qualifications. The deadline for completion is 5 years away but an adviser who is serious about continuing in the industry should already be making progress towards finishing this study.

There is intense competition among education providers now so the fees are not expensive.

Standard documents

All Financial Advisers must provide their clients with Disclosure Documents. These include:

- Financial Services Guide (FSG)

This document is relatively straightforward and static but does need to be updated occasionally. It is also important to ensure that all of the details provided are accurate. Sam Henderson was recently found guilty of Dishonest Conduct and fined \$10,000 for false representations that he held a Master of Commerce in his FSG and elsewhere.

We will shortly be required to update our FSGs to disclose any specific reasons why we lack independence (receipt of insurance commissions etc.).

- Statement of Advice (SOA)

This is the most important document that an adviser will provide to their clients. They can range from 20 pages up to over 100 pages long. They are the focal point of AFCA & ASIC investigations and clients rarely read them.

They need to contain an appropriate mixture of standard text, explanatory information and content customised to each client. This is extremely challenging and SOAs need constant improvement.

The SOA must have:

1. An adequate presentation of the client's current situation.
2. Clearly specify an appropriate scope of advice for that client.
3. Show an analysis of the current products held by the client.
4. Give compelling reasons why the recommended products are better for the client.
5. Present reasons why logical alternative strategies are not being recommended.
6. Make clear disclosures about costs & risks of the advice.

Recommendations made to the client must be appropriate and clearly in their best interest. Advisers must not prioritise their revenue opportunities above the interests of the client.

- Fee Disclosure Statements (FDS)

This is a relatively basic document that must be sent to clients every year. It must specify:

- how much they have paid,
- the services they have received and
- the services they were entitled to receive

You must have a system to demonstrate that you have actually delivered the required services to your clients (e.g. using file notes). Simply asserting that all services were delivered without proof or failing to send an FDS can result in forfeiture of fees already charged to the client.

Even though this document is being phased out you will still need to continue providing them. The template will need to be updated to incorporate a service agreement/fee renewal.

All of these documents must be approved by the licensee.

Record-keeping

You must be able to show evidence that you have followed a proper advice process. Ideally, the evidence will be presented in your SOA but it could also be partially held in file notes. Your file notes should contain strategy working papers to show how you determined your advice.

If your file notes cannot be easily accessed on demand then you are not compliant. This is an area that financial planning software can handle very well. If advisers are using their software properly it should not be necessary for an auditor to visit your office to review your files.

The compliance procedures we must follow can be onerous and not necessarily client friendly. It's easy to slip into the temptation of cutting corners just to avoid upsetting clients. That is a fatal mistake. If a client is not willing to sign authorities and other provide other documents needed to demonstrate compliance then they are best avoided.

Many times I have had conversations with advisers where they explained their reasons for doing something. It's great that they can articulate it but if the record isn't in the file then it doesn't exist. If you cannot prove that you delivered ongoing service to a client then you can be forced to refund all the fees back to them.

Financial Planning Software

While there are Financial Advisers out there who do not use Financial Planning Software, it has become more prevalent than ever how inefficient and clunky it is to continue down that path. Major challenges such as software fee costs of up to \$1,000 per month and learning to use the software need to be seen as investment towards operating an efficient business. It also assists in demonstrating that you have compliant structures in place.

The software usually provides the following functions:

- CRM for client information.
- File Notes of client interactions.
- Financial modelling for products and cashflow.
- Research on products.
- Recording of client revenue.
- Preparation of SOAs, FDS and other standard documents.

By mail-merging documents through the software you can avoid the practice of cutting & pasting client details onto templates. It can also allow licensees to ensure that all advisers are using up to date and approved templates.

The software enables templates to be tailored to each adviser (e.g. customised covering letters & front covers) and for specific content to be included or excluded depending on its relevance to the client.

We have chosen Xplan as our preferred software and going forward we expect advisers to be using software appropriately.