FPA Consultation Paper

Modifications to the FPA Code of Professional Practice to incorporate FoFA

Released in October 2012
A. Introduction

This is a time of great change in the landscape of financial services and the role it plays in underpinning the Australian economy and the future financial security of all Australians. It is our firm view that financial planners are at the centre of that change, that the role they play in protecting Australian consumers from the worst elements of change (whether from markets, products or government intervention) and in assisting Australians to navigate and secure their financial futures is a vital and important role.

We believe these responsibilities are so significant that they should only be entrusted to those who choose to work to professional ideals, who respond to standards that are higher than the law and who belong to a professional association that believes deeply in growing the professional respect of its constituents by taking consumer protection seriously.

The government’s Future of Financial Advice (FoFA) reforms have modified the Corporations Act with a legislative response to government concerns about the quality, cost and conflicts that have arisen in past financial advice practices. Whilst the FPA has supported the intention of many of those changes, we believe that these legislative changes will not deliver the consumer protection that Australians need or the professional respect that their professional financial planners deserve. We acknowledge though that this has more to do with the inherent limitations of the legal framework for financial services in Australia, rather than government, regulatory and public support for professionalism. Indeed a key element of the FoFA reforms has been the inclusion of express powers to ASIC to encourage professional codes of conduct through the provision of class order relief to providers covered by that Code.

The FPA, as the Professional Association for financial planning, already has a world respected Code of Professional Practice that governs the conduct of members of the FPA and that is used by FOS, the Courts and the Conduct Review Commission as the recognised set of standards for the provision of financial planning services in Australia. As part of its application (in February 2012) to ASIC for approval of the Code, the FPA Board undertook to review the Code and consider how it should be modified to respond to recent changes in the law. This consultation paper is a result of that review process.
In undertaking that review we have taken the opportunity to not just replicate the law but to also think broadly about the future of financial planning and how professional standards should work to promote a new approach to professional advice that improves consumer protection by empowering individual professionals. The result of this approach has been an exciting new set of breakthroughs in not only proposing a solution to the Opt-In challenge but also in encouraging a professional form of scaled advice that streamlines the process, improves the certainty for financial planners and deepens the protections for clients.

The FPA Board is pleased to release this Consultation Paper for member, licensee and public consideration. We encourage all stakeholders of financial advice to consider how a professional code such as this supports and extends the law to deliver professional respect, consumer protection and accessibility of advice to all Australians and we welcome your feedback on our proposals to achieve that.

Kind Regards

Mark Rantall
Chief Executive Officer

A special note of thanks needs to be provided to Dr Deen Sanders (FPA Chief Professional Officer) who was the author of this paper and the ideas that sit behind it. Deen is leaving the FPA at the end of October to take up the role as Executive Officer for Australia’s Office of the Professional Standards Council. We thank Deen and we wish him all the best in the future.
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About this paper

This consultation paper sets out the FPA’s proposed modifications to the Code of Professional Practice in response to the FoFA changes in the Corporations Act (2001). Specifically it addresses the issues of:

- Best Interest
- Scaled Advice
- Conflicted Remuneration
- Opt-In

In seeking to find solutions to the issues raised by FoFA it has been necessary to take some bold new considerations about the purpose and process of financial planning. Since the introduction of Corporations Act in 2001 there have been some profound missteps along the journey to a professional, respected and safe financial advice proposition for Australians. Some of these misunderstandings have resulted in various models of financial advice, some of which do not conform to our view of professional financial planning and others of which do little to ease and encourage consumer engagement. Through the work on modifying our Code it became evident that we would need to face this challenge and make clear statements about what we believe financial planning is and how it differs from other models of advice that might be offered (for instance, Corporations Act – personal financial advice or ASIC - Scaled Advice).

This paper is a conceptual paper. It is intended to outline the FPA’s thinking on how the Code might be modified to resolve the professional challenges of complying with the underlying intentions of FoFA. As a consequence it does not prescribe compliance requirements or stipulate every rule that applies to financial planning and financial planners. It deals with those elements identified above and is intended to be read in conjunction with the full FPA requirements and Code of Professional Practice.

Nothing in this paper should be taken as legal advice or as an indication of compliance expectations with FoFA or with FPA requirements. Nor should anything in this document be read as a legal opinion or interpretation of the Corporations Act.
The professional response to legislative change

The FPA believes effective regulation of professional services such as financial planning is best achieved through a collaborative effort among governments, professional bodies and the licensed, regulated community. In this preferred model governments set the regulatory expectations of practice, market integrity and consumer protection, and professional bodies determine professional norms, conduct expectations and education and certification requirements that foster consumer and government confidence in the profession.

Professional Standards and Codes play a vital role in both improving upon the Law and the way it is applied, as well as providing improved consumer protections in the way they clearly identify professional expectations. We believe that collaboration among governments, regulators and professional bodies encourages the alignment of public and professional interests to create better regulatory and consumer outcomes. Not only do professional standards safeguard the consumer, when adopted and applied by the professional community they also safeguard the professional community from the need for persistent regulatory/legislative change.

This professional, industry and regulatory partnership is a strategy that the FPA has promoted for some time and recent changes in the Corporations Act to incorporate FoFA (specifically the link between s962CA and s1101A that promotes the benefit of being a member of an approved Code) give support to the concept that this sort of partnership will be an improvement to consumer protection and professionalisation in financial advice.

With that opportunity we have approached this code modification project as a chance to completely rethink the way the Code responds to external regulatory issues and how we communicate the role of professional standards in resolving them. We are acutely aware that legislation and regulatory approaches change frequently in Financial Services and that this is costly and disruptive for financial planning practices, as well as confusing and risky for clients.

As a consequence, along with improved consumer protection, a goal of this code modification project has been to future proof the FPA’s system and build flexibility and capacity in the Code to avoid the need for constant modification in response to future, inevitable changes and regulatory creep in the external regulatory landscape. This includes taking the decision to deliberately not just incorporate versions of the law in the
Code but to deeply consider the challenge from a professional behavioural sense, where the intended benefits to the consumers are seen through the lens of ‘what professional behaviour do we want to observe?’

A consistent criticism of FoFA and the regulatory responses to it is that the elements of reform (Best Interest, Scaled Advice, Conflicted Remuneration and Opt-In) continue to be seen as disparate components, when at a practical advice level, they are clearly related. Failing to consider them in relation to each other creates confusion and complexity in their application and risk in their protective benefit to consumers. At a professional level we have the advantage of being able to consider these elements holistically and focus on the behaviour that underpins them all. This not only reduces the complexity of their interpretation, it improves their professional application and consumer benefit.

For this reason, we have deliberately avoided simply duplicating the language and requirements of the law and instead focused on fixing the underlying problems that FoFA identified. This way of considering professional standards recognises that, rather than detailing prescription and proscription with narrow compliance expectations, professionals prefer to respond to principles, over rigid rules; and that they prefer to be encouraged to engage in the right behaviours over tick-a-box compliance processes that undermine the substance of professional behaviours.

Professional Standards are the vital (and historically missing) link between consumer protection and consumer engagement and without their recognition the emphasis is too heavily focused on government regulation and licensee obligations in ways that discourage professional recognition.

**Regulatory obligations**

- Professional: Code of Professional Practice
- Government: Corporations Law (Statute and Common Laws)
- Business: Licensee compliance requirements

Professionals prefer principles over prescription and encouragement to good practice over rigid, compliance driven systems that do little to actually protect consumers.
Whilst it will always be the case that ASIC will measure compliance against the expectations and wording of the Law, the intent of professional standards is to negotiate achievement of that compliance in a way that leads to the right behaviour, rather than one that can be resolved with tick-a-box compliance solutions. In this way members can focus on meeting their professional obligations, confident that by adhering to the Code processes they are also largely satisfying their personal regulatory obligations.

The Consultation Approach

All stakeholders (members, AFSL’s, consumers and other interested parties) are invited to comment on the proposals in this paper.

As noted, the ideas within this paper are intended to refocus the debate on how regulatory requirements of FoFA can be met through a professional approach to financial planning and practice. We acknowledge that a priority for industry, licensees and members will be on how the FPA proposes to solve the 4 FoFA elements in the operation of the Code, in particular Subdivision B (962D – 962S) “Opt-In” requirements, so that Licensees and Members can consider how they might work with the FPA Code to ‘obviate the need for Opt-In’ under FoFA.

We believe that we have solved those elements in this paper through the development of a range of new Ethical Duties, Standards and Rules. Since this paper is a conceptual paper at this point, we have not provided fully worked examples of how all the concepts work in practice and at this stage our focus is on seeking feedback to these concepts before we then begin a program of work on guidance and detail in 2013.

From the outset we acknowledge that there is a need for new resources, education and tools to aid application of the ideas in this paper and the FPA is developing a separate education program of practical support to assist members in complying with their obligations (legal and professional) going forward.

We invite you to consider how these concepts might be incorporated into your business rules and practices and the impact in terms of cost and benefit. Whilst we are very interested to hear views on the scale and scope of the ideas presented, each of the principles and their wording have been carefully constructed to reflect established principles in law and professional practice, and so our preference is that feedback is focussed on issues of application and implementation so as to help us understand the professional, practical and perceived reputational impacts for members.
To aid your consideration, within each section we have attempted to provide you with the background to our thinking and then to propose specific questions that might help in any modification to the strategies we have proposed.

**Making a Submission**

All submissions will not be treated as confidential unless expressly requested by you.

Submissions close **5pm Friday, 30th November 2012**.

You have a number of options to contribute to the consultation process.

1. Submissions can be sent to:

   John Bacon  
   General Manager Professional Standards  
   Financial Planning Association of Australia Ltd  
   GPO Box 4285  
   Sydney NSW 2001

   Facsimile: 02 9220 4580  
   Email: codeconsultation@fpa.asn.au

2. You can provide an instant response to some or all of the consultation questions through our Online Feedback mechanism.

**Timetable for consultation and code modification**

The timetable for the Code modification and consultation process is proposed to be:

<table>
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<tr>
<th>Date</th>
<th>Activity</th>
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<tr>
<td>18th October 2012</td>
<td>Consultation Release to membership and stakeholders</td>
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<tr>
<td>30th November 2012</td>
<td>Consultation Close (6 week consultation window)</td>
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<tr>
<td>December 2012</td>
<td>Code finalisation – respond to Consultation feedback</td>
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<tr>
<td>January 2013</td>
<td>Republish (amended) Code of Professional Practice</td>
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<tr>
<td>January to June 2013</td>
<td>Workshops, resources and compliance development phase on Code</td>
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B. Best Interest

Our view on the background to Best Interest

The newly established Best Interest requirements in Law have been framed as a ‘fiduciary like’ concept. Throughout the consultation process for the development of the legislation the FPA has maintained its position that members are held to a professional duty of ‘client first’ which we have generally equated with the common law concept of fiduciary duty that members would likely be held to if subject to a court determined legal action.

In their consultation paper on this issue (CP182, 9 Aug), ASIC have explained that they believe the goal of the Best Interest requirement (s961B) is to ensure that “Advice providers must act in the best interests of their client” and that one way an advice provider can demonstrate they have done this is by showing they have carried out certain steps in advising their clients. These steps, which act as a ‘safe harbour’ for complying with the best interests duty, are set out in s961B(2) of the Corporations Act.

<table>
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<th>Corporations Act - Section 961B2</th>
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<td>(2) The provider satisfies the duty, if the provider proves that the provider has:</td>
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<tr>
<td>(a) identified the objectives, financial situation and needs of the client that were disclosed to the provider by the client through instructions;</td>
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<td>(b) identified:</td>
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<tr>
<td>(i) the subject matter of the advice that has been sought by the client (whether explicitly or implicitly); and</td>
</tr>
<tr>
<td>(ii) the objectives, financial situation and needs of the client that would reasonably be considered as relevant to advice sought on that subject matter (the client's relevant circumstances);</td>
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<tr>
<td>(c) where it was reasonably apparent that information relating to the client’s relevant circumstances was incomplete or inaccurate, made reasonable inquiries to obtain complete and accurate information;</td>
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<tr>
<td>(d) assessed whether the provider has the expertise required to provide the client advice on the subject matter sought and, if not, declined to provide the advice;</td>
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<tr>
<td>(e) if, in considering the subject matter of the advice sought, it would be reasonable to consider recommending a financial product:</td>
</tr>
<tr>
<td>(i) conducted a reasonable investigation into the financial products that might achieve those of the objectives and meet those of the needs of the client that would reasonably be considered as relevant to advice on that subject matter; and</td>
</tr>
<tr>
<td>(ii) assessed the information gathered in the investigation;</td>
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<tr>
<td>(f) based all judgements in advising the client on the client’s relevant circumstances;</td>
</tr>
<tr>
<td>(g) taken any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client’s relevant circumstances.</td>
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A test that ASIC propose might assess this is that: “we expect that the processes for an advice provider to follow in acting in the best interests of their client will result in the client being in a better position, if the client acts on the advice provided" (CP182, B1, p16).

In following our Professional Standards strategy, our solution is to focus on understanding the underlying problem and identifying the preferred professional behaviour. With that in mind the FPA believes that the intentions of the Best Interest provisions are to ensure:

- That clients are engaged with appropriately to their needs,
- That clients are offered advice that responds to their needs,
- That an adviser has sufficient and accurate information on which to base their advice,
- That the adviser is competent and authorised to provide appropriate advice,
- That the adviser understands and compares existing and potential products for this client,
- That the adviser takes into account the specific circumstances of this client.

**FPA solution for Best Interest**

In our view the best way to resolve these concerns is by clarifying the professional way an Adviser engages with a client and considers the advice they need. The FPA Code of Professional Practice already provides a detailed set of requirements for how engagement should work and how assessment of client need is undertaken but there is an opportunity to reframe those expectations in a way that clearly identifies the professional expectations in each of those vital steps.

We propose to do that by introducing the following Best Interest Principles:

- **Principle 1:** Fair Engagement
- **Principle 2:** Professional Competence
- **Principle 3:** Professional Diagnosis
- **Principle 4:** Recommend in Best Interest

NB: Whilst much has been made of the complexity raised by clause (g) in 961B2, especially as to how it affects the capacity for scaled advice provision, we deal with that issue separately within the ‘Scaled Advice’ section of this paper.
Our proposal for Best Interest

We believe introducing these Principles, and then providing guidance on their application and enforceability, will focus the activity of the professional on the issues that underpin the concerns of the Best Interest provision and improve client and professional outcomes. Whilst the Corporations Act proposes a minimum set of steps that afford a ‘safe harbour’ in responding to this obligation, a professional standards approach identifies the preferred professional behaviours and should act as an alternative path to ‘Best Interest’ outcomes for a client.

FPA Ethical Duty Principles (Best Interest)

**Principle 1: Fair Engagement** > a defined, client centric engagement process will identify the extent of issues to be resolved, the type of advice relationship the client is likely to need and the role of the planner.

**Principle 2: Professional Competence** > a professional will identify ‘strategies’ that:
First, deliver solutions to the Client Diagnostic; that they are capable and competent to advise on and; that their licensee has authorised them to engage in. If not, they will refer.

**Principle 3: Professional Diagnosis** > a professional diagnosis will not only identify ‘client wants and needs’, it should also identify personal strengths/weaknesses, capabilities and preferences in the way clients manage money, apply financial tools and technology, respond to risk and loss, as well as plan and progress toward their financial goals.

**Principle 4: Recommend in Best Interest** > Provide recommendations that satisfy Principles 1 to 3 and that meet the advice need identified by the client. The Adviser should demonstrably intend to financially improve the client’s outcomes, whilst balancing the obligation that if there is no best interest fit solution within the client’s existing holding or within your authorised solutions you should not make a specific financial product recommendation.
Consultation Questions (1 – 5)

B. Best Interest

1. Do you agree that this approach responds to the underlying concerns of FoFA for Best Interest?

2. List any specific examples that you can think of where these principles would not satisfy the concerns of FoFA or meet the Corporations Act expectations?

3. How closely do these principles reflect your current process and how much change would be required to modify your practice to comply with them?

4. Do you think adhering to these enforceable principles improve or reduce consumer protections available under FoFA?

5. What sort of guidance, tools and resources would be needed to aid implementation of this?

Best Interest – Provide Your Feedback
C. Scaled Advice

Our view on the background to Scaled Advice

The opportunity to deliver a more affordable form of advice or to make advice available to more Australians has been a dominant theme of the FoFA reform process. Throughout the FoFA consultation, Government and stakeholder anxiety in this area seems to have been driven by concerns that clients are being ‘forced’ into comprehensive advice because Advisers are unwilling to offer affordable, simple advice solutions. This is seen as especially concerning in high client demand areas such as superannuation advice. The underlying assumption has been that this may be motivated by revenue goals that lead to over servicing, over advising and over charging. The FPA rejects this argument entirely and has consistently argued that the interpretative uncertainty of the Law and assumptions (rightly or wrongly) about correct compliance with ASIC’s and FOS’s interpretation of it, has encouraged a ‘risk averse’ mindset in the Licensee community that has led to a compliance driven approach to advice that does not allow for ‘differentiated product’ responses. As most Advisers are authorised to offer a range of advice solutions the importance of uniformity in compliance and business rules application has resulted in Superannuation Advice being treated with the same complexity of compliance and process as is structured Investment or Estate Planning Advice.

Whilst ASIC has attempted to clarify this in iterations of Regulatory Guidance (RG200) there remains significant uncertainty as to how ‘simplified advice’ options apply in contexts outside of super. One recommendation to government has been to allow different regulatory requirements for different risk classification of products so that Super for example might have a different (lesser) regulatory burden than other financial products. As this approach has received little legislative support, there is instead a need for the professional community to make specific declarations about modifications to the professional expectations of advice to allow for streamlined processes.

It is acknowledged that the marketplace has assumed that applying the FPA’s comprehensive professional financial planning process incurs substantial cost that puts advice out of the reach of many Australians and that clarifying this issue is important to resolving arguments about the cost of comprehensive advice.

The FPA has consistently promoted the view that professional financial planning is a scalable process in terms of coverage of advice issues and that the comprehensive element relates to a comprehensive understanding of the client and not the nature of the documents and process of advice. Our Code of Professional Practice identifies that all elements of advice are important but they need not all be dealt with at the initial moment of
advice and that a member is able to *prioritise* the advice need and solution they address based on urgency and importance. This is likened to the triage medical concept where a doctor needs to respond to the immediate ‘presenting symptoms’ but should also be mindful of the wider patient needs and encourage future consultation to resolve them. We see this as distinctly different to the typical examples of ‘Scaled Advice’ that are currently being discussed in that the FPA expects all of the advice to be dealt with at some point in the relationship lifetime between financial planner and client.

Whilst we have encouraged interpretation of the professional financial planning process in this way, the FPA has not made formal statements authorising this interpretation. In order to specifically support a ‘streamlined’ advice option that matches the FoFA intent, as well as to also provide professional comfort to members and professional confidence to consumers, we propose to clarify the FPA’s professional financial planning model to create a formally authorised new concept of *staged advice* that shows how the professional financial planning process deals with individual elements of advice need and develop formal FPA standards that underpin that to provide regulatory and professional comfort.

In recognising that these ‘staged’ elements may arise as prioritised, one off or immediate advice needs the FPA is formally approving that professional financial planning can be a staged process but that Staged Advice is a distinctly different concept to the Corporations Act versions of Financial Advice and/or Scaled Advice. The professional emphasis we want to formally communicate is that the unique difference of financial planning is focused on the engagement and professional diagnostic steps in the process.

This concept extends beyond the Corporations Act Financial Advice and substantially further than the currently discussed models of Scaled Advice in that the emphasis in FoFA on Scaled Advice is on *outcome driven* advice (where subject matter is broadly equated to financial product) whilst the emphasis in FPA’s professional advice model is on *diagnostic driven* comprehensive advice (where subject matter is equated to client needs and wants).

Graphically, this difference between the processes can be seen below:
Corporations Act (2001) sought to ensure that there was a reasonable basis (s945A) for recommendations made to purchase a ‘financial product’ by linking that basis to ‘one or more client needs’. The effect of this requirement saw the growth of ‘fact find’ tools and processes that were of varying complexity and usefulness in genuinely understanding a client’s needs but were generally useful in identifying a factual basis for financial product recommendations. The FPA believes that the process of client engagement and professional diagnosis is a more comprehensive exercise than the simple collection of demographic data and that a professional planner uses their expertise to identify ‘client capability’ as well as ‘client wants and needs’, identifying personal strengths / weaknesses, capabilities and preferences in the way clients manage money, apply financial tools and technology, respond to risk and loss, as well as how they plan and progress toward their financial goals.

ASIC’s response to the July 2012 revisions to Corporations Act (FoFA reforms) is to formalise the concept of Scaled Advice as a further encouragement to simplify the financial product advice process. This is supported by an emphasis in the law (s961B2) that (in clauses 961B(1) through 961B(2)(f)) encourages the Adviser to limit the advice to the issue (subject matter) that a client raises (e.g. superannuation). ASIC’s consultation on Regulatory Guidance (CP182) and early market responses indicate this will likely result in the development of specific, limited ‘fact find’ tools that allow for streamlined compliance processes before product recommendations are made. A potential model of this substantially simplified process is represented below.
Whilst related, it is clear that these three approaches have substantially different engagement and diagnostic emphases and therefore give rise to different professional regulatory and client obligations. For instance the Fact Find process emphasised in Corporations Act is a truncated and ‘financial product’ specific version of the separate, professional processes of Client Engagement and Professional Diagnostic.

The FPA supports the need for streamlined, client driven financial advice but believes it must be offered within a professional context, where clients can rely on the professional integrity and competence of their Adviser and know that the Adviser is able to undertake a complete diagnostic that can then lead to a more comprehensively considered financial strategy. We are concerned that some of the examples raised in Industry discussion appear to approach ‘scaled advice’ emphasising the need for a lesser, product aligned diagnostic that then leads to a defined product outcome and recommendation.

Of course, given that many clients needs are predictable and can be planned for, such an outcome is often warranted, is often what the client wants, and may even be more cost effective in the delivery, and as a consequence we believe these options should be available to consumers. The caveat for the FPA is that these options should never be able to be confused by the consumer as being ‘financial planning’.

Of strategic relevance to our community and Australian consumers, is the real danger that this form of truncated ‘advice’ will be misrepresented or misunderstood as ‘Financial Planning’. In our view allowing any form of ‘advice’ from outcome oriented ‘scaled’ advice to diagnostic oriented ‘comprehensive’ financial planning to be labelled as ‘Financial Advice’ is to create a significant consumer risk and perpetuate the misrepresentation of financial planning.

Treasury voiced the related concern that clients may be offered financial product advice without sufficient consideration of their personal needs. The solution to this concern was to introduce clause s961B2(g) into the ‘Best Interest’ safe harbour elements, which require evidence that the provider has:

961B2(g) taken any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client’s relevant circumstances.

Whilst this appears to discourage formulaic advice that doesn’t take into account the client’s needs, the industry has voiced strong concerns that it has the potential to undermine the benefits of ‘scaled advice’ because the requirement to ‘take any other step’
and the open ended nature of ‘given the client’s relevant circumstances’ does not allow the fact find process to be limited or allow streamlining any other aspect of the advice process because every client is unique [and therefore their circumstances are unique].

At the moment, consumers, advisers, and licensees are still faced with uncertainty in the way ‘scaled advice’ operates under FoFA. Even in the unlikely circumstance that ASIC can provide a definitive view in their finalised Regulatory Guidance, experience suggests it will be left to FOS and the Courts to determine whether too little, or too much inquiry of the client’s particular needs and circumstances has been undertaken in support of the recommendation in a given instance.

On the one hand too little inquiry of the client is likely to result in a mismatch between client need and product recommendation, leading to consumer detriment, and potential adviser and licensee liability that has been evidenced in the past. On the other hand, too much investigation and the adviser, licensee (and therefore the consumer) will bear unnecessary expense and an overly complex advice process that discourages future engagement.

Past practice suggests that managing the liability risk will prevail, leading to many licensees, adviser and professional indemnity insurers escalating compliance settings to require over-investigation, with the consequence that many consumers will be priced out of advice. The industry has been proposing that alternative business models, able to focus on single product issues, may succeed where they can narrow the client need assessment, whereas whole service, whole advice businesses may find it more difficult to identify the business benefits of dealing with clients of limited means.

Faced with this uncertainty, financial services businesses may be reluctant to invest in beneficial consumer facing infrastructure designed to ensure access to a predictable, repeatable consumer experience of advice at a cost and quality that most consumers can afford.

**FPA solution for Scaled Advice**

At a strategic level, the FPA’s continued advocacy for application of the ‘restricted term Financial Planner’ is our response to the threat of advice mislabelling. At the level though of finding a pragmatic solution to scaled advice we believe the clearest way is to establish industry wide norms [standards] that identify the obvious [typical] issues that would arise given a typical set of circumstances for a typical client type. Whilst this cannot resolve the fact that ‘every client is unique and therefore their circumstances are unique’, a properly
constructed and agreed standard could provide comfort in responding to the vast majority of clients that have typical advice needs or are facing financial challenges or questions of a type ‘normally’ relevant to clients of their age or lifestyle needs.

Establishing such a ‘standards’ concept that interacted with ‘staged advice’ would represent a substantial change in the FPA’s position on what constitutes advice, even though we accept that most of the advice provided today is ‘limited’ in some way. Whilst individual Licensees may be applying such an approach already, strategically, and legally, it would be important that this is negotiated and established as a professional standard so that legal, compensation and potentially even regulatory responses could then rely on the established standard as a form of measurement. For the same reason, it would be better from a consumer protection perspective that such a standard should emerge from the professional community, rather than from the wider industry where Licensee and Product alliances may impact on the protections considered.

As noted, this strategy challenges the FPA to step beyond our normal approach of strictly adhering to our professional financial planning process and into the space of building and facilitating an approach to professional financial planning that allows our members (and by extension the whole financial services industry) to meet the requirements of both our Code of Professional Practice and the Law.

Our proposal for Scaled Advice

We believe clarifying and defining the types of advice that are available in the marketplace and formally introducing the concept of ‘Staged Advice’ as a priority driven form of comprehensive financial planning will focus the activity of the professional, and the compliance systems that underpin them, on solving the immediate client needs in a way that allows streamlining and cost efficiencies to emerge without the likelihood of consumer detriment and misrepresentation.

We further believe that clients and their Adviser will benefit from the development of a formally endorsed professional standard that identifies the steps that would reasonably [typically] be regarded as being in the best interests of a type of client, arising as a result of a particular advice need. We have identified these collectively in an FPA Staged Advice Standard.
Proposed Advice Need element

The first element of the Standard is based on establishing the typical advice needs that arise for Australians seeking advice, whilst also ensuring that they align to our established aspects of comprehensive professional financial planning.

Beginning with FPSB’s\(^1\) seven components of financial planning (FPSB Competency Profile, 2007):

- Integration,
- Financial Management,
- Asset Management,
- Risk Management,
- Tax Planning,
- Retirement Planning and
- Estate Planning

and incorporating FPA’s own model of the Client Needs Wheel that shows the integrated, comprehensive nature of these elements (FPA Submission to PJC, 2010).

We have also then identified the common advice questions and activities that arise through industry data sources such as consumer surveys and our own “Ask an Expert” service to identify the range of ‘advice needs’ that Australian consumers typically present with.

Applying all of these elements leads to the ‘Advice Needs Map’ (overleaf) that captures all of this material in a single screen showing a general (DRAFT) hierarchy of client financial advice needs that prompt them to see a financial adviser.

\(^1\) FPSB (Financial Planning Standards Board) is the trademark owner of CFP®. An essential role of this body is the establishment of good global standards in the provision of financial advice, including required education and elements of advice. FPA is the Australian approved affiliate of FPSB, which is represented in 26 countries worldwide.
Obviously, any needs set developed by the FPA will first assume that clients may present with a need for comprehensive financial planning before considering the other discrete needs but this map is not intended as an exhaustive map of advice scenarios. At this draft stage it is meant to be indicative of the spectrum of ‘needs based advice triggers’. We know that in many instances a client will present with a range of issues and those issues may overlap with discrete advice need categories identified here. In general though, all of these Advice Needs categories can combine over time to become a comprehensive professional financial planning solution.

Identifying the right collection (map) of needs set is the first step, as we then propose to populate the range of advice needs and client types with potential guiding questions about each of the advice needs to focus the fact find requirements in a universal way. These ‘fact find’ questions can then be used to streamline the process of advice.
In our view, the priority issues that translate to a staged advice need are likely to be:

**Sample Advice Needs and Fact Find**

- **Superannuation**
  - Do I have enough (or the right) super in place
  - Retirement goals (time to retirement, longevity, lifestyle and income expectations, pension)
  - Present circumstances (super funds – number, balance and investment strategy)
  - Goals for superannuation investment - value, yield, tax, security etc..
  - Appetite for risk in Superannuation investment (tolerance and capacity)

- **Debt and Problem Solving**
  - Getting back in financial control
  - Cashflow and savings capacity
  - Borrowing, managing and positive debt
  - Financial education
  - Prioritising payments, hardship, negotiating with creditors, bankruptcy etc..

- **Insurance and protection**
  - Protecting the things that matter
  - Goals for this product (financial, family, income, security etc..)
  - Current insurance cover and experience with insurance
  - Urgency of cover
  - Health and Underwriting factors

The Advice Needs element is only one component of the Staged Advice solution. It is intended to only be applied in conjunction with the Client Type element discussed in the next section.

**Consultation Questions (6 – 11)**

**C. Scaled Advice – advice needs standards - your feedback**

We know that members are best able to advise us on the ‘typical’ client types in their client base and are best able to inform a definitive standard in this area.

6. Map 1 is not intended to meet every possible advice need that arises but is intended to describe the ‘typical’ advice needs that a ‘typical’ client presents with. Outline any other ‘typical’ needs not captured in one of the component boxes on this map?

7. The goal of the Standards process is to identify those advice needs for which a client might seek ‘scaled advice’ [Staged Advice].
   a. We have prioritised Super, Debt and Insurance as being most urgent – do you agree?
   b. Outline the mandatory ‘Fact Find’ questions that should apply to these Advice Needs?

8. Outline any identified advice needs that cannot (or should not) be dealt with in a ‘Staged’ or ‘Scaled’ Advice way?

9. What are the typical questions that clients walk into your office with as their opening request?

10. Do you currently (or plan to) use anything like this in your practice?

11. What sort of guidance, tools and resources would be needed to aid implementation of this?

**Scaled Advice - Provide Your Feedback**
Proposed Client Type element

Obviously every client has a unique set of circumstances and needs but it is well established that particular types of advice need tend to arise at specific stages of life or in response to typical lifestyle needs of clients.

In support of the capacity to determine ‘typical client needs’ ASIC’s moneysmart.gov.au website identifies specific ‘life events’ for which they provide financial suggestions and tips, as well as a concept similar to client types in their identification of advice options. ASIC identify ‘Under 25’s, Over 55’s, Families, Self employed, Women and Indigenous people’ with standardised advice needs in each category. As a further example, ASIC have historically (between 2003 and 2009) produced (supported by the FPA) a booklet titled “Getting Advice”, which also utilises ‘life stage’ types to identify advice needs (‘planning to retire”, “retrenchment”, “having children”, paying off the mortgage” etc…). Whilst the focus of these documents has been on financial literacy and general information, they provide an important acceptance of the concept of distinct client groups having a foreseeable set of ‘typical’ needs. The FPA has recently developed an FPA Consumer brochure in consultation with members that also identifies typical life stage needs for advice. The following set of Client Types blends those agreed life stages with a list of financial needs that typically arise for clients in each of those age groups.

Client Type – Age Based - Map 2
The Client Type element is only one component of the Staged Advice solution. It is intended to only be applied in conjunction with the Advice Needs Type element discussed in the previous section. We provide a process map overleaf of how these elements will work together to deliver a streamlined advice solution that meets the professional expectations of the Code of Professional Practice.

Consultation Questions (12 – 16)

C. Scaled Advice - client type standard – your feedback

We know that members are best able to advise us on the ‘typical’ client types in their client base and are best able to inform a definitive standard in this area.

12. Map 2 is not intended to meet every possible client type you have seen but is intended to describe ‘typical’ clients and their needs. We know there are other examples that use models like marital status, family status or risk categorisation. Please provide details if there is a better spectrum of client types that captures a definable sector and has a universal needs perspective?

13. The goal of the Standards process is to identify those advice needs for which a client might seek ‘scaled advice’ [Staged Advice]. A full life spectrum of client types are presented in Map 2:
   a. Do you think that only some of these client types can (or should) be dealt with in a ‘Staged’ or ‘Scaled’ Advice way?
   b. If you answered yes, please list which ones can (or should) be dealt with in a ‘Staged’ or ‘Scaled’ Advice way.

14. a. Are these the ‘typical’ needs that each of those age categories would have?
14. b. List any ‘typical’ needs are missing in which category.

15. Do you use age based client types in your business now? If so please outline how these work?

16. What sort of guidance, tools and resources would be needed to aid implementation of this?

Scaled Advice - Provide Your Feedback
Applying the FPA Staged Advice Standard

We envisage that Advisers will be able to apply the Staged Advice Standard relatively easily, once the Advice Need and Client Type are identified in the initial client discussion.

For example:

It could be that other elements of the Age Based Client Type could apply if the issue is considered ‘relevant’ by the Adviser because of other factors the client presents with. In our view the most important determinant of how deeply to investigate a particular client’s needs is the professional judgement of the Adviser.

Applying the Staged Advice Standard in a professional setting

Whilst a goal is to establish a professionally benchmarked standard that has wide application, we also need to ensure that this benchmark meets our professional expectations for good practice and is not utilised in a way that undermines consumer benefits and protections.

This is why the emphasis in the professional financial planning process must balance the capacity for staged advice with the application of ‘professional judgement’ that arises through the professional diagnostic process. In our view a professional cannot ignore information they receive (explicitly or implicitly) about a client, especially where that information should impact on the strategy or advice provided to that client.
A process flow chart that shows how we consider professional judgement should be incorporated into staged advice is provided below.

Considerations/benefits of staged advice model
We believe the introduction of a formalised FPA Staged Advice Standard provides a range of benefits for consumers, financial planners and licensees:

- Formalises and simplifies the identification of typical ‘client types’ that provides a workable framework for responding to s961B2(g) obligations.
- Formalises and simplifies the identification of typical ‘advice needs’ that provides a workable framework for responding to s961B2(g) obligations.
- Focuses the issue of streamlining to the areas of greatest consumer need and opportunity (i.e. superannuation, financial problem solving etc.)
- Reduces the compliance driven necessity for over servicing (over advising) and over charging.
- Consumers get uniform protection that delivers on the Best Interest requirement.
- The requirement for ‘professional judgement’ clarifies the differentiation for professional advice.
- Acknowledgement of the different types of advice (from outcome driven scaled advice to diagnostic driven comprehensive advice) provides clarity to the marketplace and consumers, reducing confusion and misrepresentation.
- Clearly defining and differentiating ‘outcome driven, product advice’ from ‘financial planning’ is beneficial for the profession, the marketplace and the consumer.
- Establishing this as a Professional Standard provides rigour and legal certainty for consumers and members.
• Establishing this as a Professional Standard means it can be modified (through a formal process) over time to cater for changes in consumer need without a requirement for legislative change.
• Building a lifetime model of ‘staged advice’ helps identify the lifetime benefit and relationship options for clients. It also helps communicate the importance of a professional diagnostic process, even if the full benefit of that exercise is not gained until future elements of the advice relationship are activated.

Consultation Questions (17 – 24)

C. Scaled Advice - staged advice solution – your feedback

17. Do you think our concept of ‘Staged Advice’ works as a mechanism for improving affordability of advice?

18. Do you see a (consumer / member /industry) benefit in the FPA establishing a formal Standard in this space?

19. How likely would such standards improve certainty for:
   a. Consumers: in relation to when a ‘scaled’ solution is likely to be suitable?
   b. Financial planners: in relation to the extent of inquiries required of the client?
   c. Licensees: in relation to the risks in client data gathering when offering scaled solutions?
   d. professional indemnity insurers?

20. This is not intended as a mandatory advice model, only a solution to ‘staged/scaled advice’.
   a. What affect do you think adopting this would have on your business?
   b. How would your practice benefit from applying such an approach?

21. a. What are the risks in establishing Standards in this way?

21. b. How could these risks be reduced to an acceptable level?

22. Outline any other specific examples that you can think of where this approach would not satisfy the concerns of FoFA or meet the Corporations Act expectations?

23. What changes would you need to make to your current processes to deliver ‘staged advice’?

24. What guidance, tools and educational materials would you require to support the introduction of ‘staged advice’?

Scaled Advice - Provide Your Feedback
D. Opt-In

Our view on the background to Opt-In

The issue of ‘Opt-In’ dominated the debate during FoFA negotiations, with Government and stakeholder comments suggesting that some Australians have had their life savings eroded because they were paying for services that they either:

1. Did not fully understand and/or,
2. Did not benefit from and/or,
3. Did not actually receive and/or,
4. Were paying for in perpetuity because they did not choose to (or did not know how to) switch them off.

The FPA agrees that clients should not be charged for services that they do not benefit from or receive and through the work of our 2009 Remuneration Policy we introduced a range of measures to address those concerns. The FoFA amendments to Corporations Act take a more mechanical approach to the issue (Subdivision B (962D – 962S)) and, rather than address the significant consumer detriment concerns highlighted in 1-3 above, introduce a requirement that an Adviser formally renew (re-contract) the services (and their charges) with the client every two years or cease to charge for those services – known as the Opt-In requirement.

Solving the FoFA version of the opt-in problem through the FPA’s professional code has become of paramount importance because the legislation now provides an express benefit to Codes that ‘obviate the need’ for a legislated opt-in requirement by dealing with that requirement explicitly in the code (s962CA). As a consequence, whilst the FPA has rejected the opt-in proposals throughout the FoFA negotiation, we need to incorporate a solution in the Code, so as to activate the benefit for members and the profession.

As we believe that the FoFA amendments do not resolve the significant consumer detriment issues identified above and do not lead to a better set of professional behaviours we cannot simply incorporate the direct legislative wording of the Opt-In requirements into the Code. Instead, the FPA has taken the view that we should build a better framework for service and remuneration practices in financial planning in a way that provides stronger consumer protection and is more reflective of good professional practice.
**FPA solution for Opt-In**

Utilising this professional standards approach we see the primary elements of the opt-in requirement as being to ensure that the right services are offered and that they are formally recontracted at appropriate times in the client relationship. It should be noted that whilst the Law seeks to define and control ‘product fees’ and ‘ongoing fees’ the FPA takes the view that all services offered through an Adviser are captured as Professional Services and should be subject to the same expectations of suitability and transparency.

This means that when we layer over those requirements the professional expectations of the FPA’s 2009 remuneration policy and Code of Professional Practice we see the process of Service Renewal and Charging (Opt-In) as flowing like this:

Each of these process elements place specific expectations on the Adviser with the professional emphasis being on ensuring the right services are offered to the client in the first instance in a way that resolves the larger consumer detriment issues of inappropriate (unsuitable) advice and charging. Linking these behavioural expectations to the Service renewal and charging stages looks like this:
Our specific proposal for Opt-In

By emphasising the importance of the client negotiation and suitability of services at the beginning of the advice relationship and whenever further services are contracted or re-contracted, we believe that clients will get professional services that are better suited to their specific needs and members will be able to rely on a better informed and more widely engaged client in their future professional service delivery.

In order to encourage the right professional behaviours and outcomes we propose to introduce Professional Service Charging and Renewal Principles that will focus the activity of the professional on the issues that underpin concerns about inappropriate charging, but more widely than that, will also improve client and professional outcomes:

FPA Professional Service Charging and Renewal Principles

**Principle 1:** Professional Services > professional services can include any form of professional service able to be accessed by the member for the client (incl. 3rd party)

**Principle 2:** Suitability of Services > services should be suitable for this client (including but not limited to consideration of useability, usefulness, duration, benefit and complexity of those services).

**Principle 3:** Cost suitability > cost of services to the client should be suitable as measured by benefit (tangible and intangible) to client.

**Principle 4:** Transparency > originator and costs of services will be clearly identified and remuneration payable to member clearly disclosed.

**Principle 5:** Services must be agreed > only services that have been agreed can be charged for.

**Principle 6:** Confirmation at review > confirmation of services previously delivered will be provided at agreed review point.

**Principle 7:** Suitability review > services that have not been utilised by the client should be clarified for suitability at review point.

**Principle 8:** Agreement to Continuation > continuation of services to be delivered will be gained in the form of producible evidence.
These principles apply to the professional financial planning charging process in the following way:

Guidance and further clarification on the principles will be developed to provide examples of how suitability, agreement, cost disclosure and producible evidence will be considered in practical application. For the moment, we consider that ‘producible evidence’ is any form of record that is able to be provided under the Rules of Evidence in a court of law (so for instance file notes, phone records, email exchanges or even internal records of charging under retainer agreements etc).

**Considerations/benefits of professional service charging principles**

We believe the introduction of a formalised Professional Service Charging and Renewal Principles provides substantial improvements in consumer protection, whilst also offering benefits to financial planners and licensees:

- It formalises and simplifies future charging and remuneration debates in financial advice by shifting the emphasis to ‘what is being charged for’ and ‘how that is negotiated and agreed’, rather than the mechanical element of remuneration flow and how it is stopped. This is the model of professional services typically applied in other professional environments such as law.

- The professional emphasis is placed on the Adviser to be responsible (and have evidence) for ensuring the right (suitable) services are delivered rather than the client having to reject services they don’t understand or will not utilise. By contrast, the Opt-In process within the law creates the perverse scenario where any service (non financial product) can be charged for (and for any amount), as long as it is terminated after 2 years, irrelevant of its suitability.

- Ongoing continuation of services can only be charged for if a formal review of their suitability has been undertaken in accordance with client agreed suitability requirements. In this way, the professional emphasis is placed on the Adviser to be responsible (and have evidence) for
ensuring the right (suitable) services continue to be delivered, rather than forcing the client into the situation of having to actively switch off or actively renew services.

- The requirement for disclosure of all payments from the client and also to the Adviser for Adviser, Licensee, as well as other third party services will substantially improve the transparency, comparability and clarity of the advice costs for consumers.

- The introduction of a ‘producible evidence’ form of re-contracting will simplify and improve the re-contracting process for clients and Advisers and alleviate concerns about client unavailability when there is a requirement for the production of formal documents.

Consultation Questions (25 – 29)

D. Opt-In – your feedback

25. a. Do you agree that our proposed approach of ensuring that the right services are offered and that they are formally recontracted at appropriate times in the client relationship is the right professional approach?

25. b. Does it resolve the real concerns that surround Adviser remuneration?

26. Do you think our concept of ‘Professional Service Charging and Renewal Principles’ works as a mechanism to obviate the need for the Opt-In requirements?

27. What advantages does this approach offer you in your business over engineering processes to comply with Opt-in?

28. Will this approach offer greater clarity and transparency to consumers in contracting for services?

29. What further guidance, tools and education would you require to be able to implement this approach in your business?

Opt-In - Provide Your Feedback
E. Conflicted Remuneration

Our view on the background to Conflicted Remuneration

Another key element of the government proposal to reduce conflict in the way advice is provided to clients was to introduce a ban on ‘conflicted remuneration’ and volume payments to Advisers (s963A-964H), where conflicted remuneration is defined (in s963A) as:

any benefit, whether monetary or non-monetary, given to a financial services licensee, or a representative of a financial services licensee, who provides financial product advice to persons as retail clients that, because of the nature of the benefit or the circumstances in which it is given:

(a) could reasonably be expected to influence the choice of financial product recommended by the licensee or representative to retail clients; or

(b) could reasonably be expected to influence the financial product advice given to retail clients by the licensee or representative.

In our view this is more appropriately considered as a broader issue of conflict management, rather than having a specific remuneration element to it, in that any conflict that could influence (or be expected to influence) advice creates risk in the client outcomes if not appropriately dealt with. Linking the issue of remuneration to conflict not only distorts the relative importance of remuneration it underemphasises other conflicts (employment relationship, adviser bias, duty etc) that may have far greater impact on the advice provided.

ASIC’s Consultation Paper on Best Interest (CP182) discusses conflicts of interest in relation to the need to prioritise a client’s interest (s961J) as part of the Best Interest obligation. In their view, testing whether a conflict of interest arises might be done by considering “what an advice provider without a conflict of interest would do”. It is the FPA’s proposition that conflicts (in the broader professional sense) are unable to be entirely removed in a financial services environment, and for that reason we consider it impractical and unhelpful to begin with the proposition that the only solution is to ban them. However at the other end of that spectrum, we also endorse the accepted legal and behavioural doctrine that disclosure alone (and as currently practiced in complex, unwieldy documents) is inadequate as a basis for consumer protection and that it has been seen to undermine the distinction of expertise and ‘independence’ that normally attaches to professionals.

We believe that it is instead the role of a professional to apply professional judgement and management to avoid conflicts (where possible), manage conflicts (that are unavoidable) and gain the consent for conflict from a fully informed client (where they cannot be avoided but can be managed).
In all instances, and especially where conflict cannot be avoided, prioritising the client’s interests over all other issue of conflict is the paramount professional duty.

**FPA solution for Conflicted Remuneration**

Utilising this professional standards approach, rather than respond to the singular issue of ‘conflicted remuneration’ directly we propose to expand the professional dialogue regarding ‘conflict’ to provide a clearer set of professional expectations in all circumstances of conflict. Members are expected to comply with their legal expectations for remuneration conflict but we are concerned that solutions and work around’s may arise that allow remuneration or different conflicts to arise. We propose to resolve the issue in a way that will provide a framework for all future dialogue (regulatory, legislative, consumer, industry etc..) about conflict in financial planning.

Delivering on this has led to the development of a new set of Ethical Duty Principles that focus on Conflicts of Interest and Prioritisation.

This work expands substantially beyond the FPA’s earlier work on ‘Principles to Manage Conflicts of Interest’, endorsed by the FPA Board in June 2006. That earlier form of FPA regulation attempted to identify key conflict situations and propose mechanisms for dealing with them, such as Fees and Costs of Advice, Product Suitability, Remuneration and Benefits and Corporate Governance. Those principles were directed largely at the then Principal member group of the FPA and have been varyingly applied across the community.

The new Principles begin from the Professional Adviser position of:

1. First understanding your professional duties, your client and the conflicts that may arise, then
2. Avoid those conflicts where possible, or
3. Manage and Gain Consent to those conflicts that remain

As noted, in this model we acknowledge that simple disclosure is insufficient and the emphasis needs to be on management AND consent (where consent differs to disclosure in that the client is sufficiently and clearly informed of the conflict).
FPA Ethical Duty Principles (Conflicts of Interest and Prioritisation)

Principle 1: Identify your role > Practitioner Members provide professional services, including financial planning services, professionally to clients. Clarify and agree your role and the services with the client.

Principle 2: Identify your client relationship > Who in this engagement is your client? To whom will you be providing professional services? In what capacity will you provide them professional services (e.g. is your client an individual, husband and wife, trustee, business owner, or body corporate)? A client may wish to engage your professional services in more than one capacity.

Principle 3: Duties to client > Your duties to client are sourced from the general law of contract, tort, equity, and from statute law applying to professional nature of your relationship with your client. Once the client is identified your duties are primarily to that client until permission is given to expand or alter that client duty.

Principle 4: Fiduciary duty is primary > As a professional, you owe a fiduciary duty to your client – expressed as your duty of loyalty and incorporating the 'not to profit without informed consent' rule.

Principle 5: Duty to profession > As a professional you should honour your profession and the public interest it serves, you must avoid situations and conduct which bring the profession into disrepute.

Principle 6: Duty to third parties > A client must have identified to them third parties to whom you may owe duties and the nature of those duties. Understand when a duty to a third party may conflict with your primary duties to client and profession and with your own interests. Third parties may include for example, your employer or licensee, service providers to your business, or to your client, other professionals, potential beneficiaries of your client’s estate.

Principle 7: Identify conflicts of interest > Professional integrity requires that you identify where your interests and duties conflict, and where a duty may conflict with other duties (e.g. duty to client with duty to third party).

Principle 8: Prioritise your client’s interests > Your duties to your client and profession are paramount and must prevail in the event of a conflict:

Principle 9: Avoid and manage conflicts > avoid or manage situations and relationships which create conflicts between interest and duty, or conflict between duty and duty. Some situations and relationships cannot be managed by disclosure and informed consent, but must be avoided as a matter of integrity.
Considerations/benefits of ethical duty principles for conflict and prioritisation

We believe the introduction of a formalised Ethical Duty Principles that focus on conflicts of interest and prioritisation provides a framework that underpins the professions future. It is our proposition that these duties not only resolve the elements of concern for FoFA but that they orient the profession towards becoming a truly trusted community and allow individuals to clearly demonstrate their professional integrity:

- It formalises the professional expectations in conflict identification and management, whilst building capacity for flexibility in the development and modification of guidance as different circumstances arise in the future.
- It offers consumers far greater consumer protection by knowing that their Adviser not only has to understand their conflicts but also then seek specific agreement to that conflict before advice can be offered.
- It offers Advisers protection in circumstances (e.g. employment relationship, product relationship, ownership or other etc.) where conflicts cannot be avoided but need to be managed and agreed.

Consultation Questions (30 – 34)

E. Conflicted Remuneration – your feedback

30. a. Do you agree that our proposed approach of elevating the ethical duties is the right professional approach?
30. b. Does it resolve the real concerns in remuneration or conflict?
31. Does this approach provide a workable solution to understanding and managing conflict?
32. How closely do these principles reflect your current process and how much change would be required to modify your practice to comply with them?
33. Do you think adhering to these enforceable principles improve or reduce consumer protections available under FoFA?
34. What sort of guidance, tools and resources would be needed to aid implementation of this?

Conflicted Remuneration - Provide Your Feedback
How will the FPA Code of Professional Practice and Regulations change?

FPA Standards Framework

In releasing this consultation paper the FPA is considering formally modifying the Code of Professional Practice to incorporate new Ethical Duties and to make amendments to specific Rules of Professional Conduct. However we also propose that a substantial piece of work will be undertaken in developing FPA Guidance to support the changes in practice and compliance.

The framework of the FPA Code of Professional Practice is established as follows:

As established, the goals of this Code modification project have been to:

- Not simply mirror the requirements of the Law but build a framework of professional obligations that demonstrate the benefit of behaviourally oriented professional standards in delivering more efficient FoFA solutions and better consumer protections.

- Preference principles, guidance and education as the forces of change over a substantial expansion of rules.

- Establish a professional framework of principles that allow for future modification and growth of professional positions that will be protective against future changes in regulatory expectations.

As a consequence of this approach we anticipate that the Code of Professional Practice will require only minor modification to the Rules of Professional Conduct (estimated at approximately 10 new rules) and the expansion of less than 3 existing Practice Standards. An example of how we consider the Code may be physically altered to incorporate these FoFA elements is provided overleaf.

Overall it is anticipated that FPA Regulation will reduce with the capacity to remove the existing FPA Regulations for:
• Principles to Manage Conflicts Of Interest
• FPA/IFSA Rebates and Related Payments Guide
• FPA/IFSA Joint Code on Alternative Remuneration.

As noted earlier, this paper is a conceptual paper. It does not prescribe compliance requirements or stipulate precise changes to rules of professional conduct. It is intended that feedback on the concepts in this paper will assist us to clarify how the Rules and Standards might be altered.

The key challenge in the future for the FPA Code of Professional Practice will be the development of extensive Guidance and education material to support member and industry application of the proposed modifications.
Example of proposed Code Change accommodating new ethical principle

**New Ethical Principle:** *Engage ‘scaled advice’ clients professionally:* The same professional obligations apply to ‘scaled advice’ as apply to any other instance where the client limits the scope of the professional services to be provided by the Member.

**Existing Code Requirements relevant to the new principle**

**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**
- PS 1.1
- PS 1.2
- PS 1.3
- PS 2.1

**Indicative Code Changes**

**Practice Standard 1.3**

**Define the Scope of the engagement**

The Member and the client agree on the services to be provided. At the client’s request, the Member may limit the services to be provided in a manner consistent with the client’s circumstances and expectations in seeking professional services. The Member describes, in writing, the scope of the engagement before any financial planning is provided, including details about: the responsibilities of each party (including third parties); the terms of the engagement; and remuneration and actual or potential conflict(s) of interest of the Member. The scope of the engagement is set out in writing in a formal document signed by both parties and includes a process for terminating the engagement.

**Rules:**

1.1
1.2
1.3
1.4
1.5
1.6
1.7
1.8
1.9
2.1

**[New] Rule 2.4**

For the purposes of Rule 2.1, a Member must exercise professional judgement and determine whether the information gathered as to the client’s objectives, needs and priorities, and relevant personal circumstances enables the client engagement to proceed as scoped.

Where the information is insufficient, or inconsistent with the engagement as scoped, the Member must either seek the client’s consent to vary the nature of the engagement, or discontinue the engagement.

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 requires the Member to discontinue the engagement.
Summary of Proposals and Questions

B: Best Interest

The FPA Code of Professional Practice already provides a detailed set of requirements for how engagement should work and how assessment of client need is undertaken but there is an opportunity to reframe those expectations in a way that clearly identifies the professional expectations in each of those vital steps.

We believe introducing these Principles, and then providing guidance on their application and enforceability, will focus the activity of the professional on the issues that underpin the concerns of the Best Interest provision and improve client and professional outcomes.

Whilst the Corporations Act proposes a minimum set of steps that afford a ‘safe harbour’ in responding to this obligation, a professional standards approach identifies the preferred professional behaviours and should act as an alternative path to ‘Best Interest’ outcomes for a client.

Consultation questions

1. Do you agree that this approach responds to the underlying concerns of FoFA for Best Interest?

2. Are there any specific examples that you can think of where these principles would not satisfy the concerns of FoFA or meet the Corporations Act expectations?

3. How closely do these principles reflect your current process and how much change would be required to modify your practice to comply with them?

4. Do you think adhering to these enforceable principles improve or reduce consumer protections available under FoFA?

5. What sort of guidance, tools and resources would be needed to aid implementation of this?

FPA Ethical Duty Principles (Best Interest)

**Principle 1: Fair Engagement** > A defined, client centric engagement process will identify the extent of issues to be resolved, the type of advice relationship the client is likely to need and the role of the planner.

**Principle 2: Professional Competence** > A professional will identify ‘strategies’ that: First, deliver solutions to the Client Diagnostic; that they are capable and competent to advise on and; that their licensee has authorised them to engage in. If not, they will refer.

**Principle 3: Professional Diagnosis** > A professional diagnosis will not only identify ‘client wants and needs’, it should also identify personal strengths/weaknesses, capabilities and preferences in the way clients manage money, apply financial tools and technology, respond to risk and loss, as well as plan and progress toward their financial goals.

**Principle 4: Recommend in Best Interest** > Provide recommendations that satisfy Principles 1 to 3 and that meet the advice need identified by the client. The Adviser should demonstrably intend to financially improve the client’s outcomes, whilst balancing the obligation that if there is no best interest fit solution within the client’s existing holding or within your authorised solutions you should not make a specific financial product recommendation.
C: Scaled Advice

Consultation Questions

‘Staged Advice’

We propose to clarify the FPA’s professional financial planning model to create a formally authorised new concept of ‘staged advice’ – a priority driven form of comprehensive financial planning, that shows how the professional financial planning process deals with individual elements of advice need and develop formal FPA standards that underpin that to provide regulatory and professional comfort.

The proposed FPA Staged Advice Standard comprises of two elements: Advice Need Type and Client Type that will work together to deliver a streamlined advice solution that meets the professional expectations of the Code of Professional Practice.

Staged Advice – Advice Need Type

Typical advice needs that arise for Australians seeking advice, whilst also ensuring that they align to our established aspects of comprehensive professional financial planning.

Consultation Questions

6. Map 1 is not intended to meet every possible advice need that arises but is intended to describe the ‘typical’ advice needs that a ‘typical’ client presents with. Outline any other ‘typical’ needs not captured in one of the component boxes on this map?

7. The goal of the Standards process is to identify those advice needs for which a client might seek ‘scaled advice’ [Staged Advice].
   a. We have prioritised Super, Debt and Insurance as being most urgent – do you agree?
   b. What do you think are the mandatory ‘Fact Find’ questions that should apply to these Advice Needs?

8. Outline any identified advice needs that cannot (or should not) be dealt with in a ‘Staged’ or ‘Scaled’ Advice way?

9. What are the typical questions that clients walk into your office with as their opening request?

10. Do you currently (or plan to) use anything like this in your practice?

11. What sort of guidance, tools and resources would be needed to aid implementation of this?
C: Scaled Advice

‘Staged Advice’

We propose to clarify the FPA’s professional financial planning model to create a formally authorised new concept of ‘staged advice’ – a priority driven form of comprehensive financial planning, that shows how the professional financial planning process deals with individual elements of advice need and develop formal FPA standards that underpin that to provide regulatory and professional comfort.

The proposed FPA Staged Advice Standard comprises of two elements: Advice Need Type and Client Type that will work together to deliver a streamlined advice solution that meets the professional expectations of the Code of Professional Practice.

Staged Advice – Client type standard

Every client has a unique set of circumstances and needs but it is well established that particular types of advice need tend to arise at specific stages of life or in response to typical lifestyle needs of clients.

Client Types blends those agreed life stages with a list of financial needs that typically arise for clients in each of those age groups.

Map 2 – Refer to page 24

Consultation Questions

12. Map 2 is not intended to meet every possible client type you have seen but is intended to describe ‘typical’ clients and their needs. We know there are other examples that use models like marital status, family status or risk categorisations. Please provide details if there is a better spectrum of client types that captures a definable sector and has a universal needs perspective.

13. The goal of the Standards process is to identify those advice needs for which a client might seek ‘scaled advice’ [Staged Advice]. A full life spectrum of client types are presented in Map 2:

a. Do you think that only some of these client types can (or should) be dealt with in a ‘Staged’ or ‘Scaled’ Advice way?

b. If you answered yes, please list which ones can (or should) be dealt with in a ‘Staged’ or ‘Scaled’ Advice way.

14. a. Are these the ‘typical’ needs that each of those age categories would have?

b. List any ‘typical’ needs are missing in which category.

15. Do you use age based client types in your business now? If so please outline how these work?

16. What sort of guidance, tools and resources would be needed to aid implementation of this?
C. Scaled Advice – Staged Advice Solution

We envisage that Advisers will be able to apply the Staged Advice Standard relatively easily, once the Advice Need and Client Type are identified in the initial client discussion.

Applying the Staged Advice Standard in a professional setting.

Whilst a goal is to establish a professionally benchmarked standard that has wide application, we also need to ensure that this benchmark meets our professional expectations for good practice and is not utilised in a way that undermines consumer benefits and protections.

Emphasis in the professional financial planning process must balance the capacity for staged advice with the application of 'professional judgement' that arises through the professional diagnostic process. In our view a professional cannot ignore information they receive (explicitly or implicitly) about a client, especially where that information should impact on the strategy or advice provided to that client.

The process flow chart shows how we consider professional judgement should be incorporated into staged advice.

Process flow chart – refer to page 27

Consultation Questions

17. Do you think our concept of ‘Staged Advice’ works as a mechanism for improving affordability of advice?

18. Do you see a (consumer / member /industry) benefit in the FPA establishing a formal Standard in this space?

19. How likely would such standards improve certainty for:
   a. Consumers: in relation to when a ‘scaled’ solution is likely to be suitable?
   b. Financial planners: in relation to the extent of inquiries required of the client?
   c. Licensees: in relation to the risks in client data gathering when offering scaled solutions?
   d. professional indemnity insurers?

20. This is not intended as a mandatory advice model, only a solution to ‘staged/scaled advice’.

   a. What affect do you think adopting this would have on your business?
   b. How would your practice benefit from applying such an approach?

21. a. What are the risks in establishing Standards in this way?
   b. How could these risks be reduced to an acceptable level?

22. Outline any other specific examples that you can think of where this approach would not satisfy the concerns of FoFA or meet the Corporations Act expectations?

23. What changes would you need to make to your current processes to deliver ‘staged advice’?

24. What guidance, tools and educational materials would you require to support the introduction of ‘staged advice’?
By emphasising the importance of the client negotiation and suitability of services at the beginning of the advice relationship and whenever further services are contracted or re-contracted, we believe that clients will get professional services that are better suited to their specific needs and members will be able to rely on a better informed and more widely engaged client in their future professional service delivery.

In order to encourage the right professional behaviours and outcomes we propose to introduce Professional Service Charging and Renewal Principles that will focus the activity of the professional on the issues that underpin concerns about inappropriate charging, but more widely than that, will also improve client and professional outcomes.

25. a. Do you agree that our proposed approach of ensuring that the right services are offered and that they are formally re-contracted at appropriate times in the client relationship is the right professional approach?

25. b. Does it resolve the real concerns that surround Adviser remuneration?

26. Do you think our concept of ‘Professional Service Charging and Renewal Principles’ works as a mechanism to obviate the need for the Opt-In requirements?

27. What advantages does this approach offer you in your business over engineering processes to comply with Opt-In?

28. Will this approach offer greater clarity and transparency to consumers in contracting for services?

29. What further guidance, tools and education would you require to be able to implement this approach in your business?

FPA Professional Service Charging and Renewal Principles

**Principle 1:** Professional Services > professional services can include any form of professional service able to be accessed by the member for the client (incl. 3rd party)

**Principle 2:** Suitability of Services > services should be suitable for this client (including but not limited to consideration of useability, usefulness, duration, benefit and complexity of those services).

**Principle 3:** Cost suitability > cost of services to the client should be suitable as measured by benefit (tangible and intangible) to client.

**Principle 4:** Transparency > originator and costs of services will be clearly identified and remuneration payable to member clearly disclosed.

**Principle 5:** Services must be agreed > only services that have been agreed can be charged for.

**Principle 6:** Confirmation at review > confirmation of services previously delivered will be provided at agreed review point.

**Principle 7:** Suitability review > services that have not been utilised by the client should be clarified for suitability at review point.

**Principle 8:** Agreement to Continuation > continuation of services to be delivered will be gained in the form of producible evidence.
E: Conflicted Remuneration

Utilising this professional standards approach, rather than respond to the singular issue of ‘conflicted remuneration’ directly we propose to expand the professional dialogue regarding ‘conflict’ to provide a clearer set of professional expectations in all circumstances of conflict.

We believe the introduction of a formalised Ethical Duty Principles that focus on conflicts of interest and prioritisation provides a framework that underpins the professions future.

It is our proposition that these duties not only resolve the elements of concern for FoFA but that they orient the profession towards becoming a truly trusted community and allow individuals to clearly demonstrate their professional integrity:

Consultation questions

30. a. Do you agree that our proposed approach of elevating the ethical duties is the right professional approach?
30. b. Does it resolve the real concerns in remuneration or conflict?
31. Does this approach provide a workable solution to understanding and managing conflict?
32. How closely do these principles reflect your current process and how much change would be required to modify your practice to comply with them?
33. Do you think adhering to these enforceable principles improve or reduce consumer protections available under FoFA?
34. What sort of guidance, tools and resources would be needed to aid implementation of this?

FPA Ethical Duty Principles (Conflicts of Interest and Prioritisation)

Principle 1: Identify your role > Practitioner
Members provide professional services, including financial planning services, professionally to clients. Clarify and agree your role and the services with the client.

Principle 2: Identify your client relationship >
Who in this engagement is your client? To whom will you be providing professional services? In what capacity will you provide them professional services (e.g. is your client an individual, husband and wife, trustee, business owner, or body corporate)? A client may wish to engage your professional services in more than one capacity.

Principle 3: Duties to client >
Your duties to client are sourced from the general law of contract, tort, equity, and from statute law applying to professional nature of your relationship with your client. Once the client is identified your duties are primarily to that client until permission is given to expand or alter that client duty.

Principle 4: Fiduciary duty is primary >
As a professional, you owe a fiduciary duty to your client – expressed as your duty of loyalty and incorporating the ‘not to profit without informed consent’ rule.

Principle 5: Duty to profession >
As a professional you should honour your profession and the public interest it serves, you must avoid situations and conduct which bring the profession into disrepute.

Principle 6: Duty to third parties >
A client must have identified to them third parties to whom you may owe duties and the nature of those duties. Understand when a duty to a third party may conflict with your primary duties to client and profession and with your own interests. Third parties may include for example, your employer or licensee, service providers to your business, or to your client, other professionals, potential beneficiaries of your client’s estate.

Principle 7: Identify conflicts of interest >
Professional integrity requires that you identify where your interests and duties conflict, and where a duty may conflict with other duties (e.g. duty to client with duty to third party).

Principle 8: Prioritise your client’s interests >
Your duties to your client and profession are paramount and must prevail in the event of a conflict:

Principle 9: Avoid and manage conflicts >
avoid or manage situations and relationships which create conflicts between interest and duty, or conflict between duty and duty. Some situations and relationships cannot be managed by disclosure and informed consent, but must be avoided as a matter of integrity.
Conclusion

The Financial Planning Association is grateful for the involvement and participation of all stakeholders who have taken the time to consider and respond to the proposals outlined in this document.

The FPA Board is confident that through rigorous engagement with our members and other vital interested parties, we can ensure that the Code of Professional Practices will remain best-in-class as the financial planning landscape evolves and ultimately, facilitate the transformation of financial planning into a universally respected profession.