



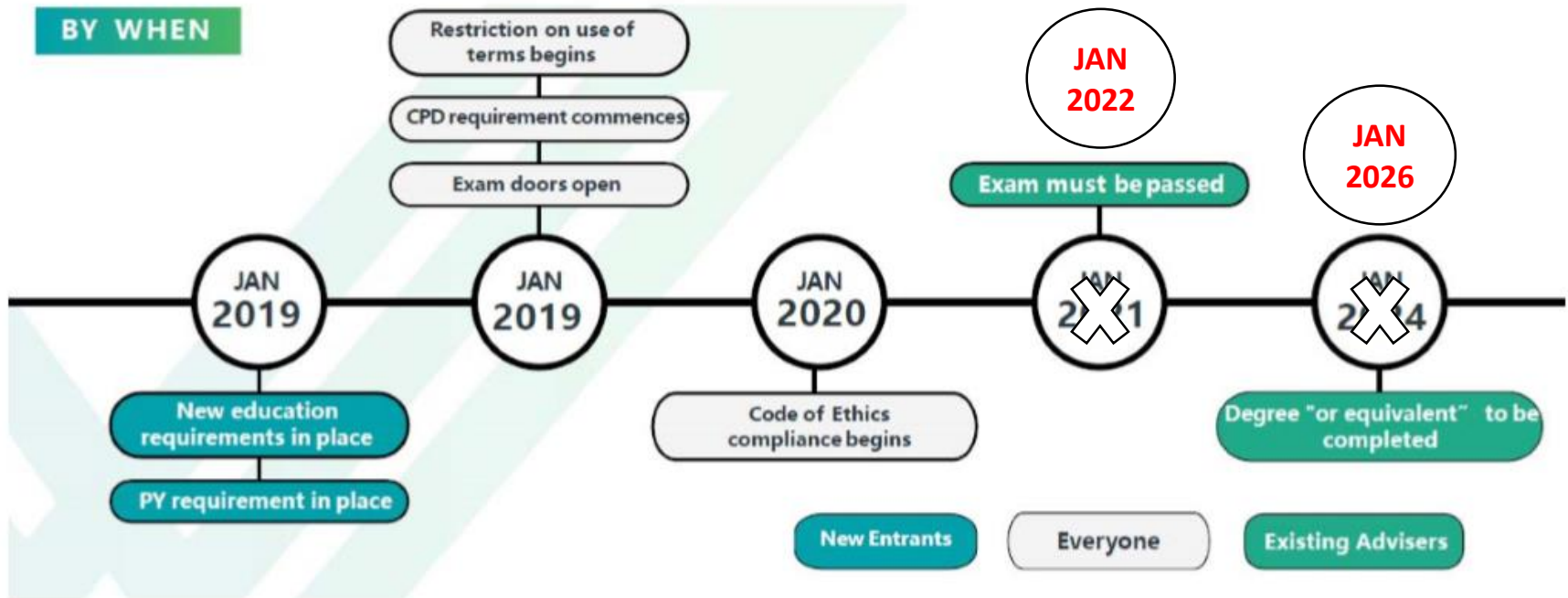
# Financial Advice Construction

*Presented by Compliance team*

# Agenda

- *FASEA Timeline*
- *Learning Objectives*
- *RG 121*
- *RG 175*
- *RG 244*
- *RG 90*
- *Examples*
- *Exam details*
- *Questions*

# FASEA Timeline



# FASEA Exam

## Sitting 2

- ~~19 – 23 September 2019~~
- ~~Sydney, Canberra, Melbourne, Brisbane, Townsville, Adelaide, Perth, Darwin, Hobart, Gold Coast, Cairns, Newcastle, Wollongong, Ballarat, Bunbury~~

## Sitting 3

- **5 – 9 December 2019**
- Sydney, Canberra, Melbourne, Brisbane, Townsville, Adelaide, Perth, Darwin, Hobart, Rockhampton, Mackay, Sunshine Coast, Toowoomba, Gosford, Orange, Wagga Wagga, Albury/Wodonga, Bendigo

*Note: Exam sitting dates include weekends and there are up to two sittings per day*

- **Existing Advisers have NOW until 1 January 2022 to pass the Exam.**

# Previous Webinar Summary

## FASEA Code of Ethics

- Code of Ethics is addressing the 5 values of
  - **Trustworthiness**
  - **Competence**
  - **Honesty**
  - **Fairness**
  - **Diligence**
- 12 Standards -> 4 categories, three in each category
  - **Ethical behaviour**
  - **Client care**
  - **Quality process**
  - **Professional commitment**

## FASEA Exam

- The exam will test the practical application of advisers' knowledge in the following competency areas:
  - *Financial Advice Regulatory and Legal requirements*
  - ***Financial Advice Construction***
  - *Applied ethical and professional reasoning and communication*

# Financial Advice Construction

## Learning outcomes:

- 1. Demonstrate an understanding of the context in which financial advice is given and requested and how this impacts decision making*
- 2. Identify misconduct and inappropriate advice, evaluate why it is inappropriate*
- 3. Identify appropriate alternative courses of action to inappropriate advice*
- 4. Identify and compare different population and community profiles at a retail client level*
- 5. Identify different types of consumer behavior and decision making*
- 6. Evaluate and apply advice strategies suitable for different retail clients*



# Doing Financial Advice in Australia Regulatory Guide 121



# ASIC's Role

## ASIC

- is an independent agency of the Australian Government
- regulates registered companies, markets and financial services providers in Australia, and administers legislation that includes the Corporations Act.
  
- Chapter 7 of the Corporations Act regulates the financial services industry.
- Guidance on key concepts in Ch 7 such as
  - 'financial product'
  - 'financial service'
  - 'wholesale' versus 'retail' clients and
  - 'authorised representative'

*We will cover Chapter 7 in more detail in the next webinar.*

# Provide financial product advice

## Meaning

- A recommendation or a statement of opinion, or a report of either of those things if:
  - it is intended to influence a person in making a decision about a particular financial product or class of financial products or an interest in such products, or
  - could be reasonably regarded as being intended to have such influence.

## Unless

- it is exempt from being a financial service.

## Adviser Poll #1

Select correct statement

- ***A person may fall within a definition of a wholesale client if they***
  - a) have net assets of at least \$2 mill
  - b) had a gross income of \$250,000 in the past 3 years
  - c) are purchasing a financial product in value above \$500,000

# Wholesale vs Retail Clients

## Disclosure requirements

- apply only to 'retail clients' because it is recognised that 'wholesale clients' are in a better position to look after their own interest

## Wholesale client if:

- purchasing a financial product, or a financial service related to a financial product, where the value of the product is above the prescribed threshold (currently set by the Corporations Regulations at \$500,000);
- a person with certified net assets of at least \$2.5 million or a person who had a gross income for each of the past two financial years of at least \$250,000; or
- a 'professional investor'.

## RG 121

### Also covers

- General requirements to be licensed
- Exemption from an AFS licence
- Obligations for AFS licensees
- Offering financial products in Australia
- Other rules and legislation



# Licensing: Financial product advisers Regulatory Guide 175

# Financial product advice

All financial product advice is either 'personal advice' or 'general advice'

- **'Personal advice':**
  - financial product advice provided to a person where you have considered one or more of your client's objectives, financial situation and needs, or
  - a reasonable person might expect you to have considered one or more of these things
- All other advice is **'General advice'**

## Financial product advice

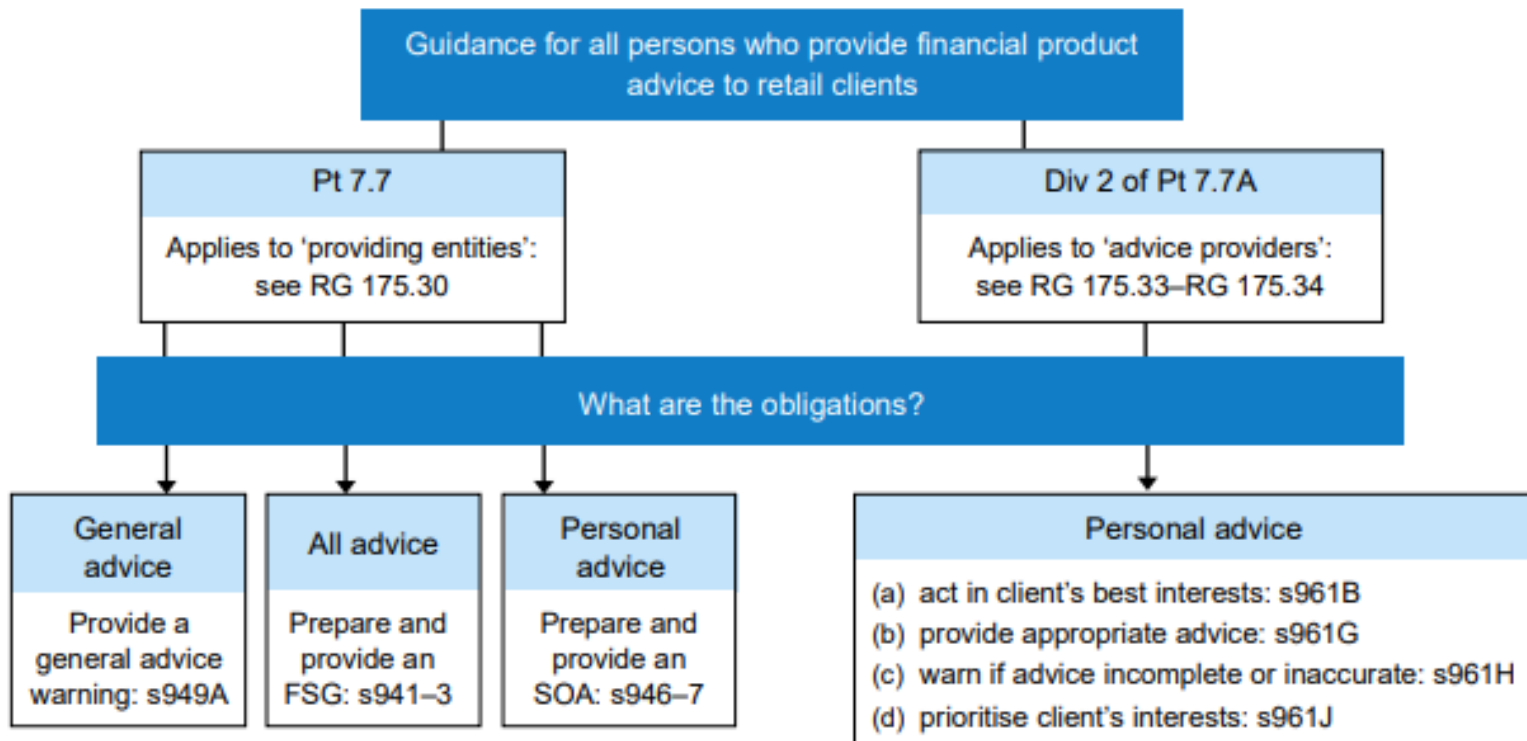
When ASIC considers where general or personal financial product advice was provided, it will:

- take into account all the circumstances
- check that the person giving the advice offered to provide personal advice
- if you clearly explained to your client whether you were providing general advice or personal advice, and
- did your client require personal advice, including requesting advice about what decision they should make



# Disclosure Obligation

Different obligations apply whether general or personal advice is provided



# Personal Advice

Reminder of key obligations that apply when providing personal financial product advice to a retail client:

- Provide your FSG (Part A and B)
- Obtain clients objectives, financial situation and particular needs
- Act in your client's best interests
- Warn your client if the advice is based on incomplete or inaccurate information
- Prepare and provide appropriate personal advice
- Prioritise your client's interests
- Prepare and provide an SOA

## FSG (Financial Services Guide)

- FSG must be provided to a client (whether a retail or wholesale client) as soon as practicable after it becomes apparent that a financial service is going to be provided, and before any 'financial service' is provided
- An FSG may be given after a financial service has been provided in 'time critical' case
  - the client expressly instructs or requests that the financial service be provided immediately, or by a specified time; and
  - it is not reasonably practicable to provide the client with an FSG before that financial service is provided as instructed

## SoA (Statement of Advice)

- an SOA must be provided to the client at the same time as, or as soon as practicable after, the personal advice is provided to a retail client
- In time-critical cases, a further financial service can be provided to the client before an SOA is provide
- An SoA should contain information about the advice and basis for the advice

## Providing appropriate advice

Advice is appropriate if it would be reasonable to conclude, at the time the advice is provided, that

1. it is fit for its purpose - that is, following the advice is likely to satisfy the client's relevant circumstances; and
2. the client is likely to be in a better position if they follow the advice

Advice that does not meet the best interests duty is unlikely to be appropriate.

In the event of a conflict between client's and adviser's interests, you must put the client's interest first.

*!! Remember, a recommendation to do nothing or retain the current position is still personal financial product advice and you must prepare an advice document*

## Adviser Poll #2

### Client scenario

A client sees an adviser because they want to increase their wealth.

The adviser recommends an investment strategy. In doing so, the adviser discusses the risk of the client losing their income and assets, which could affect the client's ability to increase their wealth.

The adviser is not skilled in the area of risk insurance (e.g. life insurance or income protection insurance), and notifies the client of this fact.

He restricts the scope of the advice to exclude consideration of risk insurance and refers the client to a specialist risk adviser.

The client agrees to seek the specialist risk advice and make a final decision about whether to implement the investment strategy after considering the specialist advice.

## Adviser Poll #2

***Did Adviser act in the Best Interest of the client?***

- a) Yes
- b) No

## Adviser Poll #3

Client requests advice about how to meet their living standards in retirement. Adviser didn't take into consideration client's Centrelink benefits when providing advice.

***Did Adviser act in the Best Interest of the client?***

- a) Yes
- b) No



# Record keeping

We must keep records for 7 years of:

- All client information provided by clients;
  - All documents sent to clients
    - FSG
    - PDS
    - Client terms, warrants and options agreements
    - General Advice declarations
    - wholesale client declarations
    - Client conflicted remuneration consents and
    - file notes of client conversations, oral warnings given and client order instructions including the name of the individual on the client account
  - All responses of clients relating to the services provided to them;
  - All marketing documents
  - Products information communicated at seminars, webinars etc
- !! *Don't write (or say) anything in any communication which is contrary to your obligations. All documents and data is recoverable and may be used against you. Act in accordance with your obligations at all times.*

# Giving Information, general advice and scaled advice

## Regulatory Guide 244

# RG 244

## Covers

- Giving Factual Information
- Giving General Advice
- Giving Scaled Advice

## Giving Factual Information

- You do not need to hold an AFS licence to give factual information to clients.
- A communication of factual information may still be considered financial product advice if:
  - **The information is presented in a way that could be regarded as suggesting or implying a recommendation to buy, sell or hold**
- ASIC will not treat factual information given by you as general or personal advice if:
  - you clarify at the outset that you are giving the client factual information where there is a reasonable likelihood of doubt; and
  - the information is not intended to imply any recommendation or opinion about a financial product.

## Giving Factual Information

It is good practice to take reasonable steps to ensure that a client understands upfront that you are providing factual information, and not general or personal advice.

- You can provide factual information even if you have personal information about a client
- You should include the accompanying information with a disclaimer

## Giving General Advice

- specific warnings need to be given about the nature of that advice and
- the fact that it does not address their specific needs.
- you do not need to provide an SOA, but you need to be careful the client does not think you are providing factual information.
  
- **A General Advice warning must be provided in every general advice communication.**

**!! All general advice clients should at a minimum have signed a general advice declaration !!**

## Giving Scaled Advice

- communicate clearly to clients the service you are providing (i.e. information or advice)
- communicate clearly the advice you are providing and the advice you are not providing, and the implications of this
- ASIC considers that scaled advice will be unlikely to meet the best interests duty and related obligations if the client does not understand any of the significant limitations or qualifications that apply to it

## Adviser Poll #4

*An adviser that specialises in insurance advice markets a product that is suitable for people who are subject to a particular broad type of risk, and sends standardised marketing material for that product to clients who fall within that broad market segment.*

- Is adviser giving the
  - a) Factual information
  - b) General Advice
  - c) Personal Advice



## Adviser Poll #5

William: *"I have recently received a cash inheritance. I would like some information about possible options for investing it. I don't want to invest it in property, though, because I plan to use the money to buy another house in a few years time. I have already bought and sold a property."*

Adviser Emma: *"One option is to pay off debts such as a mortgage, personal loan, car loan or credit card debts. Paying off a loan will save interest, although you may incur exit fees and it may have taxation consequences if the loan is for investment purposes. Another option is shares. Shares can be purchased in companies of different industries, such as mining, financials, real estate and healthcare. This means risk can be spread across different sectors. "*

- Is adviser giving the
  - a) Factual information
  - b) General Advice
  - c) Personal Advice

## Different ways to give information or advice

- The Corporations Act is neutral about technology.
- This means that you can give factual information and advice by:
  - Telephone
  - Email
  - Internet
  - video conferencing or
  - face-to-face,
  - or in any combination of these or other ways.

# Examples of giving information and advice

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# ASIC example SoA: *less is more* 05-258 Scaled advice for a new client RG 90

## ASIC Example SOA : Less is more

- ASIC has published an example SOA illustration of
  - clear
  - concise and
  - effective advice and disclosure
  
- What ASIC thinks it is important in SOAs:
  - length – the example SOA is only 12 pages long;
  - there are no ‘weasel words’ (i.e. lengthy disclaimers and exclusions);
  - it is written in simple, plain English;
  - there is adequate disclosure of conflicts, fees and commissions; and
  - there is a clear explanation of the scope and limitations of the advice.

# Practice Questions

## Client scenario

- Dorothy, 86, owns her home, valued at \$540,000.
- She has \$70,000 in a bank account and receives a full pension.
- Dorothy also has a small \$20,000 total portfolio of shares in two blue-chip companies.
- She received both parcels of shares when the companies demutualised in the 1990s and has kept them because she likes the companies and they pay high dividends.
- Due to failing health, she is preparing to move into an aged-care facility. She wants to keep her home as an inheritance for her five children, as specified in her current Will.
- Dorothy has appointed her eldest daughter, Glenda, as both the executor of the estate and enduring power of attorney (covering legal and financial decisions only).
- Glenda knows Raoul, a financial adviser with Soary Financial Planning, through the local golf club of which they are both members.
- Glenda has arranged an appointment for her mother to meet with Raoul to discuss the financial planning implications of moving into an aged-care facility.
- Glenda explains to Raoul that she will be happy to sign off on any advice even if Dorothy is unable to understand the recommendations.

## Practice Questions

### Question

Dorothy stated in the interview that even if she moves into an aged-care facility, she wants to retain her home as an inheritance for her children.

Raoul is currently writing the Statement of Advice.

- 1) What are two statements that Raoul should include in the document to explain to Dorothy the **ADVANTAGES** of retaining the home as part of the advice recommendations?**
  
- 2) What are two statements that Raoul should include in the document to explain to Dorothy the **DISADVANTAGES** of retaining the home as part of the advice recommendations?**

# FASEA Exam Reading

## **Financial Advice Construction:**

1. Doing financial services business in Australia – Regulatory Guide 121
2. Licensing: Financial product advisers – conduct and disclosure – Regulatory Guide 175
3. Giving information, general advice and scaled advice - Regulatory Guide 244
4. ASIC example Statement of Advice: less is more – 05-258
5. Example Statement of Advice: Scaled advice for a new client Regulatory Guide 90

<https://www.fasea.gov.au/wp-content/uploads/2019/05/FG003-Exam-Preparation-Guidance-vFINAL.pdf>



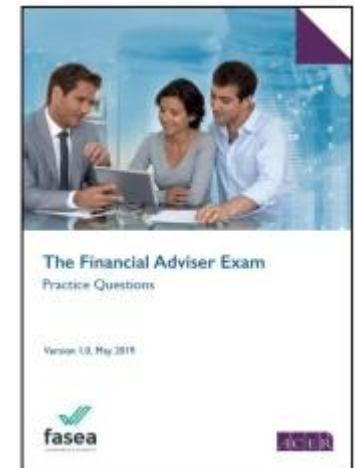
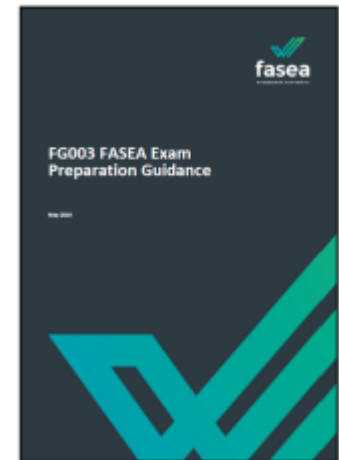
# FASEA Exam Support

- Exam Preparation guide
- **Exam Practice Questions**
- Exam Candidate Video

<https://www.fasea.gov.au/examination/>

- Candidate Information Booklet


<https://faexamreg.acer.org>



# Exam Preparation Providers

## Kaplan exam preparation for OnTrack users

- Complementary access to exam preparation material with an entire library of practice exam questions
- FASEA exam prep: Q-bank Basic and Q-bank Advanced
- Split into the three knowledge areas
- 25 questions currently available on your Ontrack

FASEA Areas	Minimum Target Points	Completed Points	Over/Under Target Points	Available learning content	Expired/unsuccessful completion
Technical competence	31.5	10.8	20.7	70 item(s)	4 item(s)
Client care and practice	7.5	7.5	0	22 item(s)	0 item(s)
Regulatory compliance and consumer protection	7.5	10	2.5	43 item(s)	3 item(s)
Professionalism and ethics	13.5	1.5	12	13 item(s)	0 item(s)
General	0	4	4	9 item(s)	1 item(s)
 FASEA exam prep: Q-bank (basic)				0 item(s)	0 item(s)
<b>Total learning content</b>				<b>144 item(s)</b>	<b>133 item(s)</b>

# Additional Exam Preparation

- Different providers on the market
  - Kaplan
  - Centrepont Alliance
  - Knowledge Shop
  - Accountants IQ
  - Integrity
  - TAL Risk Academy
- covered in InterPrac FASEA Exam Webinar
- Slides and Video available on Adviser Resource Centre
- Training section -> Download and Video Tab

# Questions

## Next Webinar

- **Tuesday 17<sup>th</sup> September 2019, 12-1pm**
- Webinar invite to register will be sent out in the next couple of days
- Second webinar of the FASEA Exam Preparation Webinar series

### Topic

- Financial Advice Regulatory and Legal requirements

### Presenter

- Compliance team