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FASEA requirements for aged care advice

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The Financial Adviser Standards and Ethics Authority (FASEA) standards that came into effect from 1 January 2020 are compulsory for all financial advisers who provide financial services to retail clients. The FASEA Code of Ethics imposes ethical duties that exceed the legal requirements of the law and, as such, aims to embed higher standards of behaviour and professionalism in the financial services industry.

Without a doubt, these regulations represent a milestone in the financial services industry that will drive adviser behaviour, affect business and client servicing models, enhance compliance and operational processes, and increase the professionalism of the industry. These impacts have already been felt, and the changes will continue over the coming years.

The FASEA Code of Ethics is built on 12 standards that provide the conduct framework for engagement with clients, and the following five value pillars:

- Trustworthiness
- Competence
- Honesty
- Fairness
- Diligence.

Much of the discussion to date has centred around the educational and exam requirements and the disruption it has created in the financial services industry. However, it is time to shift the focus to a more productive examination of the practicalities of implementation and what it means for advice processes.

This whitepaper discusses the likely implications of the FASEA standards for the financial services industry, with a focus on the increasing importance of aged care advice. The aim is to provide insights to guide advisers and licensees on the steps to take to be well positioned to meet the FASEA obligations, to protect their business from disruptions and enable advisers to be at the leading edge and positioned for growth. In particular it will discuss the impact on:

- advice behaviour, processes, delivery models and business structures
- delivery of client services
- operational processes.

Tip

Financial advisers need to incorporate aged care considerations and discussions in their advice processes to satisfy the FASEA Code of Ethics. Ignoring aged care considerations puts advisers at risk of non-compliance with the Code of Ethics.

The FASEA standards reinforce the need for advisers to consider the aged care implications for clients and implement an aged care advice solution to comply with the Code of Ethics.

Aged care as part of the best interests duty

FASEA Standard 2 requires that advisers "must act with integrity and in the best interests of each of your clients".

The best interests duty has been a core obligation for advisers well before the FASEA regulations, but the FASEA standards add an obligation to consider the broader long-term needs of a client, which can extend to the implications for the family.

Further elaboration is contained in the FASEA's *FG002 Financial Planners and Advisers Code of Ethics 2019* Guidance 2019 (Code of Ethics Guidance) paper which explains how to comply with this standard. It states "you act in a client's best interests if what you do—the advice you give, the products and services you recommend—are appropriate to meet the client's objectives, financial situation and needs, taking into account the client's ***broader, long-term interests and likely future circumstances"*** (italics and bolding added).

These requirements are reiterated in FASEA Standard 6, that instructs advisers to "take into account the broad effects arising from the client acting on your advice and ***actively consider the client's broader, long-term interests and likely circumstances***" (italics and bolding added).

Standard 5 (All advice and financial product recommendations that you give to a client must be in the best interests of the client and appropriate to the client's individual circumstances) also elaborates on the "best interest of the client" duty, further emphasising the need for advice and recommendations to take into account the client's broader, long-term interests and the client's likely future circumstances (Code of Ethics Guidance).

With three out of the 12 standards specifically requiring consideration of the broader long-term interests, it cannot be clearer that advisers must consider the entirety of a client's retirement. This now implicitly needs to take into account not only the early 'active' years but also the potential changes to the client's health and ability over time and the third phase of retirement—the frailty years.

Aged care advice and helping clients and their families be prepared for the move into frailty is now shifting into mainstream advice rather than just a peripheral and situational-based advice process.

In its *Helping you understand the FASEA Code of Ethics* publication of June 2019, the Financial Planning Association of Australia clarifies Standard 6 as follows:

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

Tip

Advisers need to factor in planning ahead for the frailty years to help clients and their families be prepared before a crisis hits.

Aged care should be a core component of retirement planning and client review meetings.

The Three Phases of Retirement TM identified by Aged Care Steps in its *Planning for the third phase of retirement* whitepaper of June 2019 are not defined by age, but rather by levels of independence and frailty. Each client's experience is unique, but as a client transitions through the phases they may need to adjust their goals and objectives, lifestyle decisions, living arrangements, income needs and priorities. But whatever the phase, quality of life, control and access to choices are key ambitions. The decisions that are made in planning for retirement as well as throughout retirement can impact on how well-prepared clients are for the third phase of frailty.

The third phase (defined as the frailty years) represents on average 17–25% of retirement years. Failing to consider this period leaves clients exposed for a large portion of retirement, failing best interests duty. During this phase, clients may require higher levels of support on a day-to-day basis to maintain quality of life within the restrictions of the particular incapacity or frailty.

Tip

Many advisers have ignored aged care as a service for clients and put it in the 'too hard' basket.

These advisers and licensees need to address aged care urgently and provide education, support and tools to help advisers adhere to the FASEA Code of Ethics. This does not require all advisers to become an aged care expert, but a business solution for how to provide the support within the set business model is important.

Aged care client conversations

Advisers need skills, confidence and support tools to have effective aged care conversations with clients. This includes the ability to explore client circumstances more deeply to identify current and future implications.

The FASEA Code of Ethics Guidance clarifies in relation to Standard 2, that "to comply with the ethical duty, it will not be enough for you to limit your inquiries to the information provided by the client; you will need to inquire more widely into the client's circumstances". The

The quote

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guidance expands further that "you are not relieved of the ethical duty merely because the client does not provide enough information".

Consequently, advisers are obliged to actively enquire about the client's circumstances including asking about aged care needs for themselves or other family members, especially if they have responsibilities under powers of attorney or guardianship. Advisers need to work with clients to help work out their objectives, financial situation, needs, long-term interests and likely future circumstances.

Tip

Advisers have a duty to actively enquire about the client's circumstances and cannot be limited to just the information provided by clients.

Further, they need the tools to build confidence to actively commence conversations with clients about planning for future or imminent frailty and aged care.

Planning ahead for aged care and incorporating aged care considerations into review meetings are important ways of meeting FASEA's Standard 2, as well as Standard 5. Standard 5 necessitates that an adviser "must be satisfied that the client understands your advice, and the benefits, costs and risks of the financial products that you recommend, and you must have reasonable grounds to be satisfied".

Advisers often avoid aged care conversations and advice if they are not confident that they can adequately and simply explain their advice. The complexity is compounded and the need for clarity is heightened, particularly if the client does not seek advice until a crisis has emerged and the family is in an emotional state.

If a client is vulnerable or unwell mentally or physically, testing the client's understanding can be even more difficult, and advisers can place less reliance on the client's statement that they have understood the advice.

This highlights the importance of addressing frailty and aged care needs ahead of time when the client has the mental and physical capacity to take control of these decisions, as well as the need to further develop communication skills and tools.

Tip

There are various communication tools to assist with client understanding.

These tools include advice modelling software which focuses specifically on telling the 'aged care story' for effective decision-making and comprehension by the clients, as well as brochures and client fact sheets.

To whom is the 'duty of care' owed when dealing with families?

Advice in the aged care space typically involves interactions with the wider family, not just the beneficiary of the advice. That is, the person accessing aged care services.

Often the adviser uncovers an aged care need from clients aged 40–65 years who are acting as the decision-maker or influencer for a parent or other family member. The adviser may never meet the person needing care (the beneficiary of the advice) who can become the focus of advice.

In these circumstances, there may be confusion and conflict as to who the 'client' is and to whom the duty of care is owed. The conflict may be heightened if the decision-maker acts in a way that may not be in the best interests of the person needing to access care.

While Standard 6 allows for the adviser to take into account the implications of advice on the client's family, this does not shift the adviser's best interests focus to those family members. The advice needs to consider the impact on family members, but should still focus on best interests of the client accessing care.

Tip

Advisers must act in the best interests of the person accessing care as the 'client' to whom a duty of care is owed, even if they never met or had a conversation with them. This requires interaction with the enduring power of attorney (EPOA) and establishing that person's fiduciary role.

If the EPOA is an existing client and there arises a conflict between the adviser's responsibility to the separately identified clients, the adviser may need to refer the client needing advice on care to another appropriate adviser.

Competence in aged care advice

'Competence' is a core FASEA value and imposes the need for advisers to have the knowledge, skills and experience necessary to perform their professional obligations (Code of Ethics Guidance).

FASEA guidance explains the ongoing obligation of an adviser to have a "life-long commitment to developing and maintaining knowledge, skills and expertise at a level of currency required to benefit your clients in particular engagements". Additionally, Standard 10 imposes the need to develop, maintain and apply a high level of relevant knowledge and skills.

This particularly applies to specialist areas such as aged care advice.

While all advisers need to provide an aged care solution (to identify the need and help clients access advice), this does not require all advisers to become aged care experts. Rather, a business solution for how to provide the support within the set business model is important. If the adviser does not possess the competencies required to assist their client, they must refer the client to another professional.

Business solutions may include outsourcing to an accredited aged care professional adviser or outsourcing advice development through specialised paraplanning services. However, if only outsourcing the advice development, the duty of competence rests with the adviser, and competencies should match.

Tip

Advisers are likely to develop core competencies and designations rather than provide 'holistic' advice to clients.

In our experience, more advisers are specialising and becoming aged care experts, and licensees are requiring completion of aged care accreditation as a requirement to provide any aged care advice.

Over time, advisers may operate as cross-referrers and work in clusters of specialisations to service clients' various and complex needs.

Efficiency in the advice delivery

Diligence is another core value that necessitates the delivery of professional services in a timely, efficient and cost-effective way.

It requires advisers to review how they manage their time and resources and consider accessing specialist tools and support to deliver customised and quality advice with cost efficiencies.

Advisers and licensees need to evaluate the relative efficiencies of developing tools internally (for instance, calculators via spreadsheets, maintaining statement of advice (SOA) template wording and/or developing marketing and communication client collateral) against outsourcing to subject matter experts. This evaluation should take into consideration:

- competence, level of knowledge and capacity to keep up to date with regulatory and strategy changes, and ability to model complex client situations
- the risk of errors, adequacy of processes for checking changes, and timeliness in implementing changes
- the cost and time of developing and maintaining internal tools
- the opportunity cost of diverting time and focus away from other key business services.

Example 14 in the FASEA Code of Ethics Guidance relates to an adviser using a template SOA provided by his licensee. This example demonstrates the pitfalls of providing a long SOA containing generic information that is not tailored to the client's individual circumstances and specific advice needs.

Tip

To comply with the 'Diligence' value, advisers and licensees should access specialist tools and support to deliver customised and quality advice with cost efficiencies.

For instance, Aged Care Steps' Advice Generator is a highly specialised modelling tool which enables advisers to produce aged care advice, efficiently and accurately with a high degree of flexibility.

The need for business efficiency is increased with the shift in responsibility for complying with the FASEA obligations to individual advisers. The FASEA Code of Ethics Guidance explains to advisers that "you have the primary obligation to regulate your own behaviour to comply with the Code. You have a fundamental, personal, professional obligation to understand and to adhere to your ethical obligations under the Code. You cannot outsource this responsibility to your employer, or your licensee, or any other person."

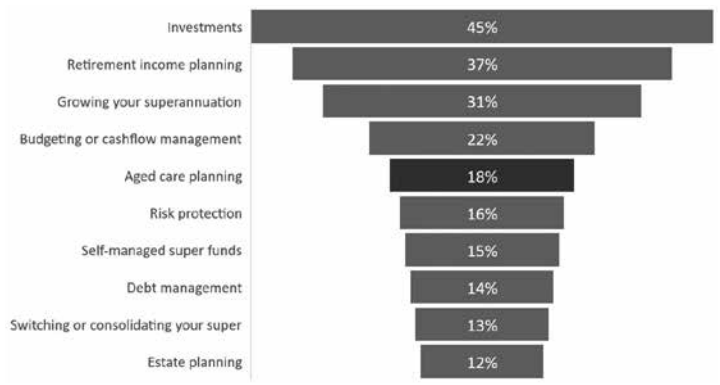
Meeting the growing demand for aged care advice

In addition to meeting FASEA's obligations, the growing demand for aged care advice heightens the need and benefits of offering aged care services.

The demand for aged care advice has been growing and is expected to continue, given the increasing longevity of the Australian population and the higher incidence of frailty, as well as the increasing cost and complexity involved with accessing aged care. The demand for aged care advice was illustrated in a recent Australian Securities and Investments Commission (ASIC) survey on what clients want, and summarised in its Report 627 *Financial advice: What consumers really think* (REP 627).

ASIC's research explored overall use of financial advisers and consumer attitudes towards the financial advice industry. A survey question asked what were the most common topics that survey participants had either received or were interested in receiving advice on. The top-10 topics or issues for which Australians seek financial advice are illustrated in Figure 1.

Figure 1. Topics for which Australians want advice



Source: Figure compiled from data in ASIC REP 627

Tip

According to ASIC's survey, clients seeking personal advice ranked aged care planning in the top five topics or issues of importance.

This accentuates the opportunities arising from advisers meeting client demands by providing aged care advice solutions.

Aged care planning featured in the top five topics or issues for which clients want advice. This ranking exceeded the demand for advice on key financial planning areas including self-managed superannuation funds, risk protection, estate planning and debt management.

Conclusion

Financial advisers can no longer delay implementing an aged care solution into their business model. Further, they need to adapt their business and client service models to incorporate aged care advice for existing and new clients as well as part of their ongoing review services.

The FASEA obligations reinforce the fact that aged care advice has grown into a core component of financial planning. As such, advisers need to build capabilities, confidence and efficiencies to ensure they are able to support clients throughout their frailty years.

Advisers who avoid aged care advice, risk failing to comply with the FASEA Code of Ethics as well as failing to satisfy clients' needs.

To get started with delivering aged care services, advisers need to understand how aged care works and the options available to clients. Moreover, they need to be confident in raising the conversation with clients and their families.

Advisers who wish to take a more active role, can build on this knowledge and undertake accreditation aged care training to develop the skills and knowledge required to provide personal aged care advice. Soft skills also need to be developed to build capability in dealing with families facing difficult and emotional times.

When implementing the aged care service, regardless of the chosen business model, it is important that advisers access practical tools to support each stage of their advice process to enable them to implement efficient processes and maximise opportunities. FS