

FASEA Exam Bundle

**Financial Advice Regulatory
and Legal Obligations**

**Applied Ethical and
Professional Reasoning
and Communications**

**Financial Advice
Construction**



Australian
College of
Financial Advisers

FINANCIAL
ADVICE
REGULATORY
AND LEGAL
OBLIGATIONS



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Introduction

This segment is designed to refresh and expand upon your knowledge of the obligations as a financial adviser in preparation for the examination.

We encourage you to think practically about your role in providing financial advice. Your examiner will expect you to demonstrate clear understanding of your legal obligations and how to apply these in real scenarios. You will need to apply your understanding to different case studies as well as answer generic questions about those obligations.

This module is intended to provide you with information about the legislative framework around providing financial advice. It should be read and applied in conjunction with your existing knowledge and practical experience. At the end of this module you should have a good understanding of the key obligations for Australian financial advisers under the Corporations Act in terms of identifying your client and the correct disclosure requirements. You should also be able to identify the risks of not complying with these obligations and how poor advice can have unintended consequences for clients and advisers. For the best learning experience, this module can be read alongside the model exam and mind map.

Key Learning Outcomes

At the end of this segment you should be confident to:

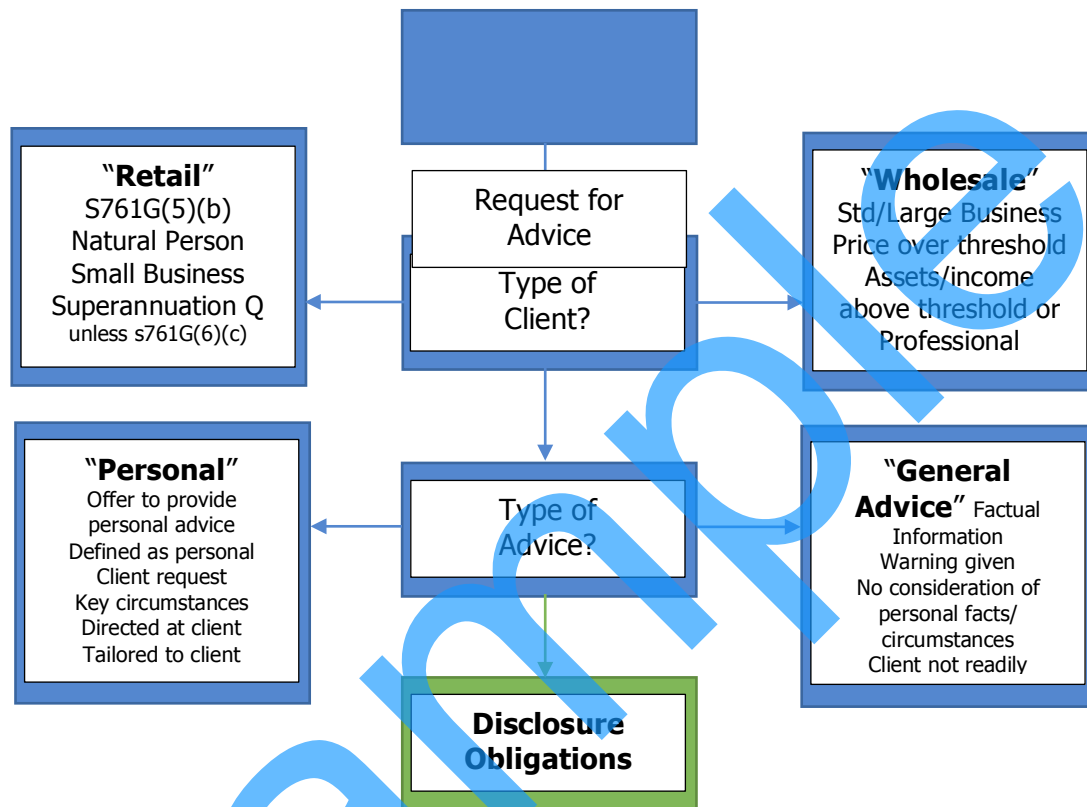
- Define the environment in which financial product advice is sought and given for new and existing clients;
- Explain the need to prevent and avoid misconduct and inappropriate advice;
- Evaluate and apply advice strategies suitable for different retail clients;
- Identify the obligations of relevant providers under Chapter 7 of the Corporations Act 2001;
- Articulate the importance of a Statement of Advice (SoA) and identify the essential requirements under Chapter 7 of the Corporations Act;
- Articulate the consequences of breaching one's financial disclosure obligations under Chapter 7 of the Corporations Act; and
- Understand the Requirements of the notification obligations for breaches under Chapter 7 of the Corporations Act.

Key Terms

Term	Definition	Provisions
Administrative Action	An action taken by ASIC against licensees and authorised representatives of those licensees who breach their obligations under the Act pertaining to suitability and disclosure obligations	RG98
Advice "Provider"	A person who provides personal advice to a retail client. Applies to natural and non-natural persons, and is not restricted by the inability to determine who in amongst a group provided said advice	s961(1)-(5)
AML/CTF Program	An AML/CTF program sets out a reporting entity's internal policy, procedure and controls for detecting any conduct or transaction that may be an attempt to launder money or fund terrorism and minimise the risk of this occurring.	
APP Entity	An agency or organisation (including an individual or Sole Trader, a Body Corporate, a Partnership, any other Unincorporated Association, a Trust).	s6(1) Privacy Act
Appropriate Advice	Where the adviser can show they satisfied the duty under s961B to act in the best interests of the client. If, at the time of providing the advice, the client was likely to be in a better position following that advice.	s961G RG 175.346
Best Interests Duty	A provider must act in the best interests of the client. Ambiguous statements can be misleading or deceptive conduct if one of the meanings could be potentially misleading or deceptive	s961B(1) RG 168.154
Beneficial Owner	A beneficial owner of a customer is defined as an individual who ultimately controls or owns the customer – at least 25% of the customer. Customer in this regard is an entity such as a business, trust, fund or other form of non-human entity.	
Civil Liability	Liability for misleading and deceptive conduct	s1041H
Conflict of Interest	A provider must not engage a client where they know or ought to know that there is a conflict between the interests of the client and interests of the	s961J

The obligations under the Corporations Act are intended to apply and be imposed on the individual adviser as opposed to the entity they are working for or as a part of (such as under license or for a business). This is to put the obligation back on to the adviser to be mindful of the advice they give and encourage best practice. You cannot contract out of those obligations.²⁸ The obligations exist alongside the fiduciary duties applied at common law.²⁹

The Corporations Act – Disclosure Obligations



Disclosure Requirements

Following the Wallis Report on the Australian Financial System in 1997, the Financial Services Reform Act 2001 was introduced. This Act created three new retail disclosure requirements, the Product Disclosure Statement, the Financial Services Guide and the Statement of Advice to increase transparency and reinforce the client's right to choose. These obligations are also set out under Chapter 7 of the Act. You cannot contract out of these requirements.

The kind of advice you are providing will determine which disclosure paperwork you will need to provide.

²⁸ s 960A.

²⁹ s 960B.

MODEL EXAM
Financial Advice
Regulatory and Legal
Obligations



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Answering The Exam - Method

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The exam will have:

- Multiple choice questions
- True/False questions
- Short answer questions

Multiple Answer Format Method for Multiple Choice Questions

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- Read the question carefully and perhaps, a couple of times over, if you have the time to do so before you answer it. Consider what it is asking of you and whether the answers make sense in response. Go with the first answer you think is right and don't spend too much time debating whether it is correct or not.
- If you are unsure of the answer, leave it immediately and move onto the next question, then return to these questions at the end of your exam when you have time remaining.
- Stick with your first choice and don't over think it. If you have time remaining at the end, you can double check your answers at that time. Success with these questions is largely strategic.

Short Answer Format Method for Problem Questions

- Specifically address the issue/s that the question asks of you. Take a moment to read the question a few times before you attempt to answer. Sometimes questions such as this are not as straight forward as they look. Be sure to know what specifically they are asking of you before you start writing.
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A few grammatical things to keep in mind

- Contractions are always a big no in exams. Use *cannot* instead of *can't*, *did not* instead of *didn't*, *is not* instead of *isn't*. Use of contractions can lead to a lesser mark.
- There is never a good reason to use exclamation points in a formal exam. All answers are persuasive at best, not definite. These are often unnecessary and looked upon poorly by markers.

**MIND MAP
FINANCIAL ADVICE
REGULATORY AND
LEGAL OBLIGATIONS**



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DISCLOSURE OBLIGATIONS PT1

Financial Services Guide

Description of the service that is being provided ☹ Must be up to date and correct

Intended to provide the client with enough information that would help them to decide which adviser to use

Statement of Advice

Either the means by which the advice is provided or merely a record of the advice

Must be given to the client when the advice is provided or as soon as practicably after

Description of the Advice that is being provided

Clear and concise ☹ Enough information to be able to be followed

Product Disclosure Statement

Provides essential information to help a client to decide whether to invest in a financial product

Describes how a product works

Must use clear language



APPLIED
ETHICAL AND
PROFESSIONAL
REASONING AND
COMMUNICATION



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Introduction

Financial advisers in Australia must be aware of their obligations to their clients and best industry practice. This segment is designed to refresh and expand upon your knowledge of your obligations when creating and providing financial advice.

We encourage you to think practically about your role in providing financial advice. Your examiner will expect you to demonstrate clear understanding of your legal obligations and how to apply these in real scenarios. You will need to apply your understanding to particular-fact scenarios as well as answer generic questions about those obligations.

This module is intended to be read as a complement to your existing knowledge and practical experience, providing you with the information about the legislative framework around providing financial advice. At the end of this module you should have a good understanding of the ethical obligations and principles which Australian financial advisers are bound by following the introduction of the FASEA code of ethics from 01 January 2020. For the best learning experience, this module can be read alongside the model exam and mind map under the same name.

Key Learning Outcomes

At the end of this segment you should be confident to:

- Explain the requirements specified in the FASEA Code of Ethics;
- Articulate the importance of a code of ethics and why financial advisers need to work and abide by the approved code in the context of professional standards;
- Apply ethical frameworks to address issues and dilemmas that are encountered as a financial planner; and
- Identify and demonstrate the importance of a relevant provider acting with integrity and in the best interests of each of their clients.

Key Terms

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Administrative Action	An action taken by ASIC against licensees and authorised representatives of those licensees who breach their obligations under the Act pertaining to suitability and disclosure obligations	RG98
Advice "Provider"	A person who provides personal advice to a retail client. Applies to natural and non-natural persons, and is not restricted by the inability to determine who in amongst a group provided said advice	s961(1)-(5)
AML/CFT Program	An AML/CFT program sets out a reporting entity's internal policy, procedure and controls for detecting any conduct or transaction that may be an attempt to launder money or fund terrorism and minimize the risk of this occurring.	
APP Entity	An agency or organisation (including an individual or Sole Trader, a Body Corporate, a Partnership, any other Unincorporated Association, a Trust).	s6(1) Privacy Act

FASEA encourage all advisers to consider the three principles of ethical behaviours as identified in the book – Everyday Ethics. These principles are:

- The Golden Rule - Do unto others as you would have them do unto you.
- The Sunlight Test - We should do only those things we would be proud to be seen doing
by those whose opinions we respect.
- Conscience - We should act only according to a well-informed (and well-formed) conscience.

Whilst it may seem obvious, by applying these principles advisers can be sure that they are acting in a manner consistent with what they expect from themselves and what is expected of them by the public and the regulator.

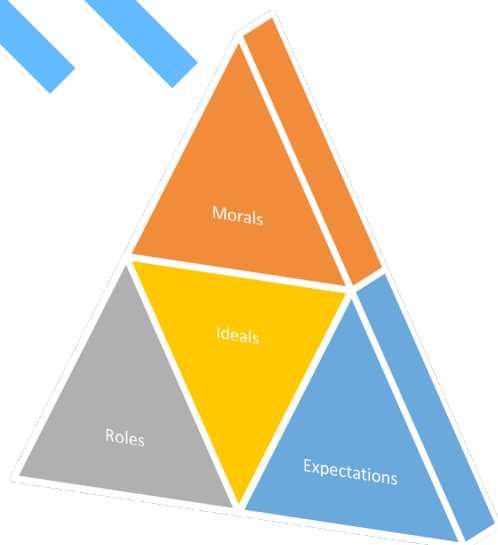
Sources of Ethics for Advisers

When we speak about values, a few key terms come to mind. Often those of valiant or empathetic nature. Some examples being respect for others, integrity, fairness or accountability.

As everyone is different, and every situation is different, there is a wealth of possible values that could make the list.

Human behaviourists generally adhere to the belief that values are both unique and central to human existence, they guide and coordinate human behaviour, ultimately non-universal in nature. On the other hand, there are some theorists that have argued that there are indeed universal structures that guide human values, which can be narrowed down to what the driving forces are behind how we act and interact. We are consistently confronted with the fact that there is no single understanding of morals generally, ideals or principles, commitments, roles or expectations.

This understanding is central to the understanding of professional ethics. Professional ethics exist to both protect people operating under and subject to the law, but also to solidify a certain set of agreed principles that generate accountability and fairness for all who encounter the practice.



What is Ethical Practice?

Ethical practice is the cornerstone of any successful fiduciary relationship. Ethics may be defined as a set of principles or standards governing the conduct of a person or members of a profession or organisation. Adviser ethics conveys the notion that professionalism carries with it responsibility and duty.

Recap: Moral Philosophy

When providing advice, advisers will usually call on different elements of each of these theories. In practice, acting ethically does not fall neatly under one theory, instead we should act based on what we know is right and proper, our technical skill and knowledge, and what the client wants and needs, producing the best outcome. An adviser should follow the general process of:

1. Identify an ethical issue.
2. Consider who is impacted by the decision that will be made.
3. Ensure you have all the relevant information.
4. Reality test your proposed decision – What will this look like? What will the impact be and on who? Will the positive outweigh the negative?
5. Act in the best way you can.
6. Reflect on what you decided on and the outcomes – Could this be different/better next time?

Identify an ethical issue. Consider who is impacted and ensure you have all of the relevant information.

Consider all of the potential outcomes, alternatives, and make a decision.

Act on your decision and reflect on the outcome of the situation - what can I do better next time?

**MODEL EXAM
APPLIED ETHICAL AND
PROFESSIONAL
REASONING AND
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**MIND MAP
APPLIED ETHICAL
AND PROFESSIONAL
REASONING AND
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Sample

ETHICS AND PROFESSIONALISM IN PRACTICE - OVERVIEW PT1

Ethical Practice

Working to a high and independent standard

Professionalism

Promotes confidence

Sources of Ethical Obligations

Ethical theories

The Corporations Act 2001 (Chapter 7)

The FASEA Code of Ethics

Common Law

Practice standards

Guidance Issued by professional bodies

Rules against misleading and deceptive conduct

The FASEA Code of Ethics

Standards 1-3 Ethical Behaviour

Standards 4-6 Client Care

Standards 7-9 Quality Process

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FINANCIAL ADVICE CONSTRUCTION



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Sample

Introduction

Financial advisers in Australia must be aware of their obligations to their clients and best industry practice. This segment is designed to refresh and expand upon your knowledge of your obligations when providing financial advice.

We encourage you to think practically about your role in providing financial advice. Your examiner will expect you to demonstrate clear understanding of your legal obligations and how to apply these in real scenarios. You will need to apply your understanding to particular-fact scenarios as well as answer generic questions about those obligations.

This module is intended to complement your existing knowledge and practical experience, regarding the legislative framework which governs the provision of financial advice. At the end of this module you should have a good understanding of the obligations and principles for Australian financial advisers under the Corporations Act, the Privacy Act, Anti-Money Laundering and Counter-Terrorism Financing Act and the Tax Agents Services Act. You should be able to demonstrate how these are to be applied in practice. For the best learning experience, this module can be read alongside the model exam and mind map under the same name.

Key Learning Outcomes

At the end of this segment you should be confident to:

- Compare and contrast legal requirements for individual and licensee;
- Identify and apply the requirements under chapter 7 of the Corporations Act 2001 when providing advice;
- Apply legal requirements for AML/CTF legislation when providing advice;
- Apply legal requirements for Privacy Legislation when providing advice;
- Articulate the requirements for compliance with the Tax Agents Services Act 2009 requirements as a registered tax adviser.

- Reporting suspicious activity to AUSTRAC as and when it arises;
- Seek assistance where you are unsure about your obligations or have concerns that are not yet suspicions as such.
- Failure to report when required or tipping off suspicious parties carries significant penalties.

The Privacy Act 1988

Financial advisers are also expected to adhere to the Australian Privacy Principles under the Privacy Act 1988 (the Act), otherwise known as the APP. The privacy principles create a series of obligations and rights under the Act about how information is obtained, used and kept. The principles act as an element of accountability for those who work with private and sensitive personal information. The principles are legally binding. They are designed to be applicable to both technology and paper-based information which gives the legislation wide applicability.

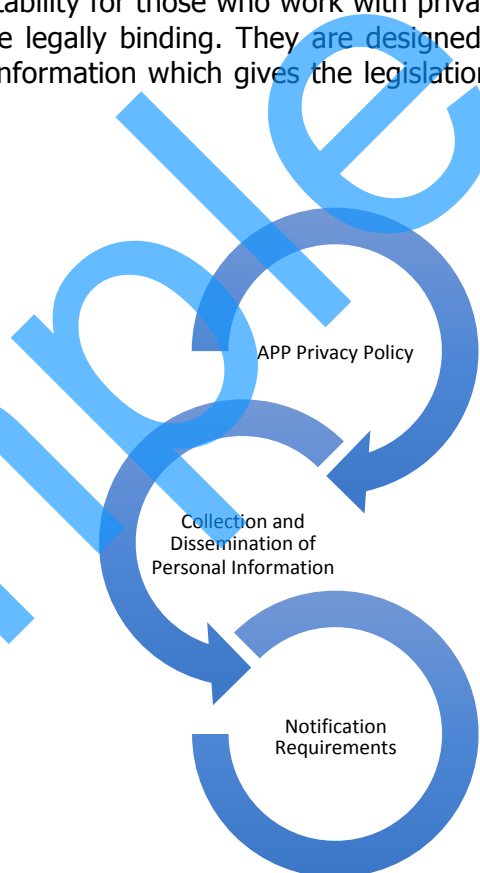
The principles cover 5 broad areas:

- Personal information itself and what this means;
- How information is collected;
- How information is stored;
- How information is used; and
- Who has access to it and when.

The federal privacy laws of Australia are administered by Office of the Australian Information Commissioner (OAIC). The OAIC regularly issues guidance in the form of "APP Guidelines" - these are not laws themselves,¹⁴ rather guidelines set out by the Commissioner to assist with the interpretation of the primary legislation.¹⁵ These are available to view at any time on the OAIC website.¹⁶

The AML/CTF legislation places specific obligations on reporting entities and licensees to collect personal and sensitive information to confirm and verify the identity of clients. When performing those tasks, the privacy obligations must be remembered and play a part in how information is obtained and maintained.

The OAIC has the power to investigate any complaints pertaining to the use of personal information either from the person concerned or OAIC's own decision.¹⁷ The privacy principles which are applicable to financial advisers are set out below.



¹⁴ The Privacy Act 1988, s28(1)

¹⁵ Above n 55, s 28(4)

¹⁶ See: <https://www.oaic.gov.au/agencies-and-organisations/app-guidelines/>

¹⁷ s 40A.

MODEL EXAM

Financial Advice

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MIND MAP FINANCIAL ADVICE CONSTRUCTION



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LICENSING REQUIREMENTS PT2

Obligations on Representatives

Not to engage in hawking ⊖ As prohibited under part 7.8.

Meet the applicable disclosure obligations ⊖ under Chapter 7

Avoid any misconduct ⊖ s 12DA

Not to engage in misleading or deceptive conduct or make misleading or deceptive statements

Meet all consumer protection obligations as identified under Chapter 7, ethical conduct, or other regulations

Breaches or Complaints

Substantial breaches must be reported

What is substantial is largely fact specific

Must have a process for dealing with breaches or complaints



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