



FPA Board  
CHARTER  
*and* CODE of  
PROFESSIONAL  
CONDUCT

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FINANCIAL PLANNING  
ASSOCIATION of AUSTRALIA

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# Introduction

As Australia's leading professional association for financial planners, the Financial Planning Association (FPA) represents the interests of the public and 11,000 members.

We are the changing face of financial planning, from an industry to a profession that earns consumer confidence and trust. We believe that better financial advice will influence the financial wellbeing of all Australians.

## FPA Vision

Through our members, we stand with Australians for a better financial future.

## The role of the FPA

We work towards our vision every day, through the provision of leadership and resources that help raise the professional standards and community standing of our members. As the leading professional association for financial planners, we have five key roles to play:

1. **Represent interests of the public:** Our members represent best practice financial planning that puts the interest of the client first. We actively champion the need for a clear separation between product sales and advice, because Australians deserve trusted and transparent financial advice.
2. **Represent interests of members:** Our strong ties with government and regulators in financial planning positions us as the collective voice of our members. We maintain strong relationships with all key stakeholders and fight for fair outcomes that advance our profession.
3. **Foster high professional standards:** We create a professional culture of accountability and self-regulation, setting and enforcing professional and ethical standards that result in the highest quality financial advice.
4. **Facilitate world class education:** We are the only Australian body licensed to administer and deliver the CERTIFIED FINANCIAL PLANNER® designation, the international gold standard and highest certification available to financial planners worldwide.
5. **Provide professional development:** We support our members with a high calibre program of continued professional development designed to enhance their knowledge and skills, and support them in financial planning excellence.

# Section 1 - Board Charter

## Role of the Board

The Board is ultimately responsible for all matters relating to the performance and effective supervision of the FPA.

The Board's role is to govern the FPA rather than to manage it. In governing the FPA, the directors must act in the best interests of the FPA as a whole. It is the role of senior management to manage the FPA in accordance with the direction and delegations of the Board. It is the responsibility of the Board to oversee the activities of management in carrying out these delegated duties.

## Responsibilities of the Board

The Board has the final responsibility for the successful operations of the FPA. In general, it is responsible for, and has the authority to determine, all matters relating to the policies, practices, management and operations of the FPA. It is required to do all things that may be necessary to be done in order to achieve the objectives of the FPA. The Board must also ensure that the FPA complies with all of its contractual, statutory and any other legal obligations, including the requirements of any regulatory body. Without intending to limit this general role of the Board, the principal functions and responsibilities of the Board include the following:

Providing leadership to the FPA by:

- Acting in the public interest to elevate the profession of financial planning in the eyes of the community;
- Guiding the development of an appropriate culture and values for the FPA through the establishment and review of policies, rules and procedures to enforce ethical behaviour and provide guidance on appropriate work practices;
- Always acting in a manner consistent with the FPA's culture and Code of Conduct;
- Overseeing the development and implementation of an appropriate strategy by:
  - Working with the Chair, Chief Executive Officer, directors and the senior management team to ensure that an appropriate strategic direction and array of goals/ strategic and operational are in place;
  - Regularly reviewing strategic performance and amending or updating the FPA's strategic direction and goals;
  - Ensuring that an appropriate set of internal controls are implemented and reviewed regularly;
  - Overseeing planning activities including the development and approval of strategic plans, annual corporate budgets and long-term budgets including operating budgets, capital expenditure budgets and cash flow budgets;
  - Reviewing the progress and performance of the FPA in meeting these plans and corporate objectives, including reporting the outcome of such reviews on at least an annual basis.
- Regularly reviewing the FPA's financial performance;
- Overseeing the control and accountability systems that ensure the FPA is progressing towards the goals set by the Board and in line with the FPA's purpose, the agreed corporate strategy, legislative requirements and community expectations;
- Ensuring robust and effective strategic and operational risk management, compliance and control systems (including legal compliance) are in place and operating effectively;
- Appointing and remunerating the Chief Executive Officer;
- Ratifying the appointment, the terms and conditions of the appointment of directors by members;
- Ratifying the appointment and the removal of senior executives;
- Ensuring an effective performance review process for all directors including the Chair;

- Ensuring that an appropriate succession plan is in place for the Chair, Chief Executive Officer, directors and senior management;
- Ensuring appropriate human resource systems (including OH&S systems) are in place to ensure the well-being and effective contribution of all employees;
- Document appropriate powers to be delegated to management to ensure the effective day-to-day management of the business and monitoring the exercise of these powers.

The detail of some Board functions may be handled through Board Committees. However, the Board as a whole is responsible for determining the extent of powers residing in each Committee and is ultimately responsible for accepting, modifying or rejecting Committee recommendations.

### **Board size and composition**

The full Board determines the Board size and composition, subject to limits imposed by the FPA's Constitution. The Constitution provides for a maximum of nine directors of whom six must be members of the FPA (and of whom four must be practising Certified Financial Planners) elected by members in accordance with the FPA's constitution and Election Regulations. Up to three additional persons (who need not be members of the FPA) may be appointed at the discretion of the Board.

The Chair and Chair-elect are selected by the Board.

### **Role of the Chair**

The Chair of the Board is responsible for:

- Leadership of the Board;
- Overseeing the Board in the effective discharge of its role and responsibility;
- The organisation and conduct of the Boards function and meetings;
- Counselling and mentoring all directors;
- Providing advice and counsel to the Chief Executive Officer including formal reviews and feedback on his or her performance and overseeing his or her development;
- Facilitating the effective contribution of all directors;
- Providing effective and respectful relations between Board members;
- Participating in the review of all directors;
- Ensuring the effective evaluation of the Boards performance on a regular basis;
- Ensuring that management reporting to the Board is timely and effective;
- Ensuring that a strategic plan is reviewed on a regular basis and that the Board monitors the FPA's performance against the plan.
- to see that new Board members are well briefed and have access to information on all aspects of the FPA's operations;
- to be the Board's representative in dealings with Management ensuring that its views are communicated clearly and accurately;
- to represent the views of the Board to the public, governments etc on appropriate occasions.

## **Statement of Individual Director Responsibilities**

As members of the peak decision making body in the FPA, directors share ultimate responsibility for the FPA's overall success. Therefore, directors have an individual responsibility to ensure that the Board is undertaking its responsibilities as set out in the Responsibilities of the Board. Directors need to ensure that the Board is providing leadership to the FPA, particularly in the areas of ethics and culture;

- leadership to members, particularly when acting in the public interest
- a clear and appropriate strategic direction;
- accountability to key stakeholders, particularly members;
- oversight of policies;
- oversight of all control and accountability systems including all financial operations and solvency, risk management and compliance;
- an effective senior management team and appropriate personnel policies; and
- timely and effective decisions on matters reserved to it.
- setting the standards of professional conduct of members and ensuring that these are adhered to.
- effective and timely reporting to members;
- ensure that the Association has adequate insurance cover for product and public liabilities and directors and officers liabilities in the event of a claim against the FPA. All directors are bound by the Code of Conduct.

## **Expectation of Directors in Board Process**

Since the Board needs to work together as a group, directors need to establish a set of standards for Board and/or Board committee meetings. It is expected that directors shall, in good faith, behave in a manner that is consistent with generally accepted procedures for the conduct of meetings at all meetings of the Board and/or Board committee.

This will include, but not be limited to:

- acting in a professional manner;
- acting with due care and diligence;
- acting in accordance with the Constitution, the Code of Conduct and Board policies;
- addressing issues in a confident, firm and professional manner;
- preparing thoroughly for each Board and adding value by their attendance;
- using judgment and commonsense when discussing issues;
- minimizing irrelevant conversation and remarks;
- ensuring that others are given a reasonable opportunity to put forward their views;
- refraining from interruption or interjection when a speaker has the floor; and
- being particularly sensitive in interpreting any request or direction from the Chair that aims to ensure the orderly and good-spirited conduct of the meeting.
- A director shall, unless exempted by the Board or the Chair, co-operate in corporate governance procedures prescribed by the Board including periodic appraisals of the performance of the Board.
- A director generally must not engage in conduct, or make any public statement likely to prejudice the FPA's business or likely to harm, defame or otherwise bring discredit upon or denigrate the FPA, fellow directors or staff.
- A director must not be discourteous towards fellow directors or staff or make personal attacks on a fellow director or a member of staff, whether in Board, committee or other internal FPA meetings or in discussion with others or in public statements.

Directors are expected to be forthright in Board meetings and have a duty to question, request information, raise any issue, and fully canvas all aspects of any issue confronting the FPA, and cast their vote on any resolution according to their own judgment.

Outside the boardroom, however, directors will support the letter and spirit of Board decisions in discussions or representations they make to any stakeholders of the organisation; including any members or ex-members, special interest groups, government or media representatives, staff, suppliers, other Associations, Financial Services industry participants and any other parties.

Directors will maintain confidentiality of all Board discussions and deliberations. Similarly, all confidential information received by a director in the course of the exercise of the director's duties remains the property of the FPA and is not to be discussed outside the boardroom unless compelled by law. **Access to Information and Independent Advice**

Directors may access such information and seek such independent advice as they individually or collectively consider necessary to fulfil their responsibilities and permit independent judgement in decision making.

Directors will be entitled to access members of senior management via the Chief Executive Officer at any time to request relevant and additional information or seek explanation and to have access to external auditors without management present to seek explanations or additional information.

Directors may seek independent professional advice with the Chair's prior consent, which will not be unreasonably withheld and which will be at the FPA's expense.

## **Board Meetings**

The FPA's Constitution provides that the Board must meet at least twice a year however It is expected that the Board shall meet on six occasions per year and no more than eight. In exceptional circumstances a Board meeting may be held in excess of these guidelines. Directors will allocate sufficient time to perform their duties effectively.

Directors will use all reasonable endeavours to attend Board meetings in person. However, attendance may also be via other forms of technology permitted by the FPA's constitution.

## **Conflicts of Interest**

Notwithstanding the ongoing obligation detailed in the Code for a director to disclose to the Board any actual or potential conflicts that might reasonably be thought to exist between the interests of the director and the interests of the FPA, at the commencement of each Board meeting directors are further required to identify to the Chair any conflict of interest that is likely to impact on their capacity to discharge their duties as a director during the meeting.

The Board can request a director to take reasonable steps to remove the conflict of interest. If a director cannot or is unwilling to remove a conflict of interest then the director must absent himself or herself from the room when discussion and voting occur on matters to which the conflict relates.

The entry and exit of the director concerned will be minuted by the Board. Directors do not have to absent themselves when either:

- a) conflict of interest relates to an interest common to all FPA members; or
- b) the Board passes a resolution that identifies the director, the nature and extent of the director's interest and clearly states that the other directors (who do not have a material personal interest in the matter) are satisfied that the interest should not disqualify the director concerned from voting on the matter or being present.

## **Related Party Transactions**

Related party transactions, including any financial transaction between a director or officer and the FPA, will be reported in writing to each Board meeting. In general, the Corporations Act requires related party transactions to be approved by the members; the Board cannot approve these transactions. An exemption to this requirement occurs where the financial benefit is given on arm's length terms.

## Review of Charter

The Board will review this charter and the charters of Board committees annually to ensure they remain consistent with the Board's objectives, responsibilities and relevant standards of corporate governance.

## Board committees

To assist it in carrying out its responsibilities, the Board has established standing committees comprising some or all of its members. They are:

- Audit Committee;
- Governance and Remuneration Committee;
- Policy and Regulation Committee;
- Regional Chapter Committee;
- Professional Standards and Conduct Committee;
- Professional Designations Committee.

In addition, the following committees have Terms of Reference and have objects and/or processes that are subject to oversight by the FPA Board but have separate powers and obligations to ensure clarity of governance and independence of decision making.

- Conduct Review Commission (CRC)
- Financial Planning Education Council

In addition the Board Committees and/or Management may appoint working groups at their discretion.

All of these committees are governed by specific Terms of Engagement empowered by the Board.

## Relationship between the Board and Chapters

The Chapters' role exists in 3 broad areas:

### Community

The Chapters' role is to:

- engage with the community at a local level to create public awareness and consumer confidence in FPA and the financial planning profession;
- foster and develop financial literacy in the community; and
- engage in pro bono activities which demonstrate the value of financial planning to aid disadvantaged members of the community.

### FPA

The Chapters' role is to:

- promote and support the strategic direction of FPA Board and Management
- promote the exchange of ideas and the sharing of knowledge between members and the FPA Board and Management; and
- highlight issues which affect the financial planning profession.

## Peers

The Chapters' role is to:

- offer professional networking and mentoring opportunities to members;
- encourage professional conduct among members; and
- develop relationships with like professional associations at local level.

Under the FPA Constitution, the FPA Board of directors has the power to:

- determine the criteria for developing a Chapter;
- determine the minimum standards to maintain Chapter status;
- determine the rules and regulations regarding the administration of Chapters and proceedings at Chapter meetings;
- prescribe benefits to be provided by Chapters to members;
- issue and withdraw approvals for the establishment of Chapters;
- terminate and dissolve Chapters; and
- remove the office-holders or management committees of Chapters.

## FPA spokesperson and approved media protocol

The Chief Executive Officer has primary responsibility for acting as FPA spokesperson and managing all media communications. This includes initiating and managing an effective communications plan for the organisation as well as responding to media enquiries. The Chief Executive Officer may involve members of the management team from time to time as appropriate.

The Chair will act as spokesperson on matters deemed appropriate and relevant to the FPA board.

Unless pre-approved by the Chief Executive Officer or Chair, Board directors are not permitted to comment publicly on FPA or related matters. If approached for comment, in their professional capacity, Board members are to ensure that they specifically state that they are not representing the FPA, and cannot comment on FPA matters.

## Social media protocol

### Intention of the policy

The use of social media is seen an important and growing business and engagement opportunity for the FPA. Directors have a strong profile within the advice community and can make a positive contribution to the reputation of the FPA. This entails promoting and commenting on FPA events, important announcements, and policies on Twitter, LinkedIn and Facebook (e.g. linking to FPA Congress website on Facebook, retweeting FPA Professionals Congress / Roadshows Tweets, posting photos from Roadshows or Congress).

The intention of this policy is the capture the positive impacts directors can have on the overall reputation and impact of the FPA, whilst protecting the FPA against any risks which could have the reverse effect.

This policy serves to advise FPA Board Directors using a social media platform in a personal or professional capacity, on suitable behaviour and rules to abide by.

### What is Social Media?

If a Board Director is discussing FPA or FPA business related issues in their personal or professional use of social media platforms, the Director is required to follow this Policy.

*Social media tools include (without limitation):*

- (i) social networking sites eg Facebook, LinkedIn, Google+, etc.
- (ii) video and photo sharing websites eg Instagram, YouTube, Flickr;
- (iii) micro-blogging sites eg Twitter;
- (iv) weblogs, including corporate blogs, personal blogs or blogs hosted by traditional media publications;
- (v) forums and discussion boards such as LinkedIn Groups, Yahoo! Groups or Google Groups;
- (vi) online encyclopaedias such as Wikipedia;
- (vii) any other web sites that allow individual users or companies to use simple publishing tools.

### **Social Media for personal use**

This section outlines how this Policy is applied if a Board Director chooses to make references to FPA, its people, products or services, its competitors, and/or other business related individuals or organisations when they are using a social media platform in a personal (ie not FPA pre-approved/professional) capacity. It is important in these circumstances that readers of the Board Director's posts do not misconstrue the Director's personal comments as representing an official FPA position.

*The Board Director is required to:*

- (i) Identify themselves as a director of FPA;
- (ii) Ensure they do not imply in any way that they are authorised to speak on FPA's behalf;
- (iii) Ensure they do not knowingly use the identity of another FPA Board Director (including name or variation of a name) unless in conjunction with a public event or with prior approval;
- (iv) Be mindful during their social media engagements of the importance of not damaging FPA's reputation, commercial interests and/or bringing FPA into disrepute;
- (v) Disclose only publicly available information. The Board Director must not comment on or disclose confidential FPA information or internal Board discussions.
- (vi) Not include FPA's logos, trademarks or other FPA intellectual property in their postings.

The Board Director is personally responsible for the content of their posts online. In this context, the Board Director has a responsibility to ensure that any information about FPA products and services that they provide is informed and factually accurate. If they wish to express their opinions please state they are the Board Director's personal opinions, or the opinion of another organisation which they represent, and not those of FPA.

If a Board Director is offering their personal perspective on a matter related to FPA, that Board Director should be mindful that their commentary and opinion does not cause damage to FPA or its commercial interests

*The Board Director is required to:*

- (i) Use a disclaimer if they are referring regularly to the FPA or FPA related issues. For irregular FPA references, a disclaimer need only be used on a case by case basis. It is understood that when using a Social Media Platform such as Twitter, that disclaimers on every post are not possible or appropriate; however, a general disclaimer could be put on your Twitter profile stating: 'Views all my own.'

An example of when a disclaimer would be appropriate is at the end of a blog post published by the Director on a website. An example of a disclaimer is: "the views expressed in this post are mine only and do not necessarily reflect the views of FPA."

- (ii) Ensure they are not the first to make an FPA announcement unless authorised by the Board to do so.

### **Social Media for Business Purposes**

This section outlines how this Policy applies where a Board Director uses social media in a professional capacity to represent FPA on a social media platform for legitimate business purposes.

The Board Director is required to:

- (i) Disclose that they are a FPA Board Director (and any other organization which may have an interest in what is being discussed);
- (ii) Disclose only publicly available information. The Director must not comment on or disclose confidential FPA information or internal Board communications;
- (iii) Ensure that any content they publish is factually accurate and complies with any other relevant FPA policies;
- (iv) Ensure they are not the first to make an FPA announcement unless authorised by the Board to do so.
- (v) Only offer advice, support or comment on topics that fall within their area of responsibility at FPA.

### **Social Media Generally**

This applies to Board Directors who choose to make references to FPA (or its directors, officers, employees or contractors) when using social media in a personal capacity.

- (i) Do not post confidential or proprietary information about FPA;
- (ii) Be respectful of all individuals and communities with which the Director interacts online;
- (iii) Comply with the Terms Of Use of the relevant social media platform being used;
- (iv) Respect copyright, privacy, financial disclosure and other applicable laws when publishing on social media platforms;
- (v) Do not use the FPA logo or any other FPA images or iconography on personal social media sites;
- (vi) Do not use FPA's name to promote a product (other than FPA products), cause, political party or candidate;
- (vii) Think twice before posting: Privacy does not exist in the world of social media. Consider what could happen if a post becomes widely known and how that may reflect both on the poster and FPA. Search engines can turn up posts years after they are created, and comments can be forwarded or copied;
- (viii) Get the facts straight before posting them on social media. Review content for grammatical and spelling errors.
- (ix) Ensure the Board Director does not post material that is obscene, defamatory, threatening, harassing, discriminatory or hateful to another person or entity, including FPA, its employees, its contractors, its partners, its competitors and/or other business related individuals or organisations;
- (x) Ensure the Board Director does not disclose other people's personal information in social media venues, and comply with the Privacy Act 1988 (Cth) and the Australian Privacy Principles;
- (xi) Photographs posted on social media sites easily can be appropriated by visitors. Consider adding a watermark to protect your intellectual property.

### **Overall intent and examples**

*Directors are encouraged to:*

- (1) Help promote FPA events on Twitter, LinkedIn and Facebook, e.g. linking to FPA Congress website on Facebook, retweeting FPA Professionals Congress / Roadshows Tweets, posting photos from Roadshows or Congress (subject to privacy issues regarding the identify of individuals). You're further encouraged to comment / like any FPA posts on Social Media relating to these types of events.
- (2) Share / comment on, positive FPA communications / news releases / developments, on Twitter, LinkedIn and Facebook, e.g. posting about the inaugural Gwen Fletcher Memorial Award, the FPA Blog.

*Show care with:*

Commenting or posting on political, policy related or current affair topics directly relating to FPA's actions / statements / stances. There's nothing wrong with supporting or passing on information relating to the FPA's public stances. However, it's important that it is posted or commented on in a way that is not too inflammatory in nature, and does not draw too much negative attention to the post or the FPA.

*Avoid:*

- (1) Making statements on social media that could be deemed as highly controversial, especially in regards to matters relating to the FPA or the financial planning industry.
- (2) Getting involved in heated debates on Social Media, such as the LinkedIn Members Forum or Twitter, that involve FPA's direct actions or FPA in the media, e.g. FPA's response to CBA Scandal.
- (3) Writing any potentially inflammatory posts relating to FPA's public statements / stances.

**FPA's Main Social Media Pages:**

FPA Facebook page:

<https://www.facebook.com/pages/FPA-Financial-Planning-Association-of-Australia/364169833628041?sk=timeline>

FPA LinkedIn Company Page:

<http://www.linkedin.com/company/financial-planning-association-of-australia>

FPA LinkedIn Members Forum:

[http://www.linkedin.com/groups?mostRecent=&gid=1839605&trk=my\\_groups-tile-flipgrp](http://www.linkedin.com/groups?mostRecent=&gid=1839605&trk=my_groups-tile-flipgrp)

FPA Twitter Handle: @AustraliaFPA

<https://twitter.com/AustraliaFPA>

## Section 2 – Board Code of Conduct

The FPA is governed by a Board of Directors. The Board is accountable to members for the performance of the FPA, for its good governance and the development of sound policies to enable the FPA to achieve its vision and core objectives.

The conduct and behaviours of company directors in Australia are prescribed by the Corporations Act and Regulations.

They are also regulated by the common law and a range of Commonwealth and other government legislation on topics in which companies have dealings including taxation law, competition and consumer law and insolvency law.

As a director of a Professional Association that seeks to model professional behaviour and to protect the community from malpractice by its members, an FPA director must also possess and maintain professional capability and personal qualities of a very high order.

### Purpose of the Code

The objective of this Code is to identify the ethical and professional standards of corporate and individual behaviour that are expected of directors of the FPA.

The Code also provides guidance to directors to assist them in carrying out their duties and responsibilities in accordance with the standards of professional conduct that the FPA expects of its directors.

The document is not an exhaustive statement of director obligations and duties. The principles were developed with the intention that they should sit comfortably and consistently with the many legal obligations that apply to directors.

The benefit of having the Code of Conduct is that it provides a degree of permanence in a code of behaviour that stands outside the constantly changing legal and regulatory framework.

Directors must familiarise themselves with the principles of the Code and commit to upholding them at all times by signing a copy of the Code on their appointment as a director.

### The principles of the Code of Conduct are:

1. Directors must act in good faith and in the best interest of the FPA;
2. Directors must act with honesty and integrity;
3. Directors must act fairly and impartially;
4. Directors must use information appropriately;
5. Directors must exercise due care, diligence and skill;
6. Directors must demonstrate leadership and stewardship;

Directors must comply with the law, this Code and the FPA's policies and procedures.

# Principles of Code of Conduct

## **Principle 1: Directors must act in good faith and in the best interest of the FPA**

Directors must demonstrate accountability for their actions, accept responsibility for their decisions and act in a way which protects and does not damage the FPA's assets or reputation at all times.

### **WHAT THEY MUST DO:**

- Undertake their duties with care and diligence.
- Commit to be an active member of the Board.
- Deal fairly and respectfully with everyone in the FPA including colleagues, staff, clients, suppliers, competitors and any other third parties or business partners with whom they deal during the course of their term.
- Exercise their authorities responsibly and within their limits set by the Board and in accordance with the FPA's policies and procedures.
- Be mindful that their conduct in all aspects of their life that reflect on their standing as a Board member and the reputation of the FPA.

## **Principle 2: Directors must act with honesty and integrity**

Directors are required to act with honesty and integrity at all times. They must be open and transparent in their dealings and use authority responsibly. They should not place themselves in a position of conflict of interest nor engage in activities that will bring the FPA into disrepute.

### **WHAT THEY MUST DO:**

- Be honest and forthright in all of their communications and dealings with the FPA, including colleagues, staff, members, government and regulators.

- Commit to high standards of professionalism, and ethics.
- Avoid actual or perceived conflicts of interest.
- Not to take improper advantage of the position of director to gain a personal advantage or cause detriment to the FPA.

## **Principle 3: Directors must act fairly and impartially**

Directors must avoid bias, discrimination, caprice or self-interest. They must demonstrate respect for others by acting in a professional and courteous manner and set an example in living the values of the FPA.

### **WHAT THEY MUST DO:**

- Treat all people they deal with dignity and respect.
- Advise and behave in a manner that is free of favouritism, self-interest and preference.
- Respect human dignity and foster a culture free of intimidation.
- Consider all relevant facts objectively when implementing policy or procedures to ensure equitable outcomes.
- Act in accordance with anti-discrimination legislation.

#### **Principle 4: Directors must use information appropriately**

Directors are to ensure that information gained as a director is used and applied for proper purposes and is kept confidential at all times.

##### **WHAT THEY MUST DO:**

- Only use information gained as a director or Board member for the purposes intended by the Board and for purposes that are in the interest of the FPA.
- Be conscious that directors hold privileged information and that strict rules apply to that information.
- Do not disclose information outside appropriate and responsible circles unless the disclosure has been authorised by the Board or is required by law.

#### **Principle 5: Directors must exercise due care, diligence and skill**

Directors must ascertain all relevant information, make reasonable enquiries and understand the financial strategic and other implications of Board decisions.

##### **WHAT THEY MUST DO:**

- Ensure they understand how the business and the Board operate.
- Ensure they are well prepared and ask relevant questions.
- Understand the strengths, weaknesses, opportunities and threats faced by the FPA.
- Understand financial reports and other financial material and actively inquire into this material.
- Ensure full compliance with legal, ethical and policy obligations of the FPA.

#### **Principle 6: Directors must demonstrate leadership and stewardship**

Directors are required to contribute and support the strategic direction and vision of the FPA.

##### **WHAT THEY MUST DO:**

- Contribute to the development and promote the strategic direction of the FPA.
- Behave in a way that exemplifies the values of the FPA.
- Exercise independent judgement and goodwill in overseeing the direction of the FPA.
- Be responsible for both tangible and intangible assets of the FPA and ensure appropriate risk controls are in place.
- Demonstrate leadership in the community and ensure that the FPA acts in the public interest.

#### **Principle 7: Directors must comply with this Code, the law and FPA policies and procedures**

Directors are required to comply with this Code and to report any conduct that may be in breach of the law, this Code or any other FPA policies or procedures as soon as possible.

##### **WHAT THEY MUST DO:**

- Familiarise themselves with the Code, all legislation and policies & procedures which set out the rules, regulations and working operations in which the FPA does business.
- Complete sufficient training and education programs to build and maintain their awareness and understanding of relevant laws, policies, procedures and practices.
- Report all actual or suspected breaches of the law, this Code and the FPA's policies, procedures or practices immediately to the Chair.

# Annexure A

## What will happen if a director breaches the code?

**Any complaint alleging that a director has breached the Code of Conduct must be made in writing and reported to the Chair for further action.**

The Chair will as soon as practicable investigate the complaint and ascertain whether the complaint has merit. Where appropriate, a board sub-committee and/or third party may be engaged by the Chair to carry out part or all of the investigation.

In the event that a complaint alleging a breach of the Code of Conduct is made against the Chair, then the Chair shall stand down and a replacement will be appointed by the remaining directors pending the outcome of an investigation of the complaint.

The Chair may decide to meet with the nominated director with a view to ascertaining their attitude towards the complaint. In the event the complainant is an employee of the FPA, the nominated Director will not be informed of the identity of the complainant, except in the following circumstances:

- a) The employee consents in writing for the disclosure of that information;
- b) It is essential, having regard for the principles of natural justice that the identifying information be disclosed to a person whom the information may concern;
- c) The disclosure of information is necessary to investigate the matter effectively; or
- d) Disclosure is otherwise in the public interest.

The Chair may convene a conciliation process (which may or may not involve the complainant) between the nominated director and the Chair and/or the remaining directors.

The Chair may draw upon supporting resources such as the Conduct Review Commission Chair and/or external mediation or legal resources to assist in the conciliation process.

In the event the complaint remains unresolved following the conciliation the Chair shall report his or her findings and recommendation to the Board.

Where a complaint is proven to the satisfaction of the remaining Board members, the Board may by resolution impose disciplinary action, ranging from a verbal warning to a recommendation to members for the suspension or the termination of the directorship in accordance with the Corporations Act.

# Annexure B

## Protocol regarding conflict of interest

1. A director must inform the Chair and the other directors of any matter which may result in a conflict of interest (actual or potential) for the director as soon as possible after such matter comes to the attention of the director by giving notice of the interest including details of the nature and extent of the interest and the relation of the interest to the affairs of the FPA.

In the event of a conflict of interest involving the Chair, the Chair must inform the other directors in the same manner. Those directors will discuss the matter and determine the appropriate action, if any. Where the interest is a material personal interest that must be disclosed under the Corporations Act, the details of the interest must be recorded in the minutes of the meeting at which the notice is given or tabled, in accordance with requirements of the Corporations Act.

2. The FPA shall maintain a Register of Interests which records the interest of each director, Principal Executive Officer and Secretary in:
  - a) Interests in other businesses or enterprises where there is a reasonable likelihood or expectation of appreciable financial gain or loss to the person (or another person with whom the person is associated) which may arise as a result of that person's association with the FPA.
  - b) Other board positions held.
3. Where a matter arises for discussion or consideration by the Board which, in the opinion of the Chair (or in the event of a potential conflict involving the Chair, then the other directors), may result in a conflict of interest (actual or potential) for a director, the Chair shall inform the director of his/her decision and whether information on the topic will be supplied and whether the director should absent himself or herself from the Board during discussion of the topic.
4. A Director who has a material personal interest in a matter that is being considered at a meeting of the Board:
  - (i) Must not vote on the matter; and
  - (ii) Must not be present while the matter (or a proposed resolution of that kind) is being considered at the Meeting, unless directors who do not have a material personal interest in the matter have passed a resolution that:
    - A. identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the FPA; and
    - B. states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

# Annexure C

## Guidelines for interpretation of the principles of the Code of Conduct

### Definitions of terms

*Associated Person* in relation to a director includes any spouse (including a de facto spouse), parent, child, brother or sister of the director or any company, corporation, partnership trust or other entity owned or controlled by the director or in which the director has a material personal interest within the meaning of the Corporations Act.

*directors* include all directors whether an Executive director or a Non-Executive director.

*Executive Director* means a director who is employed by the company and is part of management.

*Non-Executive director* means a director who is not an Executive director.

### 1. Duties to the Company

- 1.1 Each director should endeavour to ensure that the functions of the Board have been specified clearly, are properly understood and are competently discharged in the interests of the company.
- 1.2 A director should endeavour to ensure that the management of the company is competent and is devoting its best endeavours in the interests of the company.
- 1.3 In evaluating the interests of the company, a director should take into account the interests of the members as a whole, but where appropriate or required by law should take into account the interests of creditors and others.

### 2 Duties to Members

- 2.1 Each director should endeavour to ensure that the company is financially viable, properly managed and constantly improved so as to protect and enhance the interests of the members.
- 2.2 A director should seek to ensure that all members or classes of members are treated fairly according to their right as between each other.
- 2.3 A director should consider whether any benefit to be received by the director or an Associated Person is of sufficient magnitude that the approval of the board should be sought, even though not required by law.

Please refer to Annexure B Protocol regarding Conflict of Interest.

### 3 Duties to Creditors

- 3.1 Whilst the obligations of a director are primarily owed to the company (that is to the members as a whole), there are situations in which it is necessary to evaluate the interests of the creditors. This is particularly so where the company's financial position is uncertain or where insolvency may be pending. In case of doubt, a director should, with some urgency, seek professional advice.
- 3.2 The obligations of a director to a creditor are no less important than the obligations of a director to the members as a whole where the company's financial position is uncertain or insolvency may be pending.

### 4 Duties to other Stakeholders

- 4.1 All companies and their directors must comply with the legal framework governing their operations and must be conscious of the impact of their business on society. Without limiting in any way the nature of the issues with which the directors must be concerned in the running of the business, particular attention should be paid to the environment, questions of occupational health and safety, industrial relations, equal opportunity for

employees, the impact of competition and consumer protection rules, and other legislative initiatives that may arise from time to time. Although the director owes primary duty to the members of the company as a whole, the responsibilities imposed on companies and the director under various Acts of Parliament clearly demand that the director evaluate actions in a broader social context.

## **5 Due Diligence**

- 5.1 A director should attend all Board Meetings but where attendance at meetings is not possible appropriate steps should be taken to obtain leave of absence.
- 5.2 A director must acquire knowledge about the business of the company, the statutory and regulatory requirements affecting directors in the discharge of their duties to the company, and be aware of the physical, political and social environment in which it operates.
- 5.3 In order to be fully effective, a director should insist upon access to all relevant information to be considered by the Board. This information should be made available in sufficient time to allow proper consideration of all relevant issues. In the extreme circumstances where information is not provided, the director should make an appropriate protest about the failure on the part of the company to provide the information and if necessary abstain from voting on the particular matter on the basis that there has not been the time necessary to consider the matter properly. Any abstention, and the reason for it, should be included in the minutes of that meeting. It may also be appropriate to vote against the motion or move for deferment until proper information is available.
- 5.4 A director should endeavour to ensure that systems are established within the company to provide the Board, on a regular and timely basis, with necessary data to enable them to make a reasoned judgement and so discharge their duties of care and diligence. An internal audit of systems supporting the Board should be conducted regularly.
- 5.5 A director should endeavour to ensure that relations between the Board and the auditors are open, unimpeded and constructive. Similarly, the auditors should have direct and unimpeded access to the director. A director should be satisfied that the scope of the audit is adequate and that it is carried out thoroughly and with the full co-operation for management.
- 5.6 A director should endeavour to ensure that the FPA complies with the law and strives for the highest standards of business and ethical conduct.
- 5.7 A director may, from time to time, need expert advice (whether it be legal, financial or other professional advice and whether it relates to fiduciary or other duties) in order to discharge that director's duties properly. The director should ensure, to the extent possible, that any advice obtained is independent of the company. In that regard wherever necessary the services of advisers independent of those advising the company may need to be sought. In any case of doubt separate independent advice should be sought by the directors on matters that may impact on their position vis-à-vis the company. Any director who wishes to seek advice pertaining to a serious matter involving the director's position vis-à-vis the company at the expense of the company must seek the approval of the Chair prior thereto; such approval will not be unreasonably withheld.

## **6 Conflicts of Interest**

- 6.1 A director must not take improper advantage of the position of director to gain, directly or indirectly, a personal advantage or an advantage for any Associated Person, which might cause detriment to the company.
- 6.2 The personal interests of a director, and those of the director's family, must not be allowed to prevail over those of members generally. A director should seek to avoid conflicts of interest wherever possible. Full disclosure of any conflict, or potential conflict, must be made to the Board. In considering the issues, account should be taken of the significance of the potential conflict for the company and the possible consequences if it is not handled properly. Where a conflict does arise, a director must comply with any protocols dealing with the issue of conflict of interest. Where a director is thereafter absent from meetings, consideration should be given as to whether expertise that would be contributed by the director is otherwise available. In the case of a continuing material conflict of interest, a director should give careful consideration to resigning from the Board and consider the provisions of Guideline 7.3. *Please refer Annexure B: Protocol regarding Conflict of Interest.*
- 6.3 An Executive Director must always be alert to the potential for conflict of interest between management interests and the director's fiduciary duties as a director.
- 6.4 The payment of "success fees" in situations of potential conflict of interest is unacceptable.

## **7 Use of Information**

- 7.1 A director must not make improper use of information acquired by virtue of the director's position as a director. This prohibition applies irrespective of whether the director would gain directly or indirectly a personal advantage or an advantage for an Associated Person or might cause detriment to the company.
- 7.2 Matters such as trade secrets, processes, methods, advertising, and promotional programs, member revenue and statistics affecting financial results are particularly sensitive and must not be disclosed.
- 7.3 A director who takes the serious step of resignation on a point of principle should consider whether the reason for resignation should be disclosed to members or the public. In deciding whether or not to make public the reason for resignation and composing any resignation statement, a Director should have regard to the following:
- a) The duty not to disclose confidential information so as to damage the company;
- and
- b) The duty to act bona fide in the interests of the company.
- 7.4 A Director should ensure that any information which is not publicly available is not disclosed to a third party. Such information includes, but is not limited to:
- a) Financial forecasts
  - b) Disciplinary actions against members
  - c) Borrowings
  - d) Impending changes in the nature of the company's membership
  - e) Impending litigation
  - f) Significant changes in operations
  - g) New products or services
  - h) New discoveries
  - i) Liquidity problems

## **8 Professional Integrity**

- 8.1 A Director should recognize that the position occupied is particularly sensitive. As a Director one must be prepared, if necessary, to express disagreement, with colleagues including the Chair. However, in the absence of a need to express disagreement, one should be prepared to implement the decisions of the Board and the instructions of the Chair as a loyal Member of the Board.
- 8.2 If there is any doubt whether a proposed course of action is inconsistent with a director's fiduciary duty then the course of action should not be supported. Independent advice should be sought as soon as possible to clarify the issue.
- 8.3 When a director feels so strongly as to be unable to acquiesce in a decision of the Board, some or all of the following steps should be considered:
- a) Making the extent of the dissent and its possible consequences clear to the Board as a means of seeking to influence the decision;
  - b) Asking for additional legal, accounting or other professional advice;
  - c) Asking that the decision be postponed to the next Meeting to allow time for further consideration and informal discussion;
  - d) Tabling a statement of dissent and asking that it be Minuted;

- e) Writing to the Chair, or all members of the Board and asking that the letter be filed with the Minutes;
- f) If necessary, resign and consider advising the appropriate regulator.
- g) Where a decision is not unanimous, a dissenting director may not disclose the fact that he/she dissented. The fact that a director dissents on certain decisions will not in itself be sufficient to remove all liability from that director, should the decision lead to litigation.

#### 8.4 Opinion shopping and the search for loopholes in the law is unacceptable