



FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA

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# FPA PROFESSIONAL ONGOING FEES CODE

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July 2017

**FPA Professional Ongoing Fees Code**

**A Limited Code for the purposes of s.962CA Corporations Act 2001.**

**Practice Standard 7.6A for the purposes of the FPA Code of Professional Practice.**

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# Table of Contents

Purpose	4
Application	4
Record Keeping and Enforcement	4
Complaints	5
Sanctions for breach	5
Definitions	6
<b>Preamble</b>	<b>7</b>
1. Coverage	7
<b>Entering into an ongoing fee arrangement under the FPA Professional Ongoing Fees Code</b>	<b>7</b>
2. Suitability of Ongoing Fee Arrangements	7
3. Documenting the Ongoing Fee Arrangement	8
<b>Delivering Services under an Ongoing Fee Arrangement</b>	<b>9</b>
4. Services and Record Keeping	9
5. Annual Fee Disclosure Statement	10
6. Including Review Services under an Ongoing Fee Arrangement	10
<b>Renewal of Ongoing Fee Arrangements</b>	<b>11</b>
7. Setting the Renewal Interval	11
8. Reviewing the Ongoing Fee Arrangement at Renewal	11
9. Agreement to Renewal	12
10. Non Renewal	12
<b>Termination of Ongoing Fee Arrangements</b>	<b>12</b>
11. Termination	12
<b>Notices</b>	<b>13</b>

# FPA Professional Ongoing Fees Code

## Purpose

This limited code has been prepared for the purpose of Section 962CA of the Corporations Act 2001. The Australian Securities and Investments Commission (ASIC) has granted relief (ASIC 'opt in' relief) to Participating FPA Members who comply with this limited code as FPA Practice Standard 7.6A from the requirement in section 962K of the Corporations Act 2001 to provide 'an opt in renewal notice' every two years to clients who are subject to an ongoing fee arrangement.

The FPA Professional Ongoing Fees Code is designed to protect disengaged clients from paying ongoing financial advice fees where they are receiving little or no service.

## Application

The FPA Professional Ongoing Fees Code has limited application. It is only binding as FPA Practice Standard 7.6A on FPA Members who rely on the ASIC relief when entering, servicing clients under, and renewing ongoing fee arrangements ('Participating FPA Member').

The FPA maintains a register of persons (Participating FPA Members) who have elected to be subject to the FPA Professional Ongoing Fees Code. Members of the public may access this register via the Financial Planning Association of Australia website: [www.fpa.com.au](http://www.fpa.com.au)

## Record Keeping and Enforcement

The FPA Professional Ongoing Fees Code is enforceable as Practice Standard 7.6A under the FPA Code of Professional Practice against Participating FPA Members. Participating FPA Members (to whom the FPA Professional Ongoing Fees Code applies) must document and keep records about service delivery under an ongoing fee arrangement.

## Complaints

Consumers can complain to the FPA where a Participating FPA Member fails to comply with the FPA Professional Ongoing Fees Code.

Complaints may result in professional disciplinary action against the Participating FPA Member for a breach of the FPA Professional Ongoing Fees Code or other aspects of the FPA Code of Professional Practice under the FPA Constitution and the FPA Disciplinary Regulation. The FPA's independently chaired Conduct Review Commission hears disciplinary matters. Disciplinary Panels may impose sanctions against members found to be in breach of the FPA Professional Ongoing Fees Code.

## Sanctions for breach

Sanctions may range from fines, and requiring the member to undertake further professional development, to suspension or expulsion, and publication of the Participating FPA Member's name in the most serious cases. An expelled member will no longer be able to rely on the relief under section 962CA of the Corporations Act from the requirement in section 962K to give a renewal notice to clients in an ongoing fee arrangement. The FPA or the Conduct Review Commission may also refer serious breaches of the law uncovered in the course of an investigation to regulatory authorities.

## Definitions

<b>Fee Disclosure Statement</b>	has the meaning given to that term in section 962H of the Corporations Act 2001. By way of summary, a Fee Disclosure Statement is a statement in writing that sets out certain matters concerning fees paid and services delivered under an Ongoing Fee Arrangement over the previous 12 months of the arrangement.
<b>Ongoing Fee Arrangement</b>	has the same meaning as is given to that term in Division 3 of Part 7.7A of the Corporations Act 2001. By way of summary, an Ongoing Fee Arrangement is an arrangement for the provision of personal financial services advice, under which a fee (however described or structured) is to be paid during a period of more than 12 months.
<b>Participating FPA Member</b>	an FPA Member who subscribes to this FPA Professional Ongoing Fees Code and relies on relief granted by ASIC under section 962CA of the Corporations Act 2001.
<b>Professional Services</b>	services provided by a Member or the Member's associate including financial planning services.
<b>Financial Planning Service</b>	<p>is a service of which the Member or his or her associates does one or more of the following for a client:</p> <p>(a) Provides a recommendation, an opinion or report that is intended to influence a prospective client or a client in making a decision in relation to:</p> <ul style="list-style-type: none"><li>(i) a particular product or class or products, or an interest in a particular product or class or products and/or</li><li>(ii) a particular strategy in the management of a client's financial circumstances.</li></ul> <p>(b) Deal in a product or products as a result of a recommendation, opinion or report provided by the Member or his or her associates; and</p> <p>(c) Deal in a product or products pursuant to an authority provided by the client and includes the authority or power of attorney to operate managed discretionary accounts.</p>
<b>Review Service</b>	a service consisting of evaluating the client's situation against the objectives, strategies and financial planning recommendations previously identified for and agreed by the client in the provision of Financial Planning Services.

# Ongoing Fee Arrangements

## PREAMBLE

The purpose of the FPA Professional Ongoing Fees Code is to ensure that:

- generally, consumers who enter or renew an Ongoing Fee Arrangement with a Participating FPA Member can be confident that it is suitable to their needs and delivers value;
- generally, if a member is charging ongoing fees, then the client should obtain ongoing services;
- specifically, disengaged clients are protected from paying ongoing financial advice fees in circumstances where the value of the service is not commensurate with the cost, or where they are receiving no services for those fees.

Consequently, the FPA Professional Ongoing Fees Code:

- requires the member to assess the suitability of an Ongoing Fee Arrangement before it is entered with the client, to regularly review its suitability with the client, and to re-assess its suitability whenever the Ongoing Fee Arrangement is renewed;
- it establishes that an Ongoing Fee Arrangement must not continue without being re-assessed for suitability at least every three years;
- it establishes specific obligations to transparently document the arrangement and the services with the client.

## 1. Coverage

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- 1.1 A Participating FPA Member applies the FPA Professional Ongoing Fees Code to each Ongoing Fee Arrangement with a client in which the Member relies on the ASIC relief.

## ENTERING INTO AN ONGOING FEE ARRANGEMENT UNDER THE FPA PROFESSIONAL ONGOING FEES CODE

## 2. Suitability of Ongoing Fee Arrangements

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- 2.1 A Participating FPA Member takes steps to assess whether it is suitable to provide ongoing services to the client.
- 2.2 A Participating FPA Member takes steps to ensure the proposed services are relevant to the advice given by the member to the client and to the client's financial circumstances.
- 2.3 Generally, it will be suitable to provide ongoing services to a client, and the proposed services will be relevant to the advice given to a client and to the client's financial circumstances, if the proposed ongoing services reasonably address:
- one or more of the client's confirmed objectives, needs and priorities as established

during the financial planning engagement with the Participating FPA Member

- any reasonable assumption established during the financial planning engagement; and
- any suitable strategy or strategies identified during the financial planning engagement.

In particular, a Participating FPA Member will have regard to the cost, useability, usefulness, duration, benefit and complexity of the ongoing services for the client's circumstances to determine its suitability and relevance to the client.

- 2.4 It is prudent for the Participating FPA Member to regularly review each Ongoing Fee Arrangement to ensure that it remains suitable and relevant to the client in the client's circumstances. The member provides an annual Fee Disclosure Statement to the client (as required by law) providing information about the Ongoing Fee Arrangement (see Section 5 below). In addition, section 7 (below) discusses setting a renewal interval for the Ongoing Fee Arrangement with the client and section 8 (below) discusses reviewing the Ongoing Fee Arrangement for suitability and relevance at renewal.

### **3. Documenting the Ongoing Fee Arrangement**

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- 3.1 A Participating FPA Member documents the Ongoing Fee Arrangement with the client in a client engagement letter (or similar) including:
- the parties to the Ongoing Fee Arrangement and their contact addresses;
  - the services to be delivered under the Ongoing Fee Arrangement;
  - ongoing fees expressed as:
    - i) an amount in Australian dollars;
    - ii) a percentage of funds under advice; or
    - iii) an hourly rate with an estimate of the hours per annum; and
  - the terms of the Ongoing Fee Arrangement
- 3.2 The terms of the Ongoing Fee Arrangement include the following provisions:
- A term which specifies that the Ongoing Fee Arrangement entitles the client to an annual (or such other specified number or frequency) Review Service as explained in section 6 below;
  - A term that requires that the Ongoing Fee Arrangement must be renewed with the client at a mutually agreed interval, which is no less often than every three years (as explained in section 7 below);
  - A term which specifies that the Ongoing Fee Arrangement terminates unless renewed (as explained in section 10 below);

- A term which specifies that the client may terminate the Ongoing Fee Arrangement at any time (as explained in section 11 below);
  - A term which specifies how notices are provided (as explained in section 12 below).
- 3.3 The terms of the Ongoing Fee Arrangement usually also include (but are not limited to including) the following provisions:
- A term which specifies the client’s access to the member (or another financial planner) to ask questions and seek guidance;
  - A term which specifies the client’s entitlement to the provision of relevant information and education;
  - A term which specifies the client’s entitlement to the provision of administrative support (e.g. in relation to the management of insurance claims).
- 3.4 The member should explain to the client the costs and benefits of including provisions for specific services and the potential risks and consequences of excluding such provisions in the terms of the Ongoing Fee Arrangement. Section 6 requires the Participating FPA Member to discuss with the client certain issues about Review Services in the Ongoing Fee Arrangement.
- 3.5 A Participating FPA Member will not implement an Ongoing Fee Arrangement with the client unless the client has agreed to the terms of Ongoing Fee Arrangement.
- 3.6 Provisions referred to in sections 3.2 and 3.3 may be included either in a client engagement letter (or similar) prepared in accordance with section 3.1. The member retains evidence of the client’s agreement to the terms in the member’s client file.

## DELIVERING SERVICES UNDER AN ONGOING FEE ARRANGEMENT

### 4. Services and Record Keeping

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- 4.1 The Participating FPA Member’s client engagement letter (or similar) sets out the services to be delivered under the Ongoing Fee Arrangement.
- 4.2 The Participating FPA Member documents and keeps records confirming the services delivered to the client under the Ongoing Fee Arrangement.
- 4.3 Where the Ongoing Fee Arrangement includes Professional Services or Review Services, the FPA Member documents and keeps records of the Professional Services, including the Review Services performed under the Ongoing Fee Arrangement.

## 5. Annual Fee Disclosure Statement

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- 5.1 Participating FPA Member provides each client in an Ongoing Fee Arrangement with an annual Fee Disclosure Statement whilst the arrangement continues in accordance with the law.
- 5.2 The Fee Disclosure Statement confirms to the client the services the client was entitled to receive, the services actually received and the fees paid under the Ongoing Fee Arrangement for the previous 12 month period.

## 6. Including Review Services under an Ongoing Fee Arrangement

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- 6.1 In assessing whether it is suitable to provide ongoing services to the client, and in ensuring the proposed services are relevant to the advice given to the client and the client's financial circumstances (see clause 2 above), a Participating FPA Member will seek agreement with the client for the inclusion of one or more Review Services in the Ongoing Fee Arrangement.
- 6.2 In discussing this issue with the client, the member:
- Explains to the client that financial planning is a dynamic process; that it is prudent to conduct regular professional reviews of the client's personal circumstances and the economic environment to reassess and/or confirm the client's objectives, needs and priorities; to ensure that the client's previously agreed financial planning strategies continue to promote their agreed objectives, needs and priorities;
  - Explains to the client that the failure to implement regular reviews of previously agreed financial planning strategies may compromise achievement and satisfaction of the client's agreed objectives, needs and priorities; may expose the client to financial loss; and may expose the client to ongoing costs (including ongoing professional fees) which might no longer promote the client's agreed objectives, needs and priorities;
  - Outlines the costs and different options for review of the client's situation to assist the client to make an informed decision about the nature, scope and frequency of Review Services, and whether to include Review Services in an Ongoing Fee Arrangement with the Member;
  - Explains to the client that the scope and frequency of Review Services appropriate for the client will depend significantly upon the client's personal circumstances (including their attitude to, or tolerance for risk), agreed financial planning strategies, and the implemented financial planning recommendations (including implemented product and service recommendations);
  - Explains to the client it is usual to include terms that entitle the client to

annual Review Services in an Ongoing Fee Arrangement (although the member may recommend, and the client may agree to more, or less frequent reviews having regard to what is suitable and relevant to the advice and the client's financial circumstances with reference to the matters noted in section 2.3 above);

- Explains to the client it is prudent to time one Review Service to coincide with renewal of the Ongoing Fee Arrangement (see section 7 below).

6.3 As noted in section 3.2 above, the client's agreement in relation to scope and the frequency of Review Services to be included in an Ongoing Fee Arrangement will be recorded in a client engagement letter (or similar).

## RENEWAL OF ONGOING FEE ARRANGEMENTS

### 7. Setting the Renewal Interval

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- 7.1 At the time of entry into the Ongoing Fee Arrangement, the Participating FPA Member discusses and reaches agreement with the client to establish a renewal interval for the arrangement.
- 7.2 The renewal interval for an Ongoing Fee Arrangement must ensure that the Ongoing Fee Arrangement is renewed no less often than every three years.
- 7.3 In discussing and agreeing the interval for renewing the Ongoing Fee Arrangement with the client, the member will:
- Explain to the client that the appropriate interval for renewing the Ongoing Fee Arrangement will depend on the client's circumstances; and
  - Explain that it is prudent to regularly review the Ongoing Fee Arrangement to ensure it remains suitable to the client's financial planning strategy.
- 7.4 As noted in section 3.2 above, the client's agreement with the Participating FPA Member in relation to the renewal interval for the Ongoing Fee Arrangement will be recorded in the client engagement letter (or similar).

### 8. Reviewing the Ongoing Fee Arrangement at Renewal

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- 8.1 In renewing the Ongoing Fee Arrangement, the Participating FPA Member clarifies with the client whether it remains suitable to provide ongoing services to under the arrangement with reference to the matters noted in section 2.3 above.
- 8.2 This will require the Participating FPA Member to conduct a review of the advice and strategy provided, and the client's circumstances, portfolio, and risk profile as part of a Review Service, and will be timed to coincide with clarifying the continuing suitability and relevance of the Ongoing Fee Arrangement for

renewal. Section 6 above provides information about including Review Services in the Ongoing Fee Arrangement.

- 8.3 In clarifying the suitability and relevance of the ongoing services with the client for renewal, the Participating FPA Member discusses:
- The services the client was entitled to receive under the Ongoing Fee Arrangement;
  - The services the client received;
  - The proposed services to be provided to the client under the Ongoing Fee Arrangement upon renewal.

## **9. Agreement to Renewal**

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The Participating FPA Member obtains the client's agreement to renewal of the ongoing fees and services in the Ongoing Fee Arrangement. This agreement should be reconfirmed in a client engagement letter (or similar) (see section 3.2 above).

## **10. Non Renewal**

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- 10.1 Where the Participating FPA Member does not obtain the client's agreement to renewal of the ongoing fees and services, the Ongoing Fee Arrangement terminates. Non renewal provisions are included in the client engagement letter (or similar)(see Section 3.2 above).
- 10.2 The consequences of Termination of the Ongoing Fee Arrangement are set out in Section 11 below.

## **TERMINATION OF ONGOING FEE ARRANGEMENTS**

### **11. Termination**

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- 11.1 The client may terminate the Ongoing Fee Arrangement with a Participating FPA Member at any time by notifying the member in writing, in accordance with the client engagement letter (or similar).
- 11.2 The Participating FPA Member is expected to act with integrity and professionalism, and give effect to their client's instructions to terminate the Ongoing Fee Arrangement as soon as possible, in the circumstances and in accordance with the client engagement letter (or similar).
- 11.3 Whether the client terminates the Ongoing Fee Arrangement via instruction or fails to renew it (see section 10.1 above), the Participating FPA Member will confirm to the client in writing that the Ongoing Fee Arrangement has

terminated and that the member's services and the ongoing fees payable under the arrangement have ceased.

- 11.4 Alternatively, if the Participating Member terminates the Ongoing Fee Arrangement with the client, the member provides the client written notice of the reasons, including the date the termination will become effective.
- 11.5 Once the Ongoing Fee Arrangement is terminated, the client has no further obligation to pay ongoing fees to the Participating FPA member under the arrangement, and any obligation upon the member to continue to provide the client services under the arrangement also ceases.
- 11.6 As noted in section 3.2, termination provisions are included in the client engagement letter (or similar).

## NOTICES

- 12 Any notice which is provided pursuant to sections 5, 11.1 or 11.4 this FPA Professional Ongoing Fees Code or the client engagement letter will be deemed to have been sent and received, if:
  - (i) the notice is sent to the contact address of the party specified in the client engagement letter, subject to (ii);
  - (ii) if a party notifies in writing a change of contact address, the notice is sent by the other party to that changed contact address.



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