



# Compliance, Policy and Procedures Manual

*Version 20170404*

Lifespan Financial Planning Pty Ltd

*ABN 23 005 921 735*

AFSL Number 229892.

---

## INTRODUCTION

This Compliance Manual has been developed for Lifespan Financial Planning Pty Ltd ('Lifespan') and its Representatives.

The Australian financial services industry has undergone significant changes since the year 2000, particularly in the way we operate as a financial planning business. The Financial Services Reform Act 2001 put in place a new regulatory framework for the Australian Financial Services industry that covers a wide range of products, including securities, derivatives, general and life insurance, superannuation, deposit accounts and non-cash payments. The latest change is the Future of Financial Advice Reforms package of Legislation.

The changes resulting from the Future of Financial Advice reforms will require us to maintain better records to demonstrate that we have:

- Acted in the best interests of the client
- Considered any conflicts that we, you and any associates have and given priority to the interests of the client over those conflicts
- Provided advice that is appropriate for that client.

This Policy and Procedures Manual is intended as a convenient reference point for the main procedures and compliance issues that relate to your activities as a Representative of Lifespan.

In most instances, the procedures that you are required to follow have been dictated by either:

- Legislation;
- A licence condition; or
- "Best Practice" standards.

Consequently, the procedures set out in this Representative Policy and Procedures Manual should be taken as the conduct that we expect from all our Representatives.

Although care has been taken with the preparation of the Representative Policy and Procedures Manual, it does not purport to be legal advice on the issues. Reference should be made to the relevant legislation on any matters on which specific advice is required.

We will try to keep the information in the Representative Policy and Procedures Manual up to date so that it reflects any changes in legislation and rulings by the Regulators. However, we welcome your input to help us keep it current and relevant to your activities.

The words "we" and "us" and "our" are used to refer to Lifespan and the words "you" and "your" refer to you in your activities on our behalf. This refers to both administrative staff and representatives that provide advice.

Also, the words "should", "must" and "expect" have generally been used when setting out the procedures and the action that is to be taken. These have been used merely for variety and should not be regarded as representing degrees of significance.

## DEFINITIONS AND ABBREVIATIONS USED IN THIS MANUAL

Adviser	A representative who provides advice to clients; the advice can be either personal or general.
Advice Provider	A representative or Authorised Representative who provides personal financial advice.
AFSL	Australian Financial Services Licensee
APL	Approved Products List
AS	Australian Standard
ASIC	Australian Securities and Investments Commission
Authorised Representative	An entity that is authorised by an AFSL to provide financial services on its behalf (not an employee of the AFSL or a related company).
Corporations Act	Corporations Act 2001 (as consolidated from time to time) and maybe abbreviated as CA.
Corporations Regulations	Corporations Regulations 2001 in force under the Corporations Act 2001 and maybe abbreviated as CR.
Existing arrangement	An arrangement between a licensee or representative and a third party, i.e. product provider or platform operator for payment of conflicted remuneration entered into prior to 1 July 2013.
Existing Client	A client who has received personal advice from this licensee or a representative of this licensee before 1 July 2013.
FDS	Fee Disclosure Statement
FoFA	Future of Financial Advice
Grandfathered arrangement	Provision for the continuation of conflicted remuneration arrangements entered into before 1 July 2013 for existing clients and new clients up to 30 June 2014.
ISO	International Standards Organisation
Key person	A person who is the only Responsible Manager with a particular skill, or experience and education pertinent to the AFSL authorisations.
New Client	A client who has not received personal advice from this licensee or a representative of this licensee prior to 1 July 2013.
OFA	On going fee arrangement
PDS	Product Disclosure Statement
RGNNN	Regulatory Guide with relevant number, e.g. RG175
Representative	An employee, director, responsible manager, authorised representative of an AFSL.
RM	A Responsible Manager of an AFSL. Responsible Manager is involved in the day to day activities of the AFSL.
RoA	Record of Advice
SoA	Statement of Advice

## Contents

Compliance, Policy and Procedures Manual.....	1
INTRODUCTION .....	2
Definitions and abbreviations used in this Manual .....	3
1. OBJECTIVES AND SERVICES .....	7
1.1. Company Objectives And Activities.....	7
1.2. Objective of Lifespan.....	7
1.3. Australian Financial Services License.....	7
1.4. Range Of Services Offered.....	8
1.5. No Custody Of Client Securities Or Funds .....	9
1.6. Administrative Employees Not To Provide Advisory Services .....	9
1.7. Professional Indemnity Insurance .....	9
2. Support Services Obtained And Provided By LIFESPAN.....	11
2.1. Approved Products .....	11
2.2. Applying for Specific Approval For Financial Products Not On The APL..	11
2.3. Distribution Of Research Information To Representatives .....	13
2.4. Research Information About Financial Products .....	13
2.5. Shares And Stockbroking Services.....	14
2.6. Support Services .....	15
2.7. Para-Planners .....	15
2.8. Financial Planning Software .....	15
2.9. Monitoring of SOAs (SOA Vetting) .....	15
3. responsibility For AND of Representatives.....	17
3.1. Lifespan Is Responsible For Your Conduct.....	17
3.2. Your Obligations.....	17
3.3. Qualifications, Experience And Professional Standards.....	17
3.4. Recruitment Procedure .....	17
3.5. Maintain information .....	18
4. Conditions And Standards For Representatives.....	19
4.1. Representatives To Comply With Relevant Laws And Regulations.....	19
4.2. Terms And Conditions Set Out In The Authorised Representative Agreement	19
4.3. You Are Required To Act Personally .....	19
4.4. Engaging In Other Business Activities.....	19
4.5. Hawking Provisions .....	19
4.6. Disclosure Of Identity In Business Documents .....	20
4.7. Use Of Business Name.....	21
4.8. Use Of Logos.....	21
4.9. Advertising And Other Promotional Activities.....	21
4.10. Office Premises And Staffing.....	21
4.11. Computer Hardware And Software.....	21
4.12. Records In Electronic Form .....	21
4.13. Client Files .....	22
4.14. Lifespan Access To Files And Records.....	23
4.15. Tax File Numbers.....	23
4.16. Privacy Policy.....	24
4.17. Confidentiality .....	24
5. Training Of Representatives .....	25
5.1. Lifespan is Responsible For Your Training .....	25
5.2. Competency training.....	25

5.3.	Your Obligations For Training .....	25
5.4.	Initial Training.....	25
5.5.	Continuing Training Programme.....	25
5.6.	Record Of Training.....	26
5.7.	Periodic Reviews Of Training Completed By Representatives .....	26
6.	Supervision Of Representatives.....	27
6.1.	Outline Of Supervision Activities.....	27
6.2.	Counselling And Remedial Action.....	27
7.	Termination Of Representatives.....	29
7.1.	General Provisions.....	29
7.2.	Termination At Your Request .....	29
7.3.	Revenue payments after termination .....	29
7.4.	Termination By Lifespan.....	29
7.5.	Termination Procedure.....	30
8.	Advisory Standards And Procedures .....	31
8.1.	Promotion Of Identity .....	31
8.2.	Use Of Restricted Words .....	31
8.3.	Financial Services Guide ('FSG') .....	31
8.4.	Financial Product Advice.....	32
8.5.	Acting in the Best Interests of the client The Safe-Harbour Protection .....	33
8.6.	Conflicts Priority rule.....	33
8.7.	Scope or Scalability of Advice.....	34
8.8.	Obtain And Record Information About A Client .....	34
8.9.	Collection And Verification Of Client Information .....	35
8.10.	When A Client Provides Incomplete Or Inaccurate Information .....	37
8.11.	When A Client Requests Advice About A Specific Objective Or Need.....	37
8.12.	When A Client Requests "Execution Only" Service .....	38
8.13.	Research Information About A Range Of Products.....	38
8.14.	Recommend Only Products From Approved Products List .....	39
8.15.	Financial Product Requested By A Client.....	39
8.16.	Analysis To Determine Recommendations .....	39
8.17.	Existing Portfolios.....	40
8.18.	Initial Advice .....	40
8.19.	Content Of Statement Of Advice ('SoA') .....	44
8.20.	Content Of The Record Of Small Investment Advice ('ROSIA') .....	45
8.21.	Statements Of Advice incorporating previous advice by reference .....	45
8.22.	Replacement Recommendations For Existing Financial Products .....	47
8.23.	Oral Recommendations.....	47
8.24.	Further Advice.....	48
8.25.	Disclosures Of Remuneration - Commissions, Fees And Other Interests .....	50
8.26.	Review Service, But No "Monitoring" Of Client's Portfolios .....	51
8.27.	Requirement to provide a Product Disclosure Statement.....	51
8.28.	Conflicts of interest.....	51
8.29.	Conflicted Remuneration .....	53
8.30.	Rules for Specific Strategies .....	55
9.	Referrals.....	56
9.1.	Referrals Made To Lifespan Or You .....	56
9.2.	Advice Other Than That Offered By Lifespan .....	56
10.	Implementation Of Recommendations .....	57
10.1.	Applications To Be In Product Disclosure Statement ('PDS') .....	57
10.2.	Security And Prompt Arrangement Of Client's Financial Products .....	57
10.3.	When The Clients Actions Vary From Recommendations .....	57
11.	CLIENT ADMINISTRATION and revenue.....	59

11.1.	Definition of client .....	59
11.2.	Ongoing fee arrangement.....	59
11.3.	Fee Disclosure Statement.....	59
11.4.	Grandfathering .....	60
11.5.	OUR REQUIREMENTS .....	60
11.6.	Our Preferred Method of operation.....	62
11.7.	Collection and payment .....	62
12.	Complaints And Complaints Resolution Procedures .....	63
12.1.	Procedures For Handling Complaints.....	63
12.2.	External Complaints Resolution Procedures .....	64
13.	Registers .....	65
13.1.	ASIC Register of ‘Authorised Representatives’ .....	65
13.2.	Training Register .....	65
13.3.	Breaches Register .....	65
13.4.	Complaints Register .....	66
13.5.	Conflicts Of Interest Register: Non-monetary benefits that are not conflicts of interest .....	66
13.6.	Securities Trading Register .....	67
14.	Records .....	68
14.1.	Retention of Records.....	68
15.	Responsibilities.....	69
	Annexures .....	70
	Annexure 1 - Rules For Specific Strategies - Gearing.....	70
	Annexure 2 - Rules FOR Specific Strategies- Self Managed Super Fund .....	78
	Annexure 2a – SMSF Accountant Limited Authority.....	84
	Annexure 3 - No Advice Acknowledgement .....	92
	Annexure 4 - Client Direction Authority – Scope of Advice .....	95
	Annexure 5 - Complaint Record .....	96
	Annexure 6 - Breach Record .....	97
	Annexure 7 - Financial Services Guide.....	98
	Annexure 8 - Selected Information About Consumer Protection .....	102
	Annexure 9 - Explanatory NotesAbout The Financial Transaction Reports Act.....	109
	Annexure 10 - Explanatory NotesAbout The Anti-Money Laundering And Counter Terrorism Act.....	114
	Annexure 11– Managed Discretionary Account Service .....	116

## 1. OBJECTIVES AND SERVICES

### 1.1. Company Objectives And Activities

This chapter details:

- the conditions placed upon Lifespan, which includes you, our Representatives,
- related legislation and regulation,
- our general internal rules.

**Keywords:** licence conditions, Corporations regulations, services offered, professional indemnity insurance

### 1.2. Objective of Lifespan

There are two distinct parts to Lifespan's Mission Statement. Part one is the mission to provide comprehensive support services to enable our Representatives to provide high quality financial planning services to clients in an efficient, honest and fair manner.

Part two is the mission to clients which is to:

- develop an honest and service-focused relationship through transparent and open communication, and
- Provide quality financial planning advice where the use of the client's financial resources are optimised in accordance with that client's needs and goals throughout their life.

### 1.3. Australian Financial Services License



It is imperative that all Representatives are aware of the General Obligations and licence conditions.

Lifespan holds an Australian Financial Services licence, issued pursuant to s913B of the CA. As a Licensee, Lifespan, must comply with the General Obligations of a licensee and the applicable licence conditions.

The Authority that we have granted you is your authority to act on our behalf.

The obligations and conditions that govern our operations in respect of carrying on a financial services business to retail and wholesale clients also apply to you when you act on our behalf.

The General Obligations<sup>1</sup> are:

- Do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly; and
- Comply with the conditions of the licence<sup>2</sup> and
- Comply with the financial services laws; and
- Take reasonable steps to ensure that you comply with the financial services laws; and

<sup>1</sup> CORPORATIONS ACT 2001 - SECT 912A

<sup>2</sup> CORPORATIONS ACT 2001 - 914A

- Have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence and to carry out supervisory arrangements; and
- Maintain the competence to provide those financial services; and
- Ensure that you are adequately trained, and are competent, to provide those financial services; and
- If the financial services are provided to retail clients – have in place an internal complaint resolution system and be a member of an external complaint resolution scheme; and
- Have in place an adequate risk management system.

Other conditions applicable to the licence are found in the Corporations Regulations<sup>3</sup> and as inclusions in the licence.

We are also required to

- Have a Financial Services Guide<sup>4</sup> (see paragraph 8.3).
- Give a warning to a client who withholds information or provides incorrect information when personal advice is required <sup>5</sup> (see paragraph 8.10) and
- Give warnings to clients when general financial product advice is provided <sup>6</sup>(see paragraph 8.4).

Furthermore the CA requires that if a material event occurs that constitutes a contravention of any of our obligations or conditions of the licence we must lodge written notice with ASIC within specified periods.<sup>7</sup>

If you become aware of such an event, you must provide details to us immediately so that we can comply with this requirement of the Act.

## 1.4. Range Of Services Offered

Lifespan provides advisory and dealing services primarily in relation to financial products to retail clients. Lifespan holds the appropriate Australian Financial Services Licence to allow the provision of these services. The licence states the services that Lifespan can provide.

Currently, the core services provided by Lifespan are:

- A Financial planning service incorporating advice and dealing on behalf of clients in managed investments, equities, life insurance risk policies, insurance investment products, superannuation products, allocated pensions, annuities, gearing facilities, basic deposit products, non-basic deposit products, cash management trusts and advice in respect of social security issues relevant to our financial services.
- Execution only services, meaning the arrangement of products where no advice has been given by Lifespan or our Representatives.

Although these services are available generally through Lifespan, we require you to demonstrate competence in the applicable field before being authorised to provide advice about the related products<sup>8</sup>.

3 CORPORATIONS REGULATIONS 2001 7.6.04

4 CORPORATIONS ACT 2001 - SECT 941A&SECT 941B

5 CORPORATIONS ACT 2001 - SECT 961H

6 CORPORATIONS ACT 2001 - SECT 949A

7 CORPORATIONS ACT 2001 - SECT 912D

8 ASIC RG 146.31(e),





Representatives must comply with ASIC Regulatory Guide 146 prior to any advice being provided

**NOTE:** The definition of 'securities' for Chapter 7 of the Act <sup>9</sup> (which applies to our business) has changed and is now:

- shares in a body or debentures in a body; or
- a right or interest in a share or a debenture; or
- an option to acquire, by way of issue, a share or debenture.

And therefore for the purpose of our business a Managed Investment is no longer defined as a security.

## 1.5. No Custody Of Client Securities Or Funds

Representatives are not permitted to conduct a trust account for handling any client funds. Nor may you accept cash or securities from clients or others, whether for safekeeping or as security for a loan or for any other reason. Nor may loans of money or securities be accepted from clients.

All client investment / premium monies must be in the form of a cheque made payable to the particular Product Issuer and include the client's name, e.g.: ABC Fund Managers a/c Mr & Mrs Jones.

You are **NOT** permitted to act under a Power of Attorney or similar authority for any client without our prior approval.

Product issuers (fund managers and insurance companies) and stockbrokers must provide confirmations of client transactions (acquiring or disposing of a financial product). Confirmations are not required for periodic payments or transactions in respect of deposit products.

If we receive such confirmations from a product issuer or stockbroker, because the client has requested that the confirmations be sent to us, we must provide the confirmation to the client<sup>10</sup>.

There does not appear to be any requirements in respect of any other form of correspondence provided by the product issuer intended for the client. It is our view therefore that such correspondence can be retained by us unless the correspondence is significant and may affect the client's position. In such cases the correspondence should be provided to the client.

Under no circumstances is an employee or representative of Lifespan to have PIN numbers or passwords of any form of accounts belonging to a client.

## 1.6. Administrative Employees Not To Provide Advisory Services<sup>11</sup>

Only those persons to whom we have granted an authorisation are permitted to provide financial services. Therefore administrative staff are not permitted to provide financial services to anyone including their families.

## 1.7. Professional Indemnity Insurance <sup>12</sup>

We have Professional Indemnity insurance covering the services as described. It provides cover for Lifespan and our Representatives against legal claims arising from the conduct or negligence of our staff or Representatives.

<sup>9</sup> CORPORATIONS ACT 2001 - SECT 761A

<sup>10</sup> CORPORATIONS ACT 2001 - SECT 1017F

<sup>11</sup> CORPORATIONS ACT 2001 - SECT 911B

<sup>12</sup> CORPORATIONS ACT 2001 - SECT 912B



Liability should not be admitted in any circumstances as it may prejudice a claim against our Professional Indemnity Insurance. If you believe that a claim may be imminent you must notify the General Manager immediately.

If you carry on other business activities such as accounting, tax agent, superannuation administration you will need to organise separate insurance for those activities as you will NOT be covered under Lifespan's policy.

## 2. SUPPORT SERVICES OBTAINED AND PROVIDED BY LIFESPAN

This chapter provides information on the:

- availability of research material;
- use of shares;
- development of the Approved Products list.

**Keywords:** research, shares, competency, product list.

### 2.1. Approved Products



Products recommended must be included on the Lifespan Approved Product List.

We maintain a list of Approved Products comprising managed investments, listed securities, bonds, superannuation, basic deposit and life insurance products from which you may select those most appropriate to your clients' objectives, financial situations and particular needs. This is a risk management strategy as we do not have the resources to research all products available.

We have an Investment Committee (the Committee) that is responsible for the compilation and maintenance of the Approved Product List. The process takes into consideration reference to source information from our research provider. The process also takes into account the market sectors and strategies employed by the product managers, as well as our own advisory objectives.

The Approved Products List is reviewed periodically and generally updated when required to accommodate new products and economic conditions.

You may recommend or provide advice about only those products that are on the Approved Products List. This is a condition of the Authorised Representative Agreement. If you do not comply with this requirement you will not be covered under the Professional Indemnity Insurance for any loss incurred by a client.

**Warning**

If you do not follow the requirement to use only products from the Approved Product List then you will NOT be protected by Professional Indemnity Insurance held by Lifespan.

### 2.2. Applying for Specific Approval For Financial Products Not On The APL

#### **Circumstances When You Are Required to Obtain Specific Approval to use a Product that is not on the Lifespan Approved List**

An advisor must obtain specific approval from Lifespan to use a financial product in the following circumstances:

- Recommending to purchase or Investing in a product for the first time or adding to a product that is not on the Lifespan Approved List
  - Note that depending on the circumstances, approval can be given to continue using the product for multiple clients

- After 8 March 2015, recommending a client continue to hold a product that they had prior to seeking advice that is not on the Lifespan Approved List (see below Specific Approval – Inherited Products for further explanation)
- Where the product is on the Lifespan APL but is on a different platform (non approved platform), then the advisor must obtain approval to use that platform. However approval is not required for the product itself if it is already on the Lifespan Approved List.
- No specific approval is required where the adviser is recommending that the client switch from a non – APL product to an APL product

### Specific Approval – Inherited Products

There will be situations where an advisor takes on a client with an existing investment portfolio containing products not on the Lifespan approved list

- Where the advisor takes on a client after 8 March 2015, and the client portfolio contains products not on the Lifespan approved list (and the advisor gives advice to that client), we require those products be submitted for specific approval. This applies even to products that the advisor has accepted as is, i.e. no additional funds have been directed toward the product. This is necessary because accepting the product implies that it is a suitable investment for that client (or approved product).
- No specific approval is required in a situation where:
  - the advisor had the client before 8 March 2015 and,
  - the client portfolio contains products not on the Lifespan approved list and
  - the non APL product was simply held and not added to
  - However, if in the future you review this portfolio and decide to recommend a client add funds to it then you need to seek Specific Approval

### Direct shares

- For Superannuation and the Pension Service you are limited to using the ASX300 without specific approval. The exception is the list of ETFs included on the Lifespan APL.

### How to Obtain Specific Approval to use a Product that is not on the Lifespan Approved List

In some instances, a client may request an investment product that is not included on the Lifespan Approved List (APL). If you believe there is a valid reason for recommending a particular product that is not on the APL, you may ask the Head Office for Specific Approval to make such a recommendation and provide the reasons for the request and relevant background information. You should send your request by email to the Research Manager (John Kounadis). You should include the APIR codes and a web link if you have one. If it is an Insurance product then the request should be emailed to Pierre Pineault, otherwise the process is the same.

We will endeavour to accommodate each request which will be considered in light of the particular circumstances. If your request is approved, we will indicate this determination in an email so you may retain a record of the approval on the client's file. We also keep a log of Specific Approvals. If your specific approval request is not approved, then you will not be able to make any recommendations or arrange any investments in relation to that particular product.



Special requests for the one off use of a non-approved product will be considered in exceptional circumstances or where it is in the client's best interest to do so or the client has specifically requested that you consider a particular product.<sup>13</sup>

<sup>13</sup> RG175.330

## 2.3. Distribution Of Research Information To Representatives

The Approved Product List and all information about those products are recorded centrally on the server, are posted on the adviser area of the Lifespan website and accessed through our computer network. Emails alerts are sent to Representatives and posted on the website whenever a change is made to the APL.

## 2.4. Research Information About Financial Products

Research obtained from external research providers and internal committees are considered in the selection of a product for the inclusion on the Approved Product List. It is incumbent upon the representative to keep notes or other proof that the representative researched the products themselves specific to the client's needs. Diary notes, working papers, insurance selection software and other research material should be kept on the client file to demonstrate that you 'researched the research' and matched it with the client objectives. Your hand written notes are the best proof. Please see Section 8 for more information on this obligation.



The obligation is on you, the individual providing the advice to research the strategies and products to suit the client's objectives or needs. You should make use of the material provided by us and the external providers engaged by us. However if research information is not available from them on the particular product you need to conduct your own investigations.

Lifespan conducts its own in-depth research, in conjunction with various external research providers, on financial products that you may recommend. The research is conducted on the matters that ASIC has indicated should be covered, such as market and industry risks, economic and political environment, track record of the issuer of the security and other factors.

Any questions concerning research material should be directed to the Research Manager.

The Approved Product List is compiled from numerous sources and is updated regularly. It is important that you are always referring to the most up to date APL which will always be found on the Lifespan website.

All advice providers are expected to conduct due diligence on the research report providers they use<sup>14</sup>. Lifespan has conducted that due diligence and has selected specialist providers as listed below. If you wish to use a different research provider because the selected provider does not research the product in question or nominated by the client then you will need to conduct due diligence on the research provider and give that report to us with your request to use the product.

Below explains where you can obtain research on different types of financial products, however for further guidance please contact our Research Manager:

- Managed investment schemes and superannuation research can be found on the Mercer website.
- Life insurance products research is either conducted by the representative or Lifespan can be asked to do comparisons using the Insurance Quotation Module of Xplan;
- Listed securities research needs to be obtained from an approved provider.
- Exchange Traded Funds (ETFs) should be on the APL or supported by research by an approved provider.
- Income stream research can be found on the Mercer website. For Guaranteed income streams you should use the best published rate at the time of quoting.

---

<sup>14</sup> RG 175.316



Industry superannuation funds are not included on our APL. If you want to recommend that a client contribute new money to an Industry Fund then you must research the Fund and its options then present that research to Lifespan to seek approval before making the recommendation to the client.

Alternatively if the recommendation is for the client to leave the benefit in the Industry Fund you must still conduct your own research to demonstrate that you understand the Fund but you do not need to seek our approval to make this hold recommendation.

As well as the recommended section of the APL there will be a “Legacy” section for products that clients have in their portfolios as a result of recommendations made by advisers when they were authorised by a previous licensee or for investments that are Frozen. The purpose of this section is to allow advisers to assess whether or not it is appropriate to continue to hold the product (where it can be accessed) and to gauge a suitable time to sell taking into consideration the client's circumstances.

We include platforms as part of the APL. You are restricted to using those platforms unless you apply for and receive approval from Lifespan to use some other platform. You will need to provide strong reasons for selection of an alternative platform and it should relate to the client's needs.

You are permitted to recommend the use of a Managed Discretionary Account Service but this is limited to discretionary switching within a regulated platform or a Limited MDA. Lifespan has available through Omniport a number of portfolios that it manages discretionarily. You can recommend that clients use the service and recommend a portfolio that corresponds to the client's investment risk profile and objectives.



You are not permitted to exercise discretion on behalf of clients. If you believe that you can assist clients by exercising your discretion you must first obtain consent from Lifespan.

There are a number of organisations that specialise in providing Managed Discretionary Account services through various structures. You are not permitted to use these unless it is a registered managed investment scheme and included on our APL unless a specific request has been made to and approval received from the Investment Committee.

The main points that should be remembered when selecting any platform or managed account are the relevance of the features to the client and the client's attitude to fees.

If you are recommending a client borrow to invest you are limited to using an approved product provider who is on our APL. If this is unacceptable to the client (e.g. the client wishes to use a credit union of which the client is a member, using a redraw facility on their mortgage etc), then the client can arrange their own finance but you cannot receive any remuneration in respect of that loan.

## 2.5. Shares And Stockbroking Services

The licence held by Lifespan does permit us to provide advice about securities - shares. However this is a very specialised area that requires significant dedication of resources to ensure that the research and advice is current. Therefore we require you to obtain research from the stockbrokers that we have approved for this purpose. You can only recommend shares that are supported by research from an approved provider.

There is no restriction placed on selling shares as long as the advisor considers it appropriate for that client considering his circumstances and overall investment portfolio.

You can use our approved brokers to place orders for clients or if the client has an arrangement with a broker the transaction can be placed through the client's broker.

Where a client instructs you to buy or sell securities (or derivatives) on a market, because of your advice or not, you must retain the following records:

1. The client's name
2. The instruction (share name, volume, price, buy/sell)
3. Who gave you the instruction
4. The date and time you received the instruction
5. The date and time you transmitted the instruction to the executing broker
6. The date and time the broker notified you of the execution of the instruction

If a client instructs you to place an instruction with a stockbroker to buy or sell shares at the 'market price' (i.e. no specific price) the Act prohibits you from placing an instruction to buy or sell shares in that same entity/entities for your or our own benefit or any associate of you or us or from instructing another person to enter into such a transaction until the client's order has been transmitted to the stockbroker.

## 2.6. Support Services

From time to time you may have a question about a product, strategy or service. Contact Lifespan and explain the nature of your query and you will be directed to the most appropriate person to help you with that query.

## 2.7. Para-Planners

Lifespan employs para-planners and has appointed para-planners to provide support in both Statement of Advice construction and technical strategies. A para-planner is required to satisfy the standards as set out by Lifespan with regard to the functions and tasks they will be required to do.

A Representative is expected to prepare a strategy relevant to the particular client's needs and circumstances. The strategy can be formulated with the assistance of the Para-planner who may then prepare a draft Statement of Advice for the approval of the Representative.

If you require paraplanning support you should fill out a para-planning request form, which can be found on the Lifespan website and email it to [kanikaa@lifespanfp.com.au](mailto:kanikaa@lifespanfp.com.au). You will then be advised within 48 hours of how much it will cost you for us to compile the SOA and an estimate of how long it will take to complete the SOA. If we our turnaround time is too long we may direct you one of our external para-planners alternatively you can use your own para-planner.

It is important to note that even when you use a Lifespan para-planner, you must still send the completed SOA to planchecks for approval before submitting it to clients if you are Pre-Vet.

## 2.8. Financial Planning Software

Lifespan has a programme that assists advisers to build Statements of Advice. Representatives can subscribe to any reputable financial planning software, such as Xplan or Coin provided that the assumptions used for modelling are in line with Lifespan's standards and that they are clearly disclosed in the SOAs. Lifespan also requires that SOAs produced by financial planning software be a true reflection of Lifespan's templates (paragraphs, disclaimer, disclosures, sequence etc).

## 2.9. Monitoring of SOAs (SOA Vetting)

### Pre Vet Status

One of the steps that Lifespan takes in identifying potential regulatory breaches before they occur and to ensure that clients interest are protected is to check SOAs before being presented to clients.

Lifespan must receive and approve all SOAs before they are presented to clients, unless the Authorised Representative receives a written authorisation from Lifespan to do otherwise.

All SOAs are to be submitted, in Word format (not PDF), to Lifespan's SOA vetting service at least 3 business days prior to being presented to a client via the following email address: [planchecks@lifespanfp.com.au](mailto:planchecks@lifespanfp.com.au)

**SOA's Requiring Changes** - Lifespan will endeavour to get back to you within that period, so that you have time to incorporate any required changes. SOAs that require changes must be returned to the vetting service in order to obtain an approval via email. Once your SOA complies with Lifespan's standards you will be notified by email that your plan has been approved hence ready for presentation to your client.

**SOA's Not Requiring Changes** - You will be notified by email that your plan has been approved hence ready for presentation to your client.

### Post Vet Status – Non Geared Plans

Post vet status are rarely granted and before being granted Lifespan, through its SOA vetting service, will check at least 12 plans with different strategies to familiarise itself with the quality of the representative plans.

Post vet status will be awarded once Lifespan is comfortable with the adviser's process, attitude towards compliance and the quality of the advice for both products and strategies.

No Post Vet Status is awarded for plans which contain gearing in any form.

Lifespan's standard Post Vet status has the following restrictions:

- Maximum Investment amount: \$300,000

- All Insurance Advice

- Valid for 1 year extended upon review revoked if level of activity is too low

- Lifespan will from time to time conduct spot checks of plans to ensure that advisers comply with their obligations towards the clients, legislation and Lifespan.

If you apply for Post Vet status you will be notified by Lifespan in writing as to what plans are post vet and what plans still have to be vetted prior to presentation to clients.

### Post Vet Status – Geared Plans

**Not awarded, all geared plans must be vetted by Lifespan's SOA Vetting Service as described above.**



### 3. RESPONSIBILITY FOR AND OF REPRESENTATIVES

This chapter provides information on the:

- responsibilities and obligations of Lifespan and its Representatives;
- recruitment and appointment of Representatives;

**Keywords:** obligations, responsibilities, qualifications, procedures.

#### 3.1. Lifespan Is Responsible For Your Conduct

We are responsible for your conduct when you act on our behalf. We are not able to contract out of this responsibility.<sup>15</sup>

In recognition of this responsibility, we have developed procedures covering the selection, training and supervision of our Representatives to ensure that appropriately high standards are maintained.

#### 3.2. Your Obligations

Your obligations in assisting us to meet our responsibilities involve:

- willing participation in all training;
- willing co-operation with our supervision activities; and,
- adherence to the Act, ASIC's regulatory guides, licence conditions, agreement conditions, the directions in this manual and other Lifespan guidelines as well as amendments to them.

The Authorised Representative Agreement that was provided to you contains detailed information about your obligations and you should take the time to be fully conversant with them.

The following sections of this manual set out our expectations and the procedures that you are to follow to fulfil your obligations. Consequently the Authorised Representative Agreement and this Manual should be read in conjunction with each other.

#### 3.3. Qualifications, Experience And Professional Standards

If you wish to appointment a person to operate in your business and that person is to provide financial services on behalf of Lifespan then that person must meet the qualifications, experience and Professional Standards as stipulated by Lifespan. We can authorise a person who does not hold all the required competencies but their authorisation will be restricted until such time as they have provided evidence to Lifespan of completion to the level Lifespan requires.



Any discretion exercised in the appointment of a Representative must be clearly documented in the personnel file or Authorised Representative file for that applicant.

#### 3.4. Recruitment Procedure

If you wish to have an applicant considered by Lifespan you will need to submit their application and resume to Lifespan. If the applicant is not RG146 compliant and is not prepared to disclose all other business interests to Lifespan then don't submit the request.

---

<sup>15</sup> CORPORATIONS ACT 2001 - SECT 912A1 (ca) & (f)

Application assessment processes applied by Lifespan include:

- Review of information provided by the applicant;
- Contact is made with three referees;
- Contact is made with other sources in the industry if possible;
- Check the ASIC website for other authorities held by the applicant or any banning orders;
- Bankruptcy check is conducted at Lifespan's discretion; and,
- Police check is conducted at Lifespan's discretion.

### 3.5. Maintain information

The representative must keep Lifespan informed of details concerning address and any potential conflicts in business activities that occur after the initial application has been approved.

## 4. CONDITIONS AND STANDARDS FOR REPRESENTATIVES

### 4.1. Representatives To Comply With Relevant Laws And Regulations

You are required to comply with all financial laws, regulations and the procedures set out in this Policy and Procedure Manual when providing financial services on our behalf. We have included as footnotes to this manual references to the appropriate sections of the relevant legislation, regulation or ASIC Regulatory Guide ("RG").

As consumer protection is an important part of the obligations we have included a summary of those obligations as Annexure [8]. Likewise we have included information on the Financial Transaction Reports Act for your reference at Annexure [9] and Anti-Money Laundering Act at Annexure [10]

### 4.2. Terms And Conditions Set Out In The Authorised Representative Agreement

The terms and conditions relating to your appointment as a Representative for Lifespan are as set out in the Authorised Representative Agreement executed by you and us. As mentioned in paragraph 3.2 you should take the time to fully acquaint yourself with the terms and conditions of the Authorised Representative Agreement as compliance with these form part of your performance review.

### 4.3. You Are Required To Act Personally

In your activities on our behalf, you are required to act personally. Furthermore, you must not permit any unauthorised person to provide advisory or dealing services or engage in any other conduct that is required to be carried out on behalf of Lifespan by a Representative.

### 4.4. Engaging In Other Business Activities

Representatives are not permitted to engage in any other business activities that may be in conflict with their role with Lifespan. We will ask applicants to declare any other business activities when they apply.

We will check with Representatives from time to time, and at least annually, concerning their involvement in other business activities.

### 4.5. Hawking Provisions

The CA prohibits hawking of financial products and consequently that prohibition applies to you. This prohibition is to prevent pressure selling. The CA does provide some exemptions however the following policy will apply to Representatives of Lifespan.

- You are not permitted to telephone clients or potential clients for financial products<sup>16</sup>, other than managed investment schemes and securities, outside the prescribed hours of 8 am to 9 pm on a day in the State or Territory in which the person to whom the offer is made is located. You are also prohibited from calling them at any time on:
  - a) any Sunday; and
  - b) New Year's Day; and
  - c) Australia Day; and
  - d) Good Friday; and
  - e) the Monday following Good Friday (Easter Monday); and
  - f) Anzac Day; and
  - g) Christmas Day; and

---

<sup>16</sup> CORPORATIONS ACT 2001 - SECT 992A

h) 26 December (Boxing Day).

- If the client contacts you and specifies a type of product then you cannot sell another type of product to that client, e.g. the client enquires about income replacement you could not sell them a term insurance at the same time.
- You are not permitted to telephone or meet with a client or potential client and offer to sell a managed investment<sup>17</sup> or listed securities<sup>18</sup> unless the client has bought or sold managed investments or listed securities through you or Licensee Name in the previous 12 months.

Lifespan may mail or email offers to clients or potential clients but this is only to be after senior management approval has been granted. Representatives are not permitted to mail or email such offers to clients or potential clients in any circumstances.

## 4.6. Disclosure Of Identity In Business Documents

The business documents that you use in your activities on our behalf must show:

- Our Australian Financial Services Licence number;<sup>19</sup>
- Your name and business address;
- A statement to the effect that you operate for and on behalf of Lifespan;
- Lifespan business name;
- Lifespan business address;

In addition there is a requirement that;

- The disclosures must not be confusing or misleading to investors<sup>20</sup>; and,
- The disclosures and other material must not create the impression that you are carrying on a financial services business in your own right.<sup>21</sup>

Lifespan considers that “business documents” includes:

- The Financial Services Guide of which the Adviser Profile is a part<sup>22</sup>;
- The Statement of Advice<sup>23</sup>;
- Letterheads, and other stationery that is sent to a client; ♦
- Business cards; and,
- Promotional material, such as websites, brochures, circulars, flyers, newsletters etc.

Similar principles are applied to any form of electronic media presentation, such as radio, video, Internet or Email, and as far as applicable to external or internal signs.

We will provide you with templates that you can use to design your own stationery. You must use are Part 1 FSG without alteration. Any documentation that you design must be submitted to Head Office for approval before printing is arranged or the document is provided to a client.

---

17 CORPORATIONS ACT 2001 - SECT 992AA

18 CORPORATIONS ACT 2001 - SECT 736

19 CORPORATIONS ACT 2001 - SECT 912F

20 ASIC ACT 2001 - SECT 12DA

21 CORPORATIONS ACT 2001 - SECT 911C

22 CORPORATIONS ACT 2001 - SECT 953A

23 CORPORATIONS ACT 2001 - SECT 953A

♦ While there are strict requirements for regulated disclosure documents Lifespan prefers to maintain control over all business documents used in relation to the financial services provided on its behalf. The documents must not be inconsistent with the regulated disclosure documents and clearly inform a client of your capacity as well as who is licensed.

## 4.7. Use Of Business Name

If you wish to use a registered business name in your activities conducted on behalf of Lifespan:

1. you must be the proprietor of the business name
2. the name must not create the impression that you are conducting the financial services business in your own right (i.e. as a licensee)
3. the name should not or not be likely to confuse or mislead a client

You must seek approval from Lifespan before using any business name. If we have not provide consent in writing you cannot use the business name.

## 4.8. Use Of Logos

No logo of any other company or person may be used without our approval. The same principles as applied to business names are applied here.

Our logo may not be used in connection with any of your other activities.

## 4.9. Advertising And Other Promotional Activities

You are permitted to prepare advertising and promotional material but before arranging any publishing or distribution of that material you must have received our written consent.

**Remember**

You must receive our written consent prior to the printing, publishing or distribution of any promotional or advertising material.

## 4.10. Office Premises And Staffing

You are responsible for arranging suitable premises from which to conduct your activities on our behalf. Any signage promoting the business must also identify that you are operating under the AFS Licence of Lifespan.

You are also responsible for ensuring that you have adequate administration staff to efficiently provide the financial services on our behalf. This includes the recruitment, training and supervision of your staff.

## 4.11. Computer Hardware And Software

You are responsible for the supply and maintenance of hardware. You are also required to obtain the software and relevant licences for your operating systems, word processing, spreadsheets, database, etc.

## 4.12. Records In Electronic Form

Representatives employed by Lifespan must operate on Lifespan's computer network. Any files maintained as computer files will be automatically backed up.

Should a Lifespan employee representative perform any work outside of the office on a laptop or home computer then it must be scanned for any virus and copied onto the network in the office so the necessary backups are carried out.

Authorised Representatives must maintain their computer records and data in a manner that it can be retrieved at any time. All data must be backed up and taken off-site. Should an Authorised Representative perform any work outside of the office on a laptop or home computer then it must be scanned for any virus and copied onto the network in the Authorised Representatives office so the necessary backups are carried out.

Some key elements of our standards for acceptable electronic storage of data are:

- The method of storage must be such that if required the document can be reproduced precisely in the format and wording recorded as provided to the client. As an example, where a document used dates, data and unit prices current at the time of preparation storage, the storage method would have to store the dates, data and unit prices in that document. A storage method that relied upon access to separate (and therefore changing) unit price files would not be acceptable;
- It must not be unduly difficult to access file documents for a selected client, e.g. A system based only on chronological sequence would not be acceptable; and,
- A suitable and regular back up regime must be in operation.

### 4.13. Client Files

We set a high standard for client files that are to be maintained by you. The primary standard applied is that a file should be maintained in such a way that at any time another person could take over the file and have all information necessary to continue providing the services to the client.

This entails ensuring that the file contains all relevant client and research information to establish that the required steps demonstrate best interest duty has been satisfied,<sup>24</sup> and that the file is maintained in an orderly manner.

It is expected that, where the event is applicable, your files will include the items in the following checklist.

#### Checklist

- ☐ Copies of any initial file notes or documents that indicate how the person became a client including, where applicable, particulars of the referral directed to you;
- ☐ A completed 'Acknowledgement of Receipt of Key Documents' form which indicates the representative has provided the client with the Financial Services Guide (FSG), Supplementary FSG, Adviser Profile Insert and Privacy Statement.<sup>25</sup>
- ☐ All documents used to obtain the relevant circumstances that provided the basis for recommendations, including client data documents, Fact Finders and file notes<sup>26</sup>;
- ☐ Record of verification of the client's identity for the AML requirements;
- ☐ File notes of all significant discussions with clients, including telephone calls and interviews;
- ☐ File notes of all significant discussions with other parties about the client, such as the client's accountant;
- ☐ Copies of all correspondence to and from the client, and copies of any forms;
- ☐ All Statements of Advice<sup>27</sup>
- ☐ Copies of all research information (other than PDS's, and similar documents) given to the client;
- ☐ A record of the PDS and any other brochures given to the client, and the date given;
- ☐ The Client File Checklist to confirm all financial planning requirements are met;
- ☐ Photocopies of applications for investments and life insurance arranged for the client and copies of related cheques; and
- ☐ Client Confirmation Form; and,
- ☐ Care taken to ensure that Tax File Numbers are not recorded or visible on any of the documents or copies held.

24 CORPORATIONS ACT 2001 - SECT 961B & RG 175.397

25 ASIC RG 175.133-135

26 ASIC RG 175.396-403

27 ASIC RG 175.191-2

Files are required to be established and maintained, regardless of whether the client proceeds with your recommendations.

#### 4.14. Lifespan Access To Files And Records

You are required to allow access by the Lifespan Head Office staff, or our delegate, to your client files and records that relate to your activities on our behalf, whenever we may reasonably require such access. Provision for this right of access is contained in the Authorised Representative Agreement we have with you. This access will be required as part of our regular onsite and desk audit procedures.

Lifespan will provide access to its secure web based electronic file storage service. Authorised representatives are able to create client accounts and store client files. This facility is utilised to perform desk audits of client files.

#### 4.15. Tax File Numbers

We require you to observe strictly the provisions of legislation governing the collection, storage, transmission and destruction of client Tax File Numbers<sup>28</sup>.

When requesting a client to provide their Tax File Number you must inform the client that it is not an offence for the client not to quote the Tax File Number but that a consequence of not quoting it may be that the product provider will be required to deduct tax, or tax at a higher rate than otherwise deductible, from the income generated by the investment.

There is no obligation upon you or us to retain a client's tax file number. If you wish to retain the Tax File Numbers of clients then you must satisfy us that you comprehend the privacy requirements associated with that retention. Once you have received our authorisation then you must comply with the minimum standards set down by the Privacy Commissions guidelines.

These standards are set out below:

- The Tax File Number must be stored separately to the remainder of the client file.
- Any record of the Tax File Number must be removed from the applications, taxation forms and correspondence on the client file.
- The Tax File numbers must be stored under lock and key to which the Representative only has access.
- If the Tax File Number is stored on a computer system that section of the record must be password protected and only the Representative can have access.
- The Representative may only use the Tax File Number for the purpose that it was supplied.
- The Tax File Number cannot be released to any third party.
- The Tax File Number must be disposed of when it is no longer required, e.g. the client changes Representatives, the investment is cashed, etc. The disposal must be by secure means.

Please ensure that you have the client sign a 'Tax File Number Retention Form' and retain it at the front of the file.

If you have not satisfied us that you understand and will abide by the requirements then you will not be authorised to retain Tax File Numbers. In these circumstances you will need to ensure that any Tax File Numbers that may be visible on file copies of applications or other related documentation are adequately obliterated before filing and that no other record of a client's Tax File Number is kept.

---

<sup>28</sup> PRIVACY ACT 1988 - Tax File Number Guidelines 2011

## 4.16. Privacy Policy

Lifespan and you are subject to the requirements of the Privacy Act 1988. Lifespan has decided to adopt the Australian Privacy Principles. Therefore you must follow those Principles in the collection, usage, storage and disposal of a client's personal information.

Lifespan has developed a privacy policy for this business<sup>29</sup> based on the Australian Privacy Principles. The client must be made aware of the policy at the time the FSG is provided and the policy made available to the client if requested by the client. It is important information and must be treated as such.

## 4.17. Confidentiality

You are required to maintain strict confidentiality in relation to all information obtained from or about your clients and to all proprietary information about Lifespan.

---

<sup>29</sup> PRIVACY ACT 1988 Schedule 3



## 5. TRAINING OF REPRESENTATIVES

### 5.1. Lifespan is Responsible For Your Training

We are required to ensure that you are sufficiently trained in relation to the activities you carry out on our behalf before you commence those activities. We are also required to ensure that you keep up to date through the use of continuing training programmes.<sup>30</sup> We are mindful of the requirements of ASIC RG146 and the Regulations and we have developed training programmes directed to satisfying these requirements.

### 5.2. Competency training

We require you to achieve and maintain competencies in the financial products about which you are to provide advice and arrange. This includes life insurance products.

#### *Obligation*

You must maintain competencies across all areas in which you are authorised to provide advice. The requirements will be specified in your training plan in Kaplan's Ontrack system.

### 5.3. Your Obligations For Training

Although we arrange for a training programme to be made available to you, we impose a parallel obligation on you to undertake continuing training in all subjects relevant to your activities conducted on our behalf. If you have been granted approval to provide advice in any area of specialisation, we expect you to undertake additional training in relation to that area of specialisation.

### 5.4. Initial Training

You will have provided us with satisfactory evidence of competence and expertise as part of the process of qualifying for appointment as our Representative.<sup>31</sup>

If we have exercised our discretion and appointed you as a Representative, even though you have not satisfied all of our normal selection criteria, we will restrict your activities until additional training, satisfactory to us, has been completed.

### 5.5. Continuing Training Programme

As a licensee Lifespan is required to ensure that you participate in continuing training programmes.<sup>32</sup>

We consider that in order to satisfy this requirement the training needs to be:

#### **Continuing**

Part of a regular and ongoing programme;

#### **Training**

To have the character of training and,

#### **Programmes**

There needs to be an overall structure or syllabus rather than ad hoc or random material or attendance.

<sup>30</sup> CORPORATIONS ACT 2001 912A (e) & (f), ASIC RG 146

<sup>31</sup> ASIC RG 146.51

<sup>32</sup> ASIC RG 146.119

We satisfy these requirements in the following manner;

- Completion of the Kaplan Ontrack online training.
- Attendance at the full day training seminars organised by Lifespan throughout the financial year
- Attendance at fund manager and life company technical workshops for which CPD points are credited.
- Attendance at the annual Lifespan conference for which CPD points are credited.
- Make satisfactory progress in Diploma of Financial Services examinations (if applicable).

## 5.6. Record Of Training

We are required to maintain a record of your training that includes training completed prior to your appointment and training completed while you act on our behalf.<sup>33</sup>

To assist us to comply with this requirement you will provide to us information about relevant training completed prior to your appointment.

## 5.7. Periodic Reviews Of Training Completed By Representatives

Periodically, and at least twice each year, the training you complete is reviewed in order to ensure that the topics actually completed reasonably cover your areas of activity.

Where you have been granted approval to provide advice in an area of specialisation, a review is conducted to ensure that you have undertaken appropriate ongoing training in relation to that area of specialisation.

The Kaplan Ontrack system allows the Training Manager to establish a training program of relevant competencies for each representative. Ontrack provides an online training register that automatically captures all Kaplan initial and ongoing training.

### Record

The training register in Kaplan's Ontrack is the repository of training records. Use it to record your training.

It is the responsibility of each representative to record on the register any other training completed. Any training that you enter into Kaplan will be noted as training completed but will not count towards your formal training plan until it has been approved by the Training Manager. Consequently you will need to submit supporting information to the Training Manager for that verification process.

The Training Manager has access to each representatives training record to ensure that training is being completed at the required time, and that competencies are being met.

### Verification

If non-Kaplan training is recorded in the register it will only be counted towards your target if documentation to verify the relevance and completion of that training has been provided to the Training Manager for sign off.

---

33 ASIC RG 146.119 (c)

## 6. SUPERVISION OF REPRESENTATIVES

### 6.1. Outline Of Supervision Activities

We are required to ensure that you are adequately supervised in the performance of your duties on our behalf<sup>34</sup>. In addition to this specific obligation, we have a general liability for your conduct.<sup>35</sup>

In recognition of these obligations, we carry out a number of supervisory processes, including:

- Through material such as this Policy and Procedures Manual, we provide you with clear instructions about your obligations in relation to the requirements of the CA and to our procedures;
- Where appropriate, we may arrange for you to operate for a period during which your activities are subject to special conditions, such as desk audits of files or mentoring from a more senior representative;
- Additional controls and checks may be applied where particular strategies are employed, or where advice is given in areas of specialisation, e.g. taxation or Self Managed Superannuation Fund strategies;
- Statements of Advice must be prepared using an approved template;
- Only products on the APL or individually approved by Lifespan Head Office can be recommended to clients;
- All Statements of Advice and certain No Advice Acknowledgement forms are checked by Head Office and cannot be provided to a client until approval has been provided by Lifespan unless you have been otherwise notified in writing by Lifespan (Refer to 2.9 for the step by step SoA vetting procedure);
- All final versions of advice documents including SoAs, SoA Further Advice, RoAs, No Advice Acknowledgements must be sent to Planchecks as soon as possible for Lifespan's records even if they do not need to be vetted and we will do spot-checks from time to time.
- We conduct regular field reviews of your activities, the regularity of which we determine depending on a variety of factors, however we may also conduct a review at random. The review consists of an interview with the advice provider, examination of the business premises as well as compliance and marketing material used by the Representative and development of a remedial action plan to address any issues;
- Desk audits are conducted generally every 1 to 2 years but can be more frequent. Desk audits aim to ensure all laws and regulations are being complied with as well as assessing the quality of the advice provided and providing feedback to advisers to assist them in improving the quality of their advice;
- Completion of a self-assessment quality survey to ascertain the representative's level of understanding of the Legislative and Licensee requirements; and,
- We follow up promptly any enquiries or complaints involving a Representative.
- We cross check upfront commissions and fees that are collected and paid from product providers with SoAs and advice documents to ensure that SoAs and RoAs are being completed when necessary.

### 6.2. Counselling And Remedial Action

We take appropriate action when it is found that a Representative has not been operating in accordance with our procedures. The circumstances are examined to determine what remedial action may be required, particularly if the non-observance could have impacted on a client.

---

<sup>34</sup> CORPORATIONS ACT 2001 s912A(ca)

<sup>35</sup> CORPORATIONS ACT 2001 s917B.

Where the non-observance appears to have arisen from lack of knowledge of procedures, the action taken will usually include a requirement to undertake additional and specific training in that field.

Where Lifespan assesses that the non-observance is not a significant breach the details are entered into an Incidents Register. The representative is given a report listing the Incidents, the associated files and corresponding action items. The representative is to respond to the report within 10 working days and hopefully will have rectified all incidents. Lifespan reserves the right to request proof of the rectification. On receipt of the 'Acknowledgement of action items completed' the Incident Register will be updated. If acknowledgement is not received it will be followed up and further action may be taken; if there is an acceptable reason for a delay then an extension of time will be granted.

If the non-observance is determined to be a significant breach Lifespan will follow the required breach reporting obligations under the CA. The representative will also be notified and prompt action will be taken to ensure rectification for any effected client and adjustment of process if necessary.

Where the non-observance appears to have arisen from deliberate conduct, the circumstances may result in termination of the Representative's appointment.

## **7. TERMINATION OF REPRESENTATIVES**

### **7.1. General Provisions**

The provisions for terminating the agreement between a Representative and Lifespan are set out in the Authorised Representative Agreement.

### **7.2. Termination At Your Request**

When a termination arises at your request, the timing of the procedures is arranged to suit both parties as far as practicable.

If you are leaving to obtain your own Australian Financial Services licence or join another licensee, one matter to be determined is who is to provide ongoing service to the clients you are currently servicing. Lifespan will direct the Representative to write to each client advising them of the termination and that Lifespan takes no further responsibility for providing ongoing advice for their portfolio or any services to the client unless the client immediately notifies Lifespan and the Representative in writing that they wish to be serviced by another Lifespan Representative. The letter to the client must clearly state what will happen to their personal information if they choose to move with the Representative.

Where the client elects to continue with you, we will facilitate the transfer to the new Licensee provided the conditions set out in the Authorised Representative Agreement are met by you.

Where the client elects to continue with us, or if the Representative is leaving the industry, we will assign another Representative to provide ongoing service to the client.

### **7.3. Revenue payments after termination**

Revenue received by Lifespan corresponding to your clients will be distributed to you for a period of three months from the date of termination. During this period Lifespan will retain the normal percentage that applied while you were a representative. Lifespan may vary this approach at its discretion.

If payments continue to be received after this period then Lifespan will retain the whole amount.

Your new Licensee will need to contact the payers to arrange for any incorrect payments to be retrieved.

### **7.4. Termination By Lifespan**

We may terminate the services of a Representative under the general power in the Representative Agreement by giving the Representative the required notice as stipulated in the Representative Agreement.

When a Representative's appointment is terminated in these circumstances we follow the same procedure in relation to clients of the Representative as outlined in paragraph 7.2.

However, where we terminate the appointment of a Representative for some other reason such as the representative ceasing business or becoming bankrupt or breaching the Authorised Representative Agreement or committing a fraudulent act, more stringent rules may be applied with the primary concern being the welfare of the client.

## 7.5. Termination Procedure

The following are the main elements of the procedures that are followed in the circumstances most commonly encountered:

- Issue of a termination letter by or acknowledgment of receipt of one by Lifespan;
- Incorporation in the termination letter, that we:
  - Require the return of all our proprietary material, including this Policy and Procedures Manual, all stationery and any material that bears wording identifying you as our Representative or Authorised Representative; and,
  - Require the removal or change of any external and internal signs that carry such references;
- In the case of the termination of an Authorised Representative, ASIC is to be notified and its Register of Authorised Representatives is amended within 10 business days of the termination<sup>36</sup> and Lifespan will do this;
- The authority issued to you by Lifespan to act on our behalf will be revoked and must be returned to us by you.
- A letter is forwarded to all clients of the Representative, advising of the change either at our request or by Lifespan;
- A complete list of clients must be provided to Lifespan; and
- Notice is given to the managers of all the products on the Approved Products List.

---

<sup>36</sup> CORPORATIONS ACT 2001 sSECT 916F(3)

## 8. ADVISORY STANDARDS AND PROCEDURES

### 8.1. Promotion Of Identity

ASIC guidelines require that in all business documents and promotional material the identity of Lifespan must be made clear to all potential clients.

Any references to related companies that may be included in any promotional or other material **MUST NOT** create the impression that Lifespan is guaranteed by any other companies in the Group or be likely to create that impression.<sup>37</sup>

### 8.2. Use Of Restricted Words

Because we and you receive grandfathered commissions (either initial or on-going) or benefits from product providers or commissions for life insurance products the CA prohibits us and you from using the words 'independent', 'impartial' or 'unbiased'<sup>38</sup>. You are not to use these words in any advertising or promotional material or for any other purpose connected with the financial service business.

Licensee Names are also restricted from using other terms, such as stockbroker, life insurance broker, insurance broker, futures broker, etc. unless they have received approval from ASIC and this consent is shown on the licence<sup>39</sup>. We have not sought this approval and therefore the restriction applies to both you and us.

### 8.3. Financial Services Guide ('FSG')

Whenever a financial service is provided to a client an FSG must be given to the client and an explanation of its contents provided.<sup>40</sup>

We require you to maintain a record of the version of the FSG and the date you provided that FSG to a client.<sup>41</sup> This is to be noted on the Acknowledgement of Key Documents which can be found on our secure website under Planning Tools/ Documents.

We have developed our Financial Services Guide from the requirements stated in the Act<sup>42</sup>. If any significant changes occur in any of the information contained in the FSG, we will arrange for either an amended document or a new FSG to be prepared.

The FSG is to include information about Lifespan and you. It will include a personal profile with your name, business address and other individual information such as qualifications and experience. Lifespan has designed a pro-forma template which can be found in on the secure part of our website, that you must follow in composing your Personal Profile. Your Personal Profile must be approved by Lifespan Head Office before distribution to any clients.

You are required to provide a copy of the FSG to each client in the following circumstances:

- At the earliest available opportunity before providing financial services to the client;<sup>43</sup>
- If you are unable to provide an FSG to a client before a service is provided (because of distance and the client does not have email) you may provide the service and give (mail) the FSG to the client within 5 days of the service being provided.

---

<sup>37</sup> ASIC ACT SECT 12DA

<sup>38</sup> CORPORATIONS ACT 2001 s923A(5)

<sup>39</sup> CORPORATIONS ACT 2001 - SECT 923B

<sup>40</sup> CORPORATIONS ACT 2001 - SECT 941A, CORPORATIONS ACT 2001 - SECT 941B

<sup>41</sup> ASIC RG 175.98(b)

<sup>42</sup> CORPORATIONS ACT 2001 - SECT 942A, SECT 942B, SECT 942C, CORPORATIONS REGULATIONS 2001 - 7.7.03, REG 7.7.04

<sup>43</sup> CORPORATIONS ACT 2001 - SECT 941D

- If we provide you with an amended FSG the first time you see a client for advisory services after receiving the amended document.<sup>44</sup>

No changes are permitted to the FSG without our prior consent.<sup>45</sup>

## 8.4. Financial Product Advice

Financial product advice means a recommendation or a statement of opinion, or a report or either of those things, that;

- is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products; or
- could reasonably be regarded as being intended to have such an influence<sup>46</sup>.

There are two types of financial product advice: personal advice and general advice.

Personal Advice

Personal advice is financial product advice that is given or directed to a person (including electronic means) in circumstances where:

- the provider of the advice has considered one or more of the person's objectives, financial situation and needs; or
- a reasonable person might expect the provider to have considered one or more of those matters.<sup>47</sup>

### General Advice

General advice is financial product advice that is not personal advice.<sup>48</sup>

General advice is a recommendation or statement of opinion, or a report on either, about financial products but in formulating the advice, the representative has not considered the person's objectives, financial situation and needs. The advice can be intended to influence persons in making a decision in relation to a financial product or class of financial products.

If a Representative provides general financial product advice the client must be given a warning<sup>49</sup> by that Representative that:

- In preparing the advice, the client's objectives, financial situation and particular needs have not been taken into account; and,
- Before making a decision on the basis of the advice the client needs to consider, with or without the assistance of a Representative, whether the advice is appropriate in light of his or her particular needs, objectives and financial circumstances; and
- The client obtain a relevant Product Disclosure Statement and read it.

Furthermore when providing general advice the obligations of common law still apply, i.e. adopt a duty of care, diligence and competence in preparing the advice, disclosure of conflicts of interest that may affect the advice.

**Where a client approaches Lifespan or any of its representatives and requires financial planning advice Lifespan regards this as the client requiring personal financial product advice.**

<sup>44</sup> CORPORATIONS ACT 2001 - SECT 941E

<sup>45</sup> CORPORATIONS ACT 2001 - SECT 942E

<sup>46</sup> CORPORATIONS ACT 2001 - SECT 766B (1)

<sup>47</sup> CORPORATIONS ACT 2001 - SECT 766B (3)

<sup>48</sup> CORPORATIONS ACT 2001 - SECT 766B (4)

<sup>49</sup> CORPORATIONS ACT 2001 - SECT 949A



## 8.5. Acting in the Best Interests of the client The Safe-Harbour Protection



You should read and have a good understanding of RG175, RG244 and Lifespan's Best Interest Duty Guideline which can be found on the Lifespan website under Planning Tools/FOFA/Lifespan Guidelines and Templates. These documents will give you far more detailed guidelines on how to comply with the Best Interest Duty, the Conflicts Priority Rule and Scalability of Advice.

The best interest duty and related obligations now explicitly state that the individual providing the advice, including employees of a licensee (the provider in Legislation and the advice provider in RG175) must act in the best interests of the client. This requires that you demonstrate that you have carried out steps/processes reflecting the consideration of the best interest of the client.<sup>50</sup>

The Act provides a Safe Harbour<sup>51</sup>; this means that if you follow the steps outlined you will be deemed to have met the 'best interest obligation'. The Safe Harbour steps are not compulsory under the legislation however we have decided to adopt the Safe harbour steps and you must follow our direction to use them. The steps outlined in this section of the Manual are designed to satisfy that process.

In brief you are required to:

- Make reasonable inquiries and record adequate information about the client to gain an understanding of the client's objectives, financial situation and particular needs ("objectives and needs") or any one of them requested by the client;
- Analyse that information and determine the scope of the advice
- Conduct research into alternative strategies and recommend only strategies that meet the client's needs and objectives;
- Obtain and carry out adequate research about a range of financial products that may be considered suitable but only if product recommendations are needed to satisfy the needs and objectives of the client;
- Prepare recommendations that take into account these factors and which may reasonably be expected to match the client's objectives and needs; and,
- Include with the recommendations an explanation of why the recommended action is expected to suit the client's objectives and needs.



The obligation is on you the individual providing the advice to the client to comply with the best interest duty. If you are an employee of Lifespan and you do not comply then you risk the potential of being banned by the Regulator or at the least losing your employment with us.

If you are an Authorised Representatives and you do not comply then you risk the potential of being banned by the Regulator and incurring civil penalties. Even if that does not occur we could cancel your authorisation.

## 8.6. Conflicts Priority rule

You are also required to determine if you are putting the client's interests above your own interests or that of your Licensee, employee or associates of any of those. This does not mean that the client would need to be worse off as a result of implementing the advice; you could receive a benefit but the

<sup>50</sup> CORPORATIONS ACT 2001 - SECT 961B (1)

<sup>51</sup> CORPORATIONS ACT 2001 - SECT 961B (2)

client is no better or worse off. In this situation you may be deemed to have put your interests ahead of the clients.

## Remember

The conflicts priority rule goes hand in hand with the Best Interest Duty in that you must demonstrate through efficient record keeping that you have met both requirements. The conflicts priority rule simply states that where there is a conflict between the interests of a client and your interests or the interests of a related party then you must prioritise the interests of the client. Furthermore, where there is a benefit to yourself or a related party, you must be able to clearly demonstrate that the client also receives significant benefits from the recommendation.

## 8.7. Scope or Scalability of Advice

Clients can engage you for a number of reasons. Many clients will most probably want advice on a specific objective or need only, some may have a couple of objectives while others may require advice on their complete financial situation; however in reality most advice is scaled to some extent. You will need to discuss this with the client prior to the fact finding process as this will define what level and type of information you need to collect and record. We have a specific document to assist you to record the initial request from the client which can be found in Annexure [4] and on our secure website under Planning Tools/Documents. You should use this document where there is a concern that the Scope as directed by the client may be unsuitable and you are unable to convince the client that the Scope should be altered.

Once you start the collection of information you may find that the scope originally agreed to is not appropriate for the client's circumstances or the fee to provide the scope is beyond the client's affordability. You would need to renegotiate the scope at this time, obtain the client agreement and record this process before proceeding further. **You cannot just amend the scope of the advice without the client's prior agreement.**<sup>52</sup>



Scaled or Scoped advice must still meet the best interest duty obligations.

## 8.8. Obtain And Record Information About A Client

A Representative is required to obtain and record adequate information about a client's investment objectives, financial situation and particular needs before making any recommendations to a client.<sup>53</sup>

We have developed a pro forma Fact Finder, the Lifespan Client Data Form for this purpose. All Representatives must use this Form to ensure all important aspects are collected.

It is expected that the information obtained about the client, and where appropriate the client's partner (i.e. spouse, de facto, etc.), will include at least the following:<sup>54</sup>

- The details about the client which will be specific to the legal entity. There is an obligation under the AML legislation to record particular information based on the type of legal entity. You would normally collect this information and the specific requirement is detailed in section 8.9;
- The personal financial circumstances such as liabilities and potential liabilities, the nature of any assets held and any retirement benefits expected;
- The individual investment preferences and aversion or tolerance to risk, including evidence of how the clients investment risk profile was arrived at; and,

<sup>52</sup> ASIC RG 244 Section D

<sup>53</sup> ASIC RG 175.142

<sup>54</sup> ASIC RG 175 Part D

- Any other relevant information, such as employment security, family commitments and expected retirement age.

When using the Client Data Form, you should ensure that all questions record an answer. This may be the information sought by the question or “Not Applicable”, “Nil” or “None”, where appropriate. If the information is approximate only, a note is to be made to this effect. If the client declines to provide the information, a note to this effect is to be recorded for the question involved.

We expect you to sign and date all Client Data Forms you complete.<sup>55</sup> We encourage you to have the client also sign the Data Collection form as confirmation of the accuracy and completeness of the information provided by the client.

You should make adequate and appropriate file notes of all discussions with or about clients, date and sign or initial them, and place them on the relevant client’s file. Such notes and working papers are captured by the conditions of the licence and must be retained as part of the proof of compliance with the ‘best interest duty’ in the advice process.

## 8.9. Collection And Verification Of Client Information

There have been legislative changes introduced to combat money laundering and financing of terrorism. An annexure has been included in this manual, Annexure[10], which contains an explanation of the requirements of the Anti-Money Laundering and Counter Terrorism Act as well as the associated regulations and rules.

Here we have provided a table setting out what information you must collect and record for particular legal entities as well as the documentation required to verify the identity of that entity.

Legal entity	Collect	Verify	Documentation to be used for verification
Individual	Name, residential address and date of birth	Name and one of the address or the date of birth	Either a driver’s licence, or a current passport or an Australian passport that expired within the previous two years or <b>both of</b> A birth certificate (an English Version if a foreign one) or Citizenship Certificate or Centrelink pension card <b>and</b> A notice issued by the ATO or Federal/State/Local government or utilities provider
Sole trader	Individual information as well as the registered business name, ABN and principal business address (if any)	Individual details and ABN	As for an individual Check the ABN by clicking on <a href="#">ABNLookup - Home</a>
Company (domestic)	Full name of company Registered office address Principal place of business address	Full name of Company Type of Company ACN	The records held by ASIC which you can access through the free search on ASIC’s website by clicking

<sup>55</sup> Best Practice

Legal entity	Collect	Verify	Documentation to be used for verification
Trust	ACN Public or proprietary company, if proprietary the name of each director		<a href="#">here</a>
	Full name of the trust Business name if applicable Type of trust Country in which it was established If trustees are individuals all information for an individual in respect of one of the trustees If the trustee is a company all information required for a company If the trustee consists of both individuals and companies the all information in respect of either entity.	Full name of trust The verification for an individual or company whichever is appropriate	The trust deed or a certified copy of the trust deed The normal documentation specified for an individual or company whichever is appropriate
Partnership	Full name of the partnership Business name if applicable Country in which it was established All individual information for one of the partners Full name and residential address of each partner unless the partnership is currently registered on the relevant professional associations membership directory	Name of the partnership Individual information about one of the partners	Partnership agreement or certified copy or extract Certified copy or extract of minutes of a partnership meeting Verification of the individual information of the relevant partner Reliable and independent documents or electronic data relating to the partnership

It is logical that you verify the information as you collect and record it. For example when the client is: **an individual**

- ask him or her to produce their driver's licence,
- check the information is correct
- then copy it and retain it on the client file.

#### **a company**

- access the ASIC website
- on the right-hand side of the home page enter the company name under the 'Search ASIC Registers Company and business names and hit enter
- the next screen should bring up a list of companies including the name entered so click on that name to access the detailed record

- verify the required details are correct
- print off that page and retain on the client file (or retain electronically)



There are heavy penalties for not complying with the AML legislation and rules.

## 8.10. When A Client Provides Incomplete Or Inaccurate Information

You must still fulfil the obligations in respect of the 'best interest of the client'. Therefore you must assess the information that is provided and if you believe that information has been withheld or is inaccurate when compared with other information collected or the client has declined to provide information then you must explain why you need complete information. You should ask the client to provide the information or support the information provided<sup>56</sup> and you must make a reasonable inquiry to obtain the information required.

If you still cannot obtain complete information then you need to decide if you can proceed with a recommendation based on the information you have collected. If you decide to proceed then you must provide a warning to the client. We require that you provide this warning at the time of the discussion about the incomplete information or its inaccuracy. The provision of this warning should be recorded in the Fact Finder or a separate file note. The warning must also be included in the SoA given to the client.<sup>57</sup>

You must;

- Warn the advice is or may be based on incomplete or inaccurate information relating to the clients personal circumstances;
- Tell the client what information you believe is incorrect or incomplete; and
- Warn the client that, before acting on the advice, they should consider the appropriateness of the advice, having regard to the client's relevant circumstances.

Therefore your warnings must be clear so the client can make an informed decision.



You must warn the client at the time information is withheld or believed to be inaccurate and this warning **MUST** be included in the SoA along with a general indication of what you believe is inaccurate or incomplete.

In any situation where a client has not provided sufficient information to enable you to have a reasonable basis for advice, even about a specific objective, you must decline to make any personal recommendations at all and record a file note accordingly. You may still be able to provide general financial product advice, see paragraph 8.4. If you are unsure about a particular scenario, please contact someone from the compliance team for assistance.

## 8.11. When A Client Requests Advice About A Specific Objective Or Need

A client may request advice in relation to a specific objective or need. In such an instance, you need only obtain client information and carry out product research that is relevant to that objective or need<sup>58</sup>. Care should be taken in these circumstances that an important element of the client's situation that would be reasonably apparent to a competent representative is not overlooked.

<sup>56</sup> CORPORATIONS ACT 2001 - SECT 961B (1)(c); RG175.264 et seq

<sup>57</sup> CORPORATIONS ACT 2001 - SECT 961H; SECT 947B (2)(f); SECT 947C(2)(g) RG175.157(i)

<sup>58</sup> ASIC RG 175.115 & 126

You should note any restrictions made by the client. We have a form that can assist. The '[Client Direction Authority – Scope of Advice form](#)', can record the direction given by the client to receive advice in relation to the specific objective, and it has provision for the client signature before proceeding. This document can be found in Annexure [4] and on our secure website under Planning Tools/Documents

## 8.12. When A Client Requests “Execution Only” Service

We consider that such instances will be rare, for they will require the client to specify all elements of the investment / life insurance product, including the particular financial product required, the amount and any time frame and any other variables in the selected product.

You may accept such an instruction from a client but must ensure that no advice whatsoever is provided. You must obtain the '[No Advice Acknowledgement](#)' and draw the client's attention to the warnings about not receiving advice.

If the client is unwilling to sign the 'No Advice Acknowledgement', you must decline to accept the direction and decline to arrange the execution of the product. Our guidelines on the use of a No Advice Acknowledgement can be found on our website under Planning Tools/SOAs/SOA Templates.



Use the form as directed to protect both you and us from the accusation of providing advice when we have only acted under the instruction of the client.

## 8.13. Research Information About A Range Of Products

You are required to carry out, and keep, appropriate and adequate research about products you recommend to clients.<sup>59</sup>

We expect that in relation to products you recommend to clients you will be able to demonstrate having taken into account:

- Information available in the applicable market, including the relevant PDS or equivalent document, annual reports, reports by fund managers and reports and analyses prepared by specialists, including those made available through us;
- Market and industry risks, the economic and political environment, the issuer's track record, the nature of the underlying investments and assets, and any other factors which may directly or indirectly impact on the risk return and growth prospects of the security; and,
- A reasonable range of comparable and alternative financial products.

While we can provide you with research information and access to it through our external research provider we cannot match the financial products with a specific client. Only you can conduct that research and analysis. You need to retain records that demonstrate the analysis you have performed for each and every client to whom you provide personal advice. Therefore we expect you to ensure that the research material you use is up to date and to keep a copy of all research information that is given to the client on the client's file. This will be assessed during our client files assessments.

Also you must have the appropriate product competencies before providing advice on those products.<sup>60</sup>

<sup>59</sup> CORPORATIONS ACT 2001 - SECT 961B (2)(e); RG175.306 et seq.

<sup>60</sup> CORPORATIONS ACT 2001 - SECT 961B (2)(d); RG175.252

## 8.14. Recommend Only Products From Approved Products List

When recommending products to clients you may select only from products on the Approved Products List.

If a product suitable for a client's objectives and needs is not available from the Approved Products List, you will not be able to recommend any product and the appropriate action may be for you to refer the client to a different advisory organisation.

If however through your research **you identify** that there is a valid reason for the use of a particular product that is not on the Approved Products List, you may ask us for approval to make such a recommendation and provide the reasons for the request and relevant background information. If you wish to request specific approval for product that is not on the APL you must apply to Lifespan using the process explained in 2.2 above.

We will endeavour to accommodate such special requests but all such requests will be considered in the light of the particular circumstances. If your request is approved, we will indicate this approval in writing for you to retain on the client's file.

If your request is not approved, you are not permitted to make any recommendations about the product nor arrange the execution of the product.

## 8.15. Financial Product Requested By A Client

Alternatively a **client may request** a financial product that is not included in the Approved Products List. You are required to consider that product and research it<sup>61</sup>. In some instances, the requested product may be reasonably comparable to a similar financial product that is on the Approved Products List and which may be suited to the client's needs and objectives. In such an instance, you may seek special approval to recommend a non-approved product, as set out in paragraph 8.14 and 2.2 above.

However, unless you obtain our specific approval (which will not unreasonably be withheld for a client requested product supported by valid research) you must not make a recommendation about the product. If the client is determined to apply for such a product you must talk to us first and obtain approval and then have the client sign a '[No Advice Acknowledgement](#)' that makes it clear that in respect of that product you are acting at the direction of the client. The document also contains appropriate warnings, including that the client risks applying for a product that is not appropriate to their needs and objectives.

If Lifespan does not give you approval for the above or the client is unwilling to sign the No Advice Acknowledgement, you must decline to accept the direction and decline to arrange the execution of the product.

## 8.16. Analysis To Determine Recommendations

When framing recommendations for clients, you are required to ensure that you have based the recommendations on the product research you have carried out and you have matched the selected products to suit the client's objectives, financial situation and particular needs.<sup>62</sup>

We expect you to prepare and keep on the client's file a summary of factors taken into account, and analyses made, in determining the recommendations you made to the client.<sup>63</sup> The retention of such records will assist you and us to demonstrate compliance with 'best interest duty' as well as defend any potential complaint.

Lifespan provides access to technical information through Strategy Steps to assist you in analysing the alternative strategies for a particular client; to access the website you need to log in to the secure part of the Lifespan website and click on the Strategy Steps link on the right hand side. Strategy

---

<sup>61</sup> RG175.307

<sup>62</sup> CORPORATIONS ACT - 2001 SECT 961G

<sup>63</sup> ASIC RG 175.401 & 402



Steps contains a host of technical and investment news, statutory tables, ready reckoners and quick reference information, a library of financial planning strategies and technical commentary with a practical focus.

When providing Margin Lending advice the Corporations Act requires that a suitability assessment for either a new margin lending facility or for increasing an existing margin lending facility is undertaken. Failure to undertake and provide this suitability assessment to a retail client will be considered as a breach. The facility can rely on the Statement of Advice given by an advice provider within 90 days of the application for the facility as long as the SOA contains the information required to assess the suitability<sup>64</sup>. We therefore require that you conduct a full suitability assessment to meet your 'best interest obligation'.

It is also important to remember that for all advisers, advice relating to margin lending must be vetted and approved by Planchecks prior to making any recommendations to clients.



When margin lending is recommended the loan provider of the facility must conduct a suitability test. If the provider finds that the facility is unsuitable for the client that client could lose all faith and trust in your ability. Therefore please ensure that your analysis is thorough and the SOA content is clear concise and effective.

## 8.17. Existing Portfolios

Care must be taken when providing advice to a client who has an existing portfolio as it may contain financial products that are not on Lifespan's Approved Products List. Basically the same rules apply as to any financial product not on the Approved Products List.

You are permitted to review the financial product as long as you conduct adequate research into it. In fact you are obliged to review the existing product<sup>65</sup> and if it is in the best interest of the client to retain it you must NOT replace it. If you have concerns about the financial product or cannot find adequate information to perform the research you should refer the matter to the Lifespan Research manager.

It is imperative that you follow the directions we have given in these situations as providing advice to a client with an existing portfolio with no statement about it could be regarded as an implicit recommendation to retain the existing portfolio.

You must also follow our procedures to ensure that the Professional Indemnity Insurance will continue to provide cover for you and us.

## 8.18. Initial Advice

For our purposes 'initial advice' is when you first provide personal advice to a retail client or when there is a significant change in the client's circumstances or a change in the basis of your advice. In these circumstances you must provide the client with written advice in the form of either a Statement of Advice ('SoA')<sup>66</sup> or a Record of Small Investment Advice ('ROSIA')<sup>67</sup>. These regulatory documents can be the means of giving the advice or confirmation of oral advice that has been provided to a retail client. We expand on this in the section below on Statement of Advice.

**A client must always receive a Statement of Advice when a Lifespan Representative provides initial personal advice.<sup>68</sup> It may also be required when providing further personal advice if there has been a substantial change in the client's circumstances warranting the further advice.**

### Statement of Advice (SoA)

64 CORPORATIONS ACT 2001 - SECT 985G

65 RG175.322

66 CORPORATIONS ACT 2001 - SECT 947A

67 CORPORATIONS ACT 2001 - SECT 946AA

68 CORPORATIONS ACT 2001 - SECT 946A



You are required to provide a SoA in the following circumstances:

- a) Where the SoA is the means by which the advice is provided.



If you interview a client and record all the information but you do not provide advice at that time but instead send or give an SoA to the client at a time after the interview this is when the SoA is the means by which the advice is given.

- b) The SoA does not have to be the method of providing the advice. You can provide advice orally to a client.



A client meets with you for advice in respect of the investment of \$20,000. The client has provided you with information on which you have based your advice and you advise the client at that meeting in respect of the investment of the \$20,000.

**However there are specific requirements in respect of (b) - Oral Advice.**

1. you must provide an SoA to the client when, or as soon as practicable, after the advice is provided; and
2. in any event before the client is given any further financial service <sup>69</sup>; and
3. at the time the [oral] advice is provided you must give the client a statement that contains the following:<sup>70</sup>
  - Exact remuneration you will receive
  - Any relationship that would influence the advice (especially conflicts of interest)
  - Warning if information incomplete
  - Information concerning the PDS (if client has not received one already) including name of product issuer, details of any cooling off period and a statement advising they should consider this document before making the commitment to buy.



This means that you cannot sell a financial product to the client before the client receives the SoA, with the exception of 'Time Critical' cases.

#### Record of Small Investment Advice ('ROSIA')

This document can be used in place of the SoA in limited circumstances. These are:

1. when the financial products are not:
  - derivatives
  - general insurance
  - life risk insurance, except where it is part of a superannuation product; and
2. if the advice is about consolidation of superannuation funds the advice must be to invest in one of the funds of which the client is already a member; and
3. the amount of investment subject to the advice is less than \$15,000.

69 CORPORATIONS ACT 2001 - SECT 946C (1)

70 CORPORATIONS ACT 2001 - SECT 946C (2)

**The total of the investment, subject to the advice, must be calculated in accordance with the legislation<sup>71</sup>. To calculate if the advice meets the \$15,000 threshold the following must be taken into account;**

1. If the advice is in respect of acquiring;
  - a Managed Investment Scheme or
  - Superannuation (only applies to a superannuation fund that the client already holds)

**The total value of the investment is: the amount to be invested PLUS the cost of the initial investment PLUS the amount of any further contributions (for the next 12 months) to the recommended investment.**

2. If the advice is in respect of disposing of;
  - a Managed Investment Scheme
  - Superannuation (only applies to a superannuation fund that the client already holds)

**The total value of the investment is: the value to the client of the redemption PLUS reasonable costs related to the redemption of the product.**

3. If the advice involves disposing and acquiring, i.e. replacement, then the higher total value must be used in working out the exemption.
4. If the advice is in respect of acquiring or disposing;
  - Securities
  - Rights issues
  - Options over unissued shares
  - Partly paid shares
  - Debentures
  - Stapled securities

**The total value of the investment is: the value of all the financial investments that are the subject of the advice.**

If you provide oral advice to the client and the ROSIA will be the means of confirming that advice you must follow the same steps as outlined under the previous heading for SoAs.

If you use the exemption you must;

- keep a record of the advice as per the RoA requirements.
- give the client a copy of the RoA, that contains all relevant (usual) remuneration details, as soon as possible and before any transaction takes place.



Although this regulation does not include having to comply with the product replacement requirements (switching), if you were to recommend the consolidation of the superannuation funds or an investment strategy that included a product switch, it would be prudent to include the switching requirements in the RoA given to the client because CA 947D (switching requirements) applies when 'advice' is given [it doesn't say how the advice is to be given].

## Life Insurance

The only time the exemption can be used in respect of life insurance products is if those products are inside superannuation and advice is being given about superannuation. There is no dollar threshold in respect of the amount of insurance or the premium cost. Therefore if you are giving advice about a superannuation fund that has a total value of less than \$15,000 and that superannuation fund includes a life insurance benefit of \$50,000 you can still take advantage of the exemption. It is our view however that you cannot recommend that the client cancel the life insurance within the superannuation fund and apply for, say, \$100,000 of cover outside superannuation without doing an SoA.

The \$15,000 exemption applies in the following examples;

- The advice to a client relates to investing an amount of \$10,000 in a Managed Investment Scheme and the entry fee is \$500 and the MER is \$100 (total \$10,600).
- The client has a superannuation fund with a value of \$5,000 and an SGC amount of \$3500 per annum and the entry fee is \$250 and the MER is \$100 (total \$8850).
- The advice is to purchase \$2000 of each BHP, CBA, NAB and WBC shares (total \$8000)

The \$15,000 exemption does not apply in the following examples;

- The advice is to redeem a Managed Investment scheme with a value of \$14,500 and an exit fee of \$600 applies (total \$15,100).
- The client has 3 superannuation funds each with an investment value of \$4000 and wants to consolidate into one of those funds and the clients SCG amount is \$4000 per annum and the cost to consolidate is \$500 (total \$16,500).
- The advice is to purchase \$4000 of each BHP, CBA, NAB and WBC shares (total \$16,000)
- If you provide oral advice to the client and the ROSIA will be the means of confirming that advice you must follow the same steps as outlined under the previous heading for SoAs.

#### Time critical cases

It is realised that there could be situations where action is required immediately following the advice. Therefore it is permissible to provide a further service after the advice has been provided and before delivering the written advice if:

- The **client expressly instructs** that they want a further financial service (they want to buy the product) that arises out of or is connected with the advice to be given to them immediately, or by a specified time; and
- It is not reasonably practicable to give the client the written advice before that further service is provided as instructed.<sup>72</sup>



The client's instruction should be clearly documented in a file note or preferably in a statement signed by the client and retained on file

In these time critical situations you must give the oral disclosures outlined above then give the client the written advice within 5 business days after providing that further service or sooner if practicable.



A client meets with you for advice in respect of the investment of \$20,000. The client has provided you with information on which you have based your advice. The client accepts your advice and **requests** the transaction be effected immediately. The client is given a Product Disclosure Statement (PDS), completes the application and gives you a cheque for \$20,000. All this takes place at the one meeting. The two financial services you have provided are the advice and the selling of the product.

72 CORPORATIONS ACT 2001 - SECT 946C (3), CORPORATIONS REGULATIONS 2001 - 7.7.09A (12)

We have provided a specific document for you to use in these situations which can be found on our website under Planning Tools/SOAs/SOA Templates. However, we believe that time critical scenarios are infrequent and we do not wish to encourage the promotion of this exception to the rule.



Exercise care if contemplating use of this exception. We will be measuring the use of it and asking for explanations where we believe it has been overused.

The level of detail included in the SoA is to be such that a person would reasonably require for the purpose of deciding whether to act on the advice as a retail client.<sup>73</sup>

**We are of the view that this means that all clients must be treated as retail clients when composing the SoA. The contents and requirements of the SoA must be self explanatory and written in a manner that a reasonable retail client will understand i.e. clear, concise and effective<sup>74</sup>.**

There must be nothing in a SoA that extends or conflicts with the information contained in a relevant PDS.

## 8.19. Content Of Statement Of Advice ('SoA')

The contents of the SoA are specified in the legislation<sup>75</sup>. Lifespan has designed an electronic SOA portfolio template which can be downloaded from the Lifespan website (click [here](#) to access the website). The SoA contains italicised instructions for each section which you are to erase once the SoA is complete. The sample points, sentences and paragraphs are there to be used as prompts to assist you in composing your SoA.

The legislative requirements and our own requirements are as follows;

- ☐ The title "Statement of Advice" must be used on the front cover of, or at or near the front of, any SoA.
- ☐ A statement setting out the advice.
- ☐ Information about the basis on which the advice is or was given.  
It is our view that this includes the details about the client specified in paragraphs 8.5 and 8.6.
- ☐ An explanation of the reasons for the recommendations including a generic description of the range of products or classes of products or strategies considered and investigated,<sup>76</sup> the strategy selected, the asset allocation, the product provider and particular product. The explanations must include advantages and disadvantages of the recommendations<sup>77</sup>.
- ☐ The explanations must also include how it satisfies the best interest of the client, i.e. how it leaves the client in a better position<sup>78</sup>,
- ☐ If you recommend that a client replace an existing financial product with another financial product you must comply with the requirements in 8.22
- ☐ The SoA must be produced on our letterhead and include our contact details and AFS licence number.
- ☐ The SoA must indicate that you are our Representative or an Authorised Representative of Lifespan.
- ☐ A statement setting out any warnings in respect of incomplete or inaccurate information and a general indication of what was incomplete or inaccurate.
- ☐ Address the client's life insurance needs either by recommendations or by referral to an appropriately qualified Representative or a statement that the client should seek separate advice in this area;
- ☐ Expected effects of the recommendations, including expected cash flows, income tax effects etc;
- ☐ Research information relating to the recommendations;

73 ASIC RG175.155

74 ASIC RG 175.156

75 CORPORATIONS ACT 2001 - SECT 947B, SECT 947C,

76 ASIC RG175.165 (b) (iv)

77 ASIC RG175.165 (b) (vi)

78 ASIC RG175.165 (b)(v)

- ☐ Disclosure of risks and possible volatility inherent in the portfolio recommended;
- ☐ Clear disclosures of commissions, fees and other interests relating to the recommendations made (see paragraph 8.25 for details);
- ☐ Disclosure of any remuneration, commission and other benefits that a person has received, or is to receive, for referring a client to Lifespan.
- ☐ Disclosures of assumptions made and disclaimers, including a statement to the effect that the recommendations are intended for the addressee only; and,
- ☐ A “sunset statement”, limiting the applicability of the recommendations to a stated period or an earlier change of client circumstances or economic conditions.<sup>79</sup>

The level of detail included in the SoA is to be such that a person would reasonably require for the purpose of deciding whether to act on the advice as a retail client.<sup>80</sup>

**We are of the view that this means that all clients must be treated as retail clients when composing the SoA. The contents and requirements of the SoA must be self explanatory and written in a manner that a reasonable retail client will understand i.e. clear, concise and effective<sup>81</sup>.**



Remember to delete all instructive text, sample points, sentences and paragraphs that were included in the template so that it is tailored to the specific client..

There must be nothing in a SoA that extends or conflicts with the information contained in a relevant PDS.

## 8.20. Content Of The Record Of Small Investment Advice ('ROSIA')

The contents of the ROSIA are specified in the legislation<sup>82</sup>. Those requirements and our own requirements are as follows;

- ☐ A statement setting out the advice.
- ☐ Information about the basis on which the advice is or was given.
- ☐ If you recommend that a client consolidate their super funds or replace an existing financial product then the replacement of product requirements must be included (see 8.22 <sup>83</sup>)
- ☐ Clear disclosures of commissions, fees and other interests relating to the recommendations made (see 8.25 <sup>84</sup>).
- ☐ Use letterhead indicating that you represent Lifespan who holds an AFS Licence and that you act as an authorised representative. This should include the contact details as well.
- ☐ A statement setting out any warnings in respect of incomplete or inaccurate information and a general indication of what was incomplete or inaccurate.
- ☐ A statement setting out the advice.

## 8.21. Statements Of Advice incorporating previous advice by reference

When providing supplementary advice you may be able to shorten the SoA by reference to the relevant information that was in an original SoA(s)

<sup>79</sup> ASIC RG175.157 (i) Note

<sup>80</sup> ASIC RG175.155

<sup>81</sup> ASIC RG175.159

<sup>82</sup> CORPORATIONS REGULATIONS 2001 - REG 7.7.08C

<sup>83</sup> CORPORATIONS ACT 2001 - SECT 947D

<sup>84</sup> CORPORATIONS ACT 2001 - SECT 947C (2)(e) & (f)

The supplementary SoA will incorporate by reference all information from the previous eligible SoA(s) that may be relevant.

You must first decide if it is appropriate to use this incorporation by reference method. The criteria to assist you in making this decision come directly from ASIC Regulatory Guide 175.63 as follows:

*“There is no requirement to include a statement or information (other than a statement or information required by s961H and 947D) in an SOA provided to a client if:*

- (a) the SoA refers to the statement or information;*
- (b) the SoA provides sufficient details about the statement or information to enable the client to:*
  - (i) identify by a unique identifier the document, or part of the document, that contains the statement or information; and*
  - (ii) decide whether or not to read the statement or information or obtain a copy of the statement or information;*
- (c) the document containing the statement or information has already been given to the client, or is given at the same time as the SoA; and*
- (d) the SoA states that a copy of the statement or information may be obtained from the providing entity on request, at no charge: reg 7.7.09B.*

*Note: Providing entities must keep any SoA (together with any document, or part of a document, mentioned in the SoA) for seven years from the date on which the SoA was provided to the client“*

**Editor’s Note:** Section 961H is the Obligation to warn client if advice based on incomplete or inaccurate information  
Section 947D is the additional requirements when advice recommends replacement of one product with another

If you cannot comply with all of the above we require that you provide the client a new SoA. For example, if the scope of your original advice was insurance based and now the client has some money to invest, you must provide a new SoA for investment only as the original advice was not relevant. Alternatively, you may combine a review of the insurance with the investment so that the next review can be performed using a single SoA.

On the other hand if you have done a full SoA and you need to change an insurance recommendation you can now do an abbreviated SoA incorporating information about the insurance recommendations in the original SoA.

#### Statement Of Further Advice Content (with incorporation of previous advice by reference) checklist

You must still comply with paragraphs 8.18 and 8.16 where applicable. Those requirements and our own requirements are as follows:

- ☐ The written advice must be in the form of an SoA. A letter, memo, email or other format referring to the original advice is not sufficient.
- ☐ The SoA must give the client enough information so that the client can decide if they should read the original advice.
- ☐ It must at or near the beginning identify the original advice document(s) by a unique identifier.
- ☐ It must state when the original advice was given.
- ☐ A statement at or near the beginning to the effect that the SoA should be read together with the original advice document(s).
- ☐ A statement at or near the beginning that the client can obtain a copy of the original advice document(s) free of charge and how the copy can be obtained.
- ☐ Where applicable - Information in respect of the replacement of one product for another given in full [charges, lost benefits, significant consequences etc].
- ☐ Where applicable - A warning in respect to incomplete or inaccurate information given in full.
- ☐ Where the information in respect of remuneration and conflicts relate specifically to the new personal advice, the information must be provided in full.

- ☐ As the seven (7) year retention period for the original advice document(s) recommences from the giving of the new advice a copy of the original(s) should be kept with the new advice.

## 8.22. Replacement Recommendations For Existing Financial Products



It is possible that you may have to include this information in every Statement of Advice even if you meet with a client for the first time. For example, if that client has an amount of money in an ordinary savings bank account and requires a higher return and you recommend that the money be invested in a Managed Investment you have in fact recommended that the client replace one financial product (the savings account) with another financial product (the Managed Investment).<sup>85</sup>

If your advice is or includes a recommendation that the client dispose of, or reduce the client's interest in, all or part of a particular financial product and instead acquire all or part of, or increase the client's interest in, another financial product additional information must be included in the SoA. This extends to the switching of investment options within a product.<sup>86</sup>

The requirement that you must have a reasonable basis for a recommendation applies equally to situations where you make a recommendation to replace an existing product held by a client. You must carry out sufficient research about the client, the existing product and the proposed product to be confident that the advice is appropriate for the client. Copies of the research material used to support the recommendation are to be placed on the client's file.

The following additional information must be included in the Statement of Advice<sup>87</sup> to the extent that the information is known to, or could reasonably be found out by, you:

- i. any charges the client will or may incur in respect of the disposal or reduction;
- ii. any charges the client will or may incur in respect of the acquisition or increase;
- iii. any pecuniary or other benefits that the client will or may lose (temporarily or otherwise) as a result of taking the recommended action;
- iv. information about any other significant consequences for the client of taking the recommended action that the providing entity knows, or ought reasonably to know, are likely; and

If you are aware that;

- the client will or may incur charges as mentioned in subparagraph i or ii; or
- the client will or may lose benefits as mentioned in subparagraph iii; or
- there will or may be consequences for the client as mentioned in subparagraph iv, but,

you do not know, and cannot reasonably find out, what those charges, losses or consequences are or will be, the SoA must include a statement to the effect that there will or may be such charges, losses or consequences but you do not know what they are.

## 8.23. Oral Recommendations

Our approach is that no oral advice is allowed for initial advice but we appreciate that there are circumstances where a client may instruct you to make an oral recommendation. The requirements in respect of the SoA and disclosure will apply in such circumstances.

<sup>85</sup> ASIC has confirmed that replacement includes money from bank accounts see ASIC RG175.321

<sup>86</sup> ASIC RG175.321

<sup>87</sup> CORPORATIONS ACT 2001 - SECT 947D, ASIC RG175.157



Oral recommendations will be the general method of delivering advice where there is no significant change in the client's circumstances or the basis of the advice and the class of financial product that will be recommended is the same as the class of financial product contained in the original advice. In these instances you must retain a Record of Advice on the client file for a minimum of 7 years. If replacement of an existing financial product is involved in the recommendations then you will need to make the additional disclosures for replacement of financial products (click [here](#) for details) and record this in the Record of Advice.

If there has been a significant change in the client's circumstances or a change in the basis of the advice or it involves a different class of financial product then you will need to prepare a new Statement of Advice.

## 8.24. Further Advice

In the section above on Oral Advice we touched on Records of Advice. This section will provide more detail about when you can use a Record of Advice and what it must contain.

Once you or Lifespan has a relationship with a client where personal advice was originally given you will be providing 'further advice'. The further advice may require you to keep a Record of Advice or issue a Statement to Advice. This will depend up on a number of conditions that must be met.

### Can a Record of Advice be used?

For you to use a record of advice the following conditions must be met: <sup>88</sup>

- the client must have previously received personal advice from you under Lifespan, this will usually be in the form of a SoA. A RoA cannot refer to a SoA from another licensee, refer to "Has the providing entity changed?" section below.
- the client's circumstances cannot have significantly altered since the previous personal advice was provided
- the basis of the personal advice cannot be significantly different from the previous personal advice
- the class of the financial product must be the same as the previous personal advice
- classes of financial products are:
  - Superannuation;
  - Retirement Savings Account;
  - Securities;
  - Life insurance risk;
  - Life insurance investment;
  - Government debentures;
  - Stocks and bonds
  - Deposit products;
  - Managed investment schemes, including IDPS;
  - Managed investment schemes, excluding IDPS; Derivatives;
  - Standard Margin Lending facilities;
  - Non-standard Margin Lending facilities.

There is no definition of significant in the legislation. Therefore the ordinary meaning of the word should be applied – meaningful, major effect, fairly large in amount or quantity. Consequently you and the client will determine what is significant for that particular client. Examples for you to consider in making this judgement are:

- increase or decrease in salary of greater than 10%
- marriage or divorce
- loss of employment
- birth of a child

---

<sup>88</sup> CORPORATIONS REGULATIONS 2001 - REG 7.7.10AE





Significant can be different things to different people.

Therefore when in doubt take the conservative approach and prepare a SoA. Also if providing advice about a different class of product to that in the original advice consider including a review of the existing product with the new advice in the SoA so that you can rely on a Record of Advice in future.

#### Has the Providing Entity changed?

When an authorised representative ceases with a licensee and becomes an authorised representative of another licensee, it will be considered that the providing entity has changed. This is because the "Authorised Representative" is dependent on the licensee it is attached to and so changing licensees changes the authorised representative.

The providing entity must give a SoA to a client before they can give an RoA for further advice.

Therefore, before an authorised representative that has changed licensees can give a RoA, they must:

- first give a client, a SoA under the new Licensee. The new SoA can make reference to a previous SoA from a previous Licensee. However, the providing entity must have in their possession that previous SoA which was given to the client when they were an adviser with the previous licensee. The rules are detailed in RG175.158.
- before writing the new SoA ascertain:
  - that the personal information in the previous SoA remains unchanged (a reverse fact find),
  - the client's current risk tolerance,
  - that the product originally recommended is still appropriate for the client
- essentially follow the safe harbour steps in respect of producing this SoA in the same manner as the provision of any other recommendation in an SoA. The adviser must be able to demonstrate they have acted in the clients best interest even for this type of advice, which may only be recommending retain the current position.
- lodge the new SoA **as well as the original SoA** from the previous licensee with planchecks for approval,
- give consideration to any specific approvals that may need to be requested refer to 2.2 Applying for Specific Approval For Financial Products Not On The APL

#### Format of the Record of Advice

The Record of Advice can be a file note or a tape recording of the conversation with the client (with the client's permission) or a tape recording made by you of your recollection of the conversation or a letter to the client. Lifespan requires that the Record of Advice:

- confirms that the client's present circumstances were checked against the information held for the previous advice and there was no significant change
- sets out the recommendations and why they are suitable
- brief particulars of the information/disclosures required for replacement of an existing financial product, if applicable (see section 8.22)
- sets out the commission and conflicts of interest disclosures provided to the client (see section 8.25 and 8.28)



The Record of Advice must be retained for a minimum of 7 years and made available to the client if and when requested.

## 8.25. Disclosures Of Remuneration - Commissions, Fees And Other Interests



You must be very aware of the requirements for this disclosure particularly for 'grandfathered clients and grandfathered remuneration arrangements.

All disclosures must be made at the same time as the recommendation. In the majority of instances this will be in the SoA. If advice was provided in some other manner then not only must the disclosure be made then but it must also be confirmed in the SoA.

You must **disclose** to the client information about the remuneration (including **commission**) or **other benefits** that any of the following is to receive, or has received, (that might reasonably be expected to be or have been capable of influencing you in providing the advice).

### ***If you are an Employee Representative you must make the following disclosures;***

1. You (you only need to disclose the fact that you are salaried. Your salary does not have to be disclosed.)
2. Us (remuneration, commissions or benefits received by Lifespan)
3. Any of our employees or directors that are directly involved in the provision of the advice given by you if they are remunerated.
4. Any associate of the above who is remunerated; and;

Information about:

1. any other interests, whether pecuniary or not and whether direct or indirect of you, us or any associate of you or us; any conflicts of interest; and
2. any associations or relationships between you, us or any associate of you or us, and the issuers of any financial products; that might reasonably be expected to be or have been capable of influencing you in providing the advice.

### ***If you are an Authorised Representative you must make the following disclosures;***

1. You (if you are salaried you only need to disclose the fact that you are salaried, your salary does not have to be disclosed. If you receive a share of commissions and/or fees of any type you must also disclose these)
2. Your employer ( the body corporate, which is also an Authorised Representative)
3. Us (including remuneration, commissions or benefits received by Lifespan)
4. Any of our or your employees or directors that are directly involved in the provision of the advice given by you.
5. Any associate of the above; and;

Information about:

1. any other interests, whether pecuniary or not and whether direct or indirect of you, us or any associate of you or us; any conflicts of interest; and
2. any associations or relationships between you, us or any associate of you or us, and the issuers of any financial products; that might reasonably be expected to be or have been capable of influencing you in providing the advice.

Other interests include;

- Non cash benefits or "soft dollar" benefits provided by a product supplier must be disclosed. These could include subsidised office space, computer access to research of databases, advertising subsidies etc; and,
- Cumulative or incentive rewards (including any bonus paid to you by us based on turnover and other indicators) are to be disclosed, except where it could reasonably be considered that you

are unlikely to be influenced by the reward. Generally this will be only where you have no current entitlement to the reward and have no reasonable likelihood or expectation of achieving it.

You are required to disclose the total amount of remuneration, commission and other benefits payable:

- stated as both percentages (if applicable) and actual or estimated dollar amounts; or
- if the total amount cannot be identified when the SoA is provided – set out a description of the method of calculating the remuneration, commission and benefits (including, if appropriate, percentages or worked dollar examples).

You are also required to provide written details of when and how the remuneration, commission and other benefits are payable.



When disclosing on-going commissions it is not possible to nominate an exact amount of commission received. In this case an explanation that we will receive, say, .45% of the clients account balance each month from the fund manager and provide a mathematical example of amounts received based on the clients original investment will be sufficient.

The disclosures apply to each recommended product.

**We will provide you with an approved disclosure format to use in the SoA.**



Whilst disclosures must be comprehensive they must remain easy for the client to understand.

## 8.26. Review Service, But No “Monitoring” Of Client’s Portfolios

Lifespan provides a review service for the client. This service is to be promoted and any related fees clearly disclosed to the client.

If a client does not wish to use the review service then this decision needs to be clearly recorded and confirmed to the client in the Statement of Advice. The advice should still inform the client that the advice will need to be reviewed from time to time and at least when their circumstances change and that their decision has resulted in them taking on the responsibility of deciding when that review is to be performed.

We cannot stress enough that under no circumstances should you undertake, or use any wording that could lead a client to believe that we or you undertake, to monitor the client’s portfolio.

## 8.27. Requirement to provide a Product Disclosure Statement

When you have recommended the purchase of a financial product you are required to provide the client with the particular Product Disclosure Statement<sup>89</sup> or inform the client how the Statement can be accessed<sup>90</sup>, e.g. electronically.

## 8.28. Conflicts of interest

In accordance with Corporations Act s912A(1)(aa) we are required to have in place a management policy in respect of identified material conflicts of interests in our provision of financial services to retail and wholesale clients. Lifespan has such a policy, which Representatives are required to read, and

89 CORPORATIONS ACT 2001 - SECT 1012A, CORPORATIONS ACT 2001 - SECT 1015C  
90 CORPORATIONS REGULATIONS 2001 - REG 7.9.02A, REG 7.9.02B

acknowledge that they have read which can be found on the Lifespan secure website under Compliance. In addition, you are expected to read ASIC Regulatory Guide 181.

A conflict of interest occurs when you provide recommendations to a client that is inconsistent with some or all of the interests of the client, in favour of the interests of Lifespan or the Representative, associates or other person. Examples may include an association with a product provider, co-branded (in-house) IDPS (Wrap account), soft dollar benefits paid by product providers, or getting paid an allowance for back office services. Even though new arrangements for conflicted remuneration are banned from 1 July 2013 and no new clients can be added to existing arrangements from 1 July 2014, conflicts of interest can still exist.

In performing our conflicts of interest obligations we require Representatives to assist us in identifying all potential, actual or apparent conflicts of interest on a regular basis and manage such conflicts appropriately.

### Identifying Conflicts of Interest

1. Representatives are required to be knowledgeable with respect to what a conflict of interest is, how to identify it and how to manage it.
2. As Representatives may be transferring from another licensee you are required to complete a statement disclosing any possible conflicts at the commencement of your employment/appointment.
3. Lifespan keeps a register of all potential, apparent and actual conflicts of interest. This register is updated as required and forwarded to all Representatives when updated. It is your responsibility to assess which of the conflicts listed on Lifespan's schedule affects you when providing financial product services. This document can be found on the secure website under Compliance.
4. Representatives will also be required to complete their own register, listing **all** arrangements they have in place with fund managers or other entities, as well as any potential, actual or apparent conflicts of interest. Any such arrangements must be disclosed and approved by Lifespan.
5. Lifespan requires Representatives to complete and return to Lifespan an updated register whenever changes are made. However, Representatives are required to report immediately to the General Manager any situation, real or perceived, which could be regarded as a conflict of interest.

### Managing Conflicts of Interest

Once a conflict of interest has been identified and reported to Lifespan, Lifespan will recommend a suitable management policy. You are required to follow all Lifespan recommendations, which may include avoiding, disclosing or controlling the conflict of interest.

#### Avoidance:



- Refusing offers of volume bonuses from product providers.
- Refusing sponsorship from product providers.
- Declining to act for the client (where the conflict could not be managed because of confidentiality).

#### Disclosure:



- Disclosing in detail in Lifespan's Financial Services Guide (if known at the time the FSG is given to the client) and an oral explanation provided to the client at that time.
- Disclosing in detail in a Statement of Advice including prominent and specific details of the conflict and be written in plain English. For example if a representative was entitled to participate in a volume bonus reward of an overseas conference trip the disclosure will include how much income is required to be rewarded with the trip, conference destination, the length in days of the trip, the approximate value in

monetary terms of the reward.

#### Controlling:



- Charging a fee-for-service rather than receiving commissions.
- Representatives being paid a salary rather than commission.

## 8.29. Conflicted Remuneration

#### Overriding factors



- While the requirements of the changes resulting from FoFA are distinctly separate they cannot be looked at in isolation. The requirements for 'best interest', client interest to receive priority and appropriate advice **CANNOT** be **IGNORED** for grandfathered clients to be retained in a conflicted remuneration arrangement.

The ban on conflicted remuneration means that you and us cannot receive anything that falls within the definition and a platform provider or product issuer cannot pay a benefit that falls within the definition.

Conflicted remuneration was banned from 1 July 2013 for the establishment of new arrangements and from 1 July 2014 for new clients into existing arrangements. You will still be required though to demonstrate that the advice is in the 'best interests' of the client. This extension does not apply to asset based fees for investments made using borrowed funds. Remuneration based on an asset based fee for new investments using borrowed funds cannot be received after 1 July 2013



- Asset based fees for new investments using borrowed money are prohibited from 1 July 2013. If you normally charged on this basis you **MUST** cease this and charge clients a flat fee for any new investments.
- Asset based fees for existing investments where borrowed funds are included is grandfathered.

You must confirm to us all arrangements that you have in place directly with a product provider for any benefit or reward or commission from a product provider or platform operator so that we can record it as an existing arrangement that qualifies for grandfathering provisions.

#### Existing arrangements



- Initially you must let us know of any existing arrangements you have in place for commissions, benefits, rewards even if you think we already know about it.

Conflicted remuneration is defined in the Corporations Act under s963A<sup>91</sup>. The definition is quite broad and includes anything that could be expected to influence the advice that you provide to a client. There are some exceptions to the general rule<sup>92</sup>. These are:

- a) Life insurance risk products that are not group life insurance for members of a superannuation entity or insurance in a default fund
- b) General insurance
- c) Where no advice was provided to the client in the previous 12 month period and the client purchased a product (i.e. execution or no advice transaction with the addition of the time frame limitation)

91 CORPORATIONS ACT 2001 - SECT 963A

92 CORPORATIONS ACT 2001 - SECT 963B, SECT 963C, CORPORATIONS REGULATIONS 2001 Div 4,

- d) A fee paid by the client for a service received (either advice or a purchase of a product)
- e) Where the benefit is provided for education or training and is relevant to the financial product advice
- f) The benefit is IT support or software in relation to the financial product advice given and specifically relates to the financial products issued or sold by the benefit provider.

In addition to the above exceptions any existing arrangements for commission and other benefits in place prior to 1 July 2013 will be grandfathered<sup>93</sup>. However, as mentioned in other sections of this Manual, you must still put the interests of the client above your (and our) interests. Therefore when you are providing advice to a client even if a client is part of the grandfathering provisions but it is not in the interest of the clients to remain in the commission generating product then you are obliged to replace that product.

The flip side to this example is where a client has an existing insurance product and they wish to increase their level of cover. The Best Interest Duty requires you to consider increasing the existing cover and if it is better for the client to proceed with that as opposed to replacing the product entirely just because a higher commission will be received.

The point is, the client's interest must come first. Any recommendation that results in a better income outcome for the adviser must be well justified relative to options that do not achieve as high an income result for the adviser and scenarios like the ones above will be heavily scrutinised by ASIC.

Generally speaking, our position is that on review you should investigate the options for the existing client, retain those working papers and make a recommendation that meets the interests of the client, puts the client's interest before your and our interests and ensure that the product if there is any involved is appropriate for the client.

### Existing clients



- Review existing clients when due
- Investigate the alternatives to remaining in the existing arrangement and product(s).
- Recommendations must put the interests of the client first, leave the client in a better position and provide appropriate advice.
- If you leave the client in the existing arrangement you must disclose any new commissions that you will receive as a result of your advice.
- If you agree to a new fee arrangement then you will need to set up a diary entry for the provision of the Fee Disclosure Statement at the anniversary of the disclosure day. An existing client who enters into a new arrangement remains as an existing client and the opt-in' obligations do not apply.

### New Clients



- New investment products without commissions must be used for new clients.

### Caution



- Bonuses paid to staff of a representative can be classified as conflicted remuneration if not structured correctly.
- Existing bonus arrangements are grandfathered. Any material change though will negate the grandfathering provisions.
- An existing arrangement with discretion built into the qualification process will not qualify for the grandfathering provisions.

<sup>93</sup> 93 CORPORATIONS ACT 2001 - SECT 1528, SECT 1529, CORPORATIONS REGULATIONS 2001 - REG 7.7A.16

For new employees who act as representatives providing financial product advice on our behalf you need to be careful if you have a bonus structure in place that includes a reward for sales volume of financial products or funds under management. There must be balance in the way you determine a bonus for a representative. Funds under management can form a part of the measurement but it must not be predominant. It should relate to financial planning revenue and not be dependent on the adviser providing product advice. To be safe other items should be taken into account on whether or not the bonus should be paid such as:

- Client feedback survey
- Completion of required training on time and at an acceptable level of competency
- Compliant results of client file assessments
- Quality of advice provided
- Any complaints received
- Meeting legal and licensee requirements

The obligation is on the licensee to rebut any accusation of conflict as a result of the inclusion of sales volume in the qualification criteria (as it is automatically presumed to be conflicted until you can prove otherwise).

### 8.30. Rules for Specific Strategies

Lifespan intends to have strict rules concerning the use of potentially high risk strategies. At present there are only rules in respect of gearing and SMSF advice . As the rules may change from time to time we have included them as an annexure to this manual. These specific rules will be added to as other high risk strategies are adopted. If you click on the following link you will be taken to the appropriate annexure.

- [Gearing](#)
- [Self-Managed Superannuation Funds](#)



## 9. REFERRALS

### 9.1. Referrals Made To Lifespan Or You

A referral, whether received directly by us or by one of our Representatives, is treated in all respects as being a referral made to us as you are operating on our behalf.

Any referral arrangements must be included in the FSG. This disclosure must also indicate the remuneration that the referrer is likely to receive which can be a range.<sup>94</sup>

If you receive a referral you are to keep an appropriate record of the referral on the client's file. Where a person has **referred** a client to you and that person is paid a referral fee, you must include information in the SoA about all remuneration (including commission) and other benefits that the person has received, or is to receive for referring the client to you or us.<sup>95</sup>

*For a referring party to be exempt from the licensing requirements that party must only inform the client that a licensee or licensee's representative can provide a particular financial service and if the referring party, or any associate, has received or is to receive a fee, commission or benefit it must be disclosed to the client by the referring party.<sup>96</sup>*

*This should be brought to the attention of any referring party with whom we or you have referral arrangements.*



Any referral fee or benefit given to a referring party must be disclosed to the client by both you and the referring party.

### 9.2. Advice Other Than That Offered By Lifespan

If a client needs financial planning assistance that is not within your field of competency<sup>97</sup>, then you are required to refer the client to a suitably qualified Representative within Lifespan. If you receive a payment in respect of that referral then you must disclose that fact, as must the person to whom you made the referral.

If a client requires accounting, or tax, or legal advice and Lifespan cannot provide those services in-house the client should be advised of this particularly if the advice required has a direct bearing on your advice.

---

94 CORPORATIONS REGULATIONS 2001 - REG 7.7.04 (1), REG 7.7.07

95 CORPORATIONS REGULATIONS 2001 - REG 7.7.11

96 CORPORATIONS REGULATIONS 2001 - REG 7.6.01(1) (e)

97 CORPORATIONS ACT 2001 - SECT 916A (2), CORPORATIONS ACT 2001 - SECT 912A 1 (e)



## 10. IMPLEMENTATION OF RECOMMENDATIONS

### 10.1. Applications To Be In Product Disclosure Statement ('PDS')

When a Financial Product requires a PDS you must provide the PDS when you make a recommendation that a client acquire the Financial Product.

When arranging for clients to sign applications for the selected financial products you must ensure that the applications are included in or accompany the related current PDS when presented to the client for signature. <sup>98</sup>

**Where you recommend an Investor Directed Portfolio Service ('IDPS') or a Master Fund you must provide the client with the disclosure documents for the selected investments within the IDPS or Master Fund or inform the client where they can access those documents<sup>99</sup>. If the document is available from the website of the provider then you must ensure that the client has access to that website, otherwise you will need to provide printed documents to the client.<sup>100</sup>**

### 10.2. Security And Prompt Arrangement Of Client's Financial Products

Cheques relating to the products are to be made payable only to the manager or life company or responsible entity of those financial products in accordance with the relevant PDS. Such cheques **must not** be made payable to Lifespan, to you or to any other entity.

You should ensure that the applications and cheques are sent to the insurance company, manager or responsible entity as promptly as possible after completion by the client.

### 10.3. When The Clients Actions Vary From Recommendations

A client may choose to take actions that do not fully follow the recommendations you have made and in such cases the following applies.

Where the products are the same and there is only a minor difference in the amount invested:

- Minor variations of less than 10% will not normally cause a significant change to the balance of the portfolio you recommended. Also, the disclosures of commissions and other benefits will not be significantly changed. In these circumstances you are to record in a file note the reasons for the changes. The file note is to be placed on the client's file.

Where the amounts proposed to be invested in the products differ significantly from those recommended, or where it is proposed that different products are to be used:

- If the proposed variations arise because the client has advised changes in client information, objectives or needs, and/or you consider the changes to be reasonable, you will be required to prepare a fresh analysis and SoA, based on the amended information. The eventual investments, and the disclosures, will then be in accordance with the amended recommendations.
- However, if the changes arise at the direction of the client and do not appear reasonable, or the proposed products are not on the Approved Products List, you should ascertain the reasons why the client seeks to dictate what investments are to be made.

---

98CORPORATIONS ACT 2001 - SECT 1016A

99CORPORATIONS REGULATIONS 2001 - REG 7.9.02A

100CORPORATIONS REGULATIONS 2001 - REG 7.9.02B

- Your further action will depend upon circumstances but it will usually require you to have the client sign a 'Client Direction Authority for No Advice'. This Direction Authority records that the execution of the products are to be made at the direction of the client and containing appropriate warnings, in the same manner as indicated in paragraph 8.12.
- If the client is not prepared to sign the 'Client Confirmation and Transaction Authority for No Advice', you are not permitted to arrange for the execution of the products nominated by the client.

## 11. CLIENT ADMINISTRATION AND REVENUE

The method of engagement with clients and remuneration for services is changing and you must understand some basic concepts:

- Definition of new and existing clients for fee disclosure statement
- Ongoing fee arrangement
- Fee disclosure statement
- Grandfathering.

### 11.1. Definition of client

'**New clients**' and '**Existing Clients**' are defined, for the purpose of the obligation to issue a Fee Disclosure Statement as<sup>101</sup>:

#### New client

- A person who enters into an ongoing fee arrangement with an AFS licensee or their representative:
  - after the FDS obligations apply to that AFS licensee or representative; and
  - who has not been provided with personal advice as a retail client before that time by that AFS licensee or representative.

#### Existing client

- A person who has received personal advice as a retail client from an AFS licensee or their representative:
  - before the obligations apply to that AFS licensee or representative; and
  - who enters into an ongoing fee arrangement with that AFS licensee or representative, either before or after the obligations apply. An existing client can enter into a new ongoing fee arrangement but will still retain the classification as an existing client.

### 11.2. Ongoing fee arrangement

An ongoing fee arrangement is one where a client has received personal financial advice from you or us and agreed to pay for an ongoing service for a period of more than 12 months. It does not include commissions paid from a third party or a charge for an initial service that is paid by instalments. A fee is an amount which the client agrees to and has control, so can stop it or amend it. Furthermore a fee is usually an amount that is not bundled with any product fee.

### 11.3. Fee Disclosure Statement

A Fee Disclosure Statement is a regulated document. The regulations do not state the format or structure of the document but set out what it must contain. It must include:

- the services that were agreed,
- those actually delivered and
- the fees paid stated in dollars.

It must be issued by the fee recipient within 60 days of the anniversary of the disclosure day to the client. The delivery can be by mail, email, fax, online or by hand. ASIC indicated that numerous

---

<sup>101</sup> ASIC RG245.7

ongoing fee arrangements can be included in one fee disclosure statement but inferred that it should include only one client<sup>102</sup>.

## 11.4. Grandfathering

Broadly any existing arrangement for commissions or benefits entered into prior to 1 July 2013 can continue. New clients could have continued to be added to these existing arrangement between 1 July 2013 and 30 June 2014. Care does need to be exercised because you still need to meet the best interest obligation when giving further advice to existing clients and it may not be in the best interest of the client to remain in a product that is paying commissions and other benefits to you and us.

## 11.5. OUR REQUIREMENTS

### Fee Disclosure Statement

You need to work out the disclosure day for any existing clients that have paid a fee for services (and received personal advice) for more than 12 months. The disclosure day is either the anniversary of the ongoing fee arrangement or an earlier date. The FDS must cover a period of 12 months.

#### Existing client's disclosure day anniversary 'a one off requirement'



1. The actual anniversary of the day you entered into an ongoing fee arrangement or
2. A date earlier than the anniversary of the day you entered into an ongoing fee arrangement or
3. A date between 1 July 2013 and 30 January 2014 as long as you inform the client and the implications of it (and have attempted to determine an actual day but it was too onerous to do so –retain a record of this process) or
4. Send all prior to 30 July 2013.

Lifespan considered the options and decided that it would assist all representatives by preparing the FDS for all existing clients and issuing then prior to 30 July 2013. Given that this process has already been undertaken by Lifespan advisers, it should be noted that the disclosure date for subsequent years will be the same date used between 1 July 2013 and 30 June 2014. However, you may decide to change the date to an earlier date at some point which is fine so long as a period of more than 12 months does not elapse without an FDS being sent to any clients.

#### New Clients disclosure day anniversary



1. The date will be the anniversary of the date the ongoing fee arrangement was commenced.
2. The day can be reset if more convenient but you need to inform the client and it must be reset to a date that results in the FDS being sent earlier than when due.

We have provided access to a standard template for the preparation of the FDS. It covers the legislative requirements of:

- Services that were agreed with the client in the ongoing fee arrangement
- The services actually delivered
- The fees paid.

---

102 ASIC RG245.36

We have also included provision for free text so that you can explain why some services had not been delivered.

The obligation for delivery of the FDS is on the fee recipient but it can be outsourced however, the obligation for compliance remains with the fee recipient. The method of delivery can be mail, email, fax, online access or hand delivery. If you have not provided this type of report or document to a client previously we suggest that you do so face to face at a client review as long as it can be achieved within the required timeframes.

### Obligation



Obligation is on the fee recipient to provide the FDS. In future we require you to provide it.

We will assess your compliance with our requirement.

You will need to establish a diary system to assist you to comply with the delivery time requirements. We will assess your compliance with these requirements.

### Record keeping



Keep records of delivery of the FDS to clients. If electronic method you need to be able to reproduce the FDS in the same format and with the same information as was provided to the client at the time. Protected document format might be a prudent format.

### Client fees

Any advice to a **new** client for **investment** products can no longer involve the payment of commissions from the product provider<sup>103</sup>. You will need to charge a fee for service. If you are offering an ongoing service then you will need to have an ongoing fee arrangement in place.

Your Financial Services Guide must reflect your method of charging for services as well as the range of fees. The spilt with us must still be included. If you have grandfathered clients the FSG must still contain the commission and other benefits disclosures.

### FSG



FSG must cover all forms of remuneration including the grandfathered arrangements and new fee arrangements.

Your fees must be reasonable for the services you provide. Any fees that are excessive may be viewed by ASIC as conflicted remuneration. Additionally ASIC has indicated that over servicing to generate additional revenue would be viewed as conflicted remuneration.

We require that all fees still be paid to us and we will deduct your agreed fee payable to us before passing on the balance to you.

As representatives operate in different methods we are not enforcing the use of a standard template for an ongoing fee agreement. Most advisers rely on the "Ongoing Service" section of our SoA templates and the signed Authority to Proceed as their ongoing fee agreements which is fine however you are free to create your own document for ongoing fee agreements. If you choose to create your own, you must present your ongoing fee agreement to us for approval. This can be a 'terms of

---

103 CORPORATIONS ACT 2001 - SECT 963E

engagement' letter or a formal agreement. The document can cover the initial service and ongoing services or you can have two separate documents. We believe that two separate documents make sense as a client should not sign up to ongoing service until the recommendations have been accepted.

### Fee arrangement documentation



If you have a preferred document or wish to develop one please submit it to us for assessment.

Alternatively you can opt to rely on the "Ongoing Service" section of our SoAs and the Authority to Proceed as your ongoing fee agreement. We also have a Terms of Engagement template that you can use however this is geared more towards upfront fees.

### Efficiency

You must have a good diary system to track the dates for issuing your FDS and ensure that FDSs are sent promptly within 30 days of the disclosure dates.

### Diary system



You must put in place an efficient diary system to remind you that the FDS is to be issued, if they are outstanding so approach actions can be taken.

## 11.6. Our Preferred Method of operation

While grandfathering is permitted and we appreciate the importance of that revenue to the viability of your and our business we encourage you to commence an orderly conversion of your clients from the grandfathered commission products to new products with no commission built into them and to charge a fee for the service that you provide. This will assist you to retain clients who may otherwise seek a new financial planner or who may be approached by financial planners who operate solely on a fee for service.

Remember though that advice to move must meet the interests of the client's and the product must be appropriate.

### Moving forward



Consider an orderly conversion of your clients from grandfathered arrangements to fee for service to avoid pilfering of your client base and deterioration of your revenue.

## 11.7. Collection and payment

We will still collect and pass commissions to you in accordance with the agreement between you and us.

You are to prepare invoices for fees that you charge clients and that invoice is to request payment to us. The fee arrangement that you put in place with the client must disclose the split between us and you to avoid the fee payment being accidentally caught in the definition of conflicted remuneration.

The collection of any outstanding fees remains your responsibility. We will only pass on fees when they are cleared funds from the client.

## Debtors



Collection of arrears is your responsibility so ensure your accounting procedures are in place.

## 12. COMPLAINTS AND COMPLAINTS RESOLUTION PROCEDURES

### 12.1. Procedures For Handling Complaints

We consider that a complaint is “*An expression of dissatisfaction made to an organisation, related to its products/services, or the complaints handling process itself where a response or resolution is explicitly or implicitly expected*”. We also believe that most complaints arise from a failure to communicate properly with the client. We are required to have internal complaint handling procedures that at a minimum comply with Australian Standard AS ISO10002-2006.<sup>104</sup> If you receive a complaint directly from a client you should:

- Ascertain what it is that the client is complaining about;
- Explain the internal process for complaint handling and the options available to the complainant;
- Explain to the complainant that their complaint will be given fair and due consideration, it is a free service and a response will be forthcoming in 14 days and that if this time period is not achievable then notification will be provided with the expected time;
- Inform the complainant of the options available if the resolution is not to their satisfaction or the complaint is not resolved within 45 days;
- Record exactly what the client is complaining about and repeat back to the client to ensure your record of the complaint is accurate;
- If possible try to arrange an appointment with the client to discuss the complaint;
- Not admit liability;
- Not place blame, be condescending, arrogant or argumentative when receiving the complaint;
- Let your employer know about the complaint (if applicable);
- Inform us within 24 hours, giving details, even if you are confident of resolving the complaint;
- We will allow you 3 days to attempt to resolve the complaint but you must let us know that you intend to do so; and,
- Forward to us a copy of the file note record and other material that is relevant to the complaint.

We must approve any resolution that you propose to make to a client prior to making the offer. Also you must inform us when you resolve any complaint.

If we receive a complaint direct from a client, we will normally let you know about it as soon as practicable after receipt and ask you to provide whatever information you have that may assist the handling of the complaint.

We record the complaint in a complaints register as soon as it is notified to us. Unless it can be resolved immediately we send an acknowledgement letter to the complainant.

Every endeavour is made to resolve complaints promptly but in any event they are to be resolved within 45 days from date of receipt of the complaint. If they are not resolved within this timeframe they must be referred to the external dispute resolution scheme.

<sup>104</sup> CORPORATIONS ACT 2001 - SECT 912A(2)(a), ASIC RG 165

## 12.2. External Complaints Resolution Procedures

We are also required to be a member of an external complaint handling body approved by ASIC.<sup>105</sup>

To fulfil this requirement we are members of the Financial Ombudsman Service (FOS).

Even though the FSG contains information about the complaints process you are to inform a client of the process, the existence of the external body and their right to take a complaint to that body if they are dissatisfied with the resolution or the response has not been received within 45 days of our receipt of the complaint.

Further information about FOS can be found at their website [www.fos.org.au](http://www.fos.org.au).

---

<sup>105</sup> CORPORATIONS ACT 2001 - SECT 912A(2)(b)



## 13. REGISTERS

### 13.1. ASIC Register of 'Authorised Representatives'

ASIC will keep a register of Authorised Representatives. Within 15 business days of authorising the Authorised Representative we are required to provide information about that Authorised Representative to ASIC<sup>106</sup>. We comply with this by completing and lodging ASIC Form FS30.

If Lifespan appoints a body corporate as an Authorised Representative it can consent to allow that body corporate to appoint an individual or specified class of individuals to act on behalf of the licensee. Both the individual and the individuals in the class are known as Authorised Representatives.<sup>107</sup>

If Lifespan consents, in writing, to that body corporate issuing a sub-authorisation to a class of individuals the body corporate must provide to Lifespan the following in respect of each individual;

- a) The representatives name;
- b) The representatives business address;
- c) Details of the authorisation, including the date on which it was made and what the representative is authorised to do on behalf of Lifespan.
- d) Details of each other financial services licensee on behalf of whom the representative is an Authorised Representative.
- e) A Deed of Consent signed and executed by the body corporate and the Sub Authorised Representatives

If a body corporate wishes to appoint an individual, the body corporate is responsible to notify ASIC of the details to be entered into the Register (complete and lodge Form FS30 within 15 business days). The body corporate is also required to complete Form RC99 However Lifespan has the responsibility of ensuring all representatives comply with financial laws and therefore Lifespan will complete Form FS30 and lodge it with ASIC on the body corporate's behalf. Lifespan will also facilitate the lodgement of Form RC99.

### 13.2. Training Register

We are required to maintain a Training Register which details all training completed by you<sup>108</sup>.

We require you to keep a register in which you record all training that you undertake that is relevant to your activities on our behalf. To assist you and us to comply with this requirement we have arranged subscription to Kaplan's Ontrack system.

Your Training Register will be reviewed during compliance visits by or on behalf of our company.

### 13.3. Breaches Register

We must be able to track, monitor and rectify breaches that occur. Therefore Lifespan will maintain a breaches register. It is the responsibility of all representatives to notify the compliance manager of any recognised breach of a financial Law, licence condition or our policies and procedures. Where the breach is significant or systemic Lifespan will notify ASIC<sup>109</sup>.

---

106 CORPORATIONS ACT 2001 - SECT 916F

107 CORPORATIONS ACT 2001 - SECT 916B (3) et seq

108 CORPORATIONS REGULATIONS 2001 - REG 7.6.04 1(d)

109 CORPORATIONS ACT 2001 - SECT 912D

ASIC's Breaches Guide<sup>110</sup> sets out examples of breaches and actions required and you should familiarise yourself with it. In any event if you are unsure that the action was a breach then contact the Compliance Officer for assistance.

### 13.4. Complaints Register

As complaints must be tracked, assessed and analysed relevant information must be recorded and compiled in one place. Therefore Lifespan will maintain a complaints register. It is the responsibility of all representatives to notify the compliance manager, within 24 hours, of any complaint received. The complaint record form will assist you to provide the necessary detail (96).

### 13.5. Conflicts Of Interest Register: Non-monetary benefits that are not conflicts of interest

We must be able to monitor and review any conflicts of interest to ensure correct disclosure where applicable some benefits are not conflicted as they cannot, on a reasonable basis, be considered to influence the advice given or the product recommended. The decision on influence is to be made by Lifespan.

All representatives must disclose all conflicts of interest both potential and real in all advice documents and their Financial Services Guide. These conflicts could include, but are not restricted to, affiliation with a specific product issuer, higher commissions for your licensee for recommending particular products, or incentives such as prizes or rewards for sales made. Lifespan will maintain a Conflicts of Interest Register and all Representatives must report, in writing, any real and potential conflicts. All representatives will be requested to provide details of current conflicts on a bi-annual basis. If you are unsure of your obligations or require further details contact Lifespan's General Manager for further assistance.

The following sets out matters in relation to a non-monetary benefit that must be recorded. You may be required to report on these matters to Lifespan:

1. A description of the benefit.
2. The value of the benefit; or if the value is not known, the estimated value of the benefit expressed as a dollar amount or as a range of dollars.
3. The date on which the benefit was given.
4. The name of the person who gave the benefit and, if relevant, the number of the person's financial services licence.
5. Whether the benefit was given to the licensee or to a representative of the licensee.
6. If the benefit was given to an authorised representative of the licensee, the name and contact details of the authorised representative.
7. If the benefit was given to another representative of the licensee, the name and contact details of the other representative.

At the request of a person, Lifespan must give the person the particulars in its records relating to the matters in items 1 to 4 of the table for the last financial year.<sup>111</sup>

The licensee may require the person making the request to pay a charge for obtaining the particulars.

---

<sup>110</sup> ASIC Breaches Guide – RG 78  
<sup>111</sup> Corporations Regulations 7.8.11A

The amount of the charge must not exceed the reasonable costs that the licensee incurs that are reasonably related to giving the particulars (including any costs incurred in photocopying the document containing the particulars).

*Note* This would include the costs of collating the information.

The licensee must give the particulars to the person as soon as practicable, and no later than one month after the person makes the request to the licensee.

### 13.6. Securities Trading Register

We must be able to track and monitor all share trades you perform on a client's behalf. At a minimum the register must contain the applicable following:

1. The date of instruction
2. Name of Client
3. Person who instructed the trade
4. Time of Call or Email
5. Name of share
6. ASX code
7. Platform
8. No. of Shares
9. Price of shares
- 10.If the instruction is a Buy or Sell
- 11.Cost of shares
- 12.Date and time of execution
- 13.Person who executed

A Securities trading Records for Clients template is available from our secure website under Planning Tools/Documents/securities trading

## 14. RECORDS

### 14.1. Retention of Records

Many of the records of Lifespan's operations are subject to minimum retention periods prescribed by Law through Licence Conditions. It is also likely that any dispute with a client is likely to be resolved in favour of a client if the Representative or Lifespan fails to maintain adequate records.

Lifespan has established procedures for the retention of a number of its essential records.

Lifespan also requires Representatives to maintain records relating to their activities on behalf of Lifespan as the prime record of those activities.

The main records that Lifespan requires Representatives to retain, and the minimum retention periods, are:

Record	Retention period
Research information	At least seven years after applicable date.
Records about clients, including where the person did not become a client, i.e. fact finding material file notes, working papers and SoAs	At least seven years after ceasing as a client.

Lifespan will provide access to its secure web based electronic file storage service. Authorised representatives are able to create client accounts and store client files. This facility is utilised to perform desk audits of client files.

## 15. RESPONSIBILITIES

Responsibility for the following significant compliance functions within Lifespan have been allocated as follows:

Responsibility	Ref.	Title/Person
Financial Services Guide, including updating in event of significant changes	8.3	General and Compliance Manager/ Eugene Serravalle
Approved Products List, including selection and maintenance of List	8.11	Research Manager/ John Kounadis
Appointment or termination of Representatives	3.5&7.4	National Dealer Development Manager/ Alan McTighe
Training of Representatives	5.1 etc.	General and Compliance Manager/ Eugene Serravalle
Supervision of Representatives	6	Chief Executive Officer/ Eugene Ardino
Advisory standards of Lifespan	8	Chief Executive Officer/ Eugene Ardino
Complaints handling	12	Chief Executive Officer/ Eugene Ardino
ASIC Register of Authorised Representatives	13.1	Receptionist Administration/ Kate Walsh
Notifiable events, reference, and notification to ASIC.	15	Chief Executive Officer/ Eugene Ardino

## ANNEXURES

### Annexure 1 - Rules For Specific Strategies - Gearing

#### Gearing business rules for representatives

##### **Why have Lifespan Business Rules been formalised?**

The existing business rules for Lifespan have been formalised to reflect current thinking, to place within a framework consistent treatment of gearing programs and provide a training and accreditation procedure. We have formalised the existing rules in a manner that may be easily referred to in the future.

Particular care must be taken by Representatives when implementing gearing programs, whether these are more traditional uses of lending facilities or newer approaches including Protected Equity Loans and Instalment Warrants, or geared investments into Alternative asset classes.

The rules are based on Industry best practice and Lifespan standards. The process outlined in the specific rules provides guidance to you when investigating and recommending the viability of gearing to your clients.

Representatives who wish to provide any advice involving gearing must be suitably qualified and authorised to do so.

Qualified means to have successfully achieved specialist competency in FNSASICR503A – Provide advice in Margin Lending. To achieve this competency, Representatives are encouraged to undertake the required training via Kaplan and its 928S Margin Lending subject course.

To achieve competency to provide personal advice, successful completion of the following components must be successfully completed:

- Generic Knowledge and exam,
- Margin Lending and exam
- A Skills assignment for Margin Lending.

**Any gearing recommendation outside these rules needs specific approval from both Compliance and the Investment committees. Contact Pierre Pineault to apply for specific approval.**

#### Lifespan Business Rules

##### **1. Data Collection**

- 1.1. A full Fact Find must be completed, or completed as fully practicable with relevance to associated gearing.
  - 1.1.1. A conservative, worst case view must be taken of a client's gross income - particularly if a client's income fluctuates from year to year.
  - 1.1.2. Investment income should not be included in the calculation of regular income, unless future payments are assured (as in the case of long-term leases).
- 1.2. A realistic assessment of the client's financial and emotional ability to cope with leveraged gains and losses in their net worth as a result of market movements should be documented in the fact find or file notes.

- 1.3. The data analysis needs to demonstrate why your client can not achieve his/her objectives through conventional methods such as increasing contributions to superannuation and why this particular client qualifies for gearing. The need for accelerated wealth creation and an interest in investing should be acknowledged here unless the client has expressed a desire to establish an investment gearing strategy.

## 2. Risk Tolerance & Portfolio Construction

From the 1<sup>st</sup> of July 2013 advisors cannot take an asset based fee for giving advice to invest borrowed funds. You must make a positive enquiry of the client as to the source of the funds being invested to ensure they have not borrowed without your knowledge.

Gearing a portfolio will increase the risk of that portfolio, particularly where borrowed funds are invested in growth assets like property and shares. Before recommending a gearing strategy for clients, assess whether the resulting outcomes will enable the client to achieve their desired goals relative to their defined risk tolerance.

Gearing can enhance the after-tax returns of a core investment and the taxation implications are quite complex. Gearing is not a reason for investing in its own right. An investment should only be entered into if there are sound investment reasons to do so. Gearing must only be entered into by investors who understand the risks, are prepared to accept the risks, and have the financial resources to meet them.

- 2.1. The owner of the geared investment must have a risk tolerance of Balanced, Growth or High Growth<sup>112</sup>. Barring this you should demonstrate through your data collection that your client has sufficient previous gearing experience if their risk tolerance differs from above.
- 2.2. The investment horizon for the client must be seven years or greater.
- 2.3. Portfolio Construction must reflect any rules imposed by the Investment Committee.
- 2.4. All investments with gearing must be on Lifespan's APL. Products outside this must attain approval from the Investment Committee, and be recommended by Lifespan's research house.

## 3. Allowable Cost and Level of Gearing - Margin Lending

- 3.1. Lifespan allows that advisers recommend an effective maximum LVR of 50%. If gearing exceeds this level the client **must** have assets available to meet the margin call, and gain approval from both Compliance and the Investment Committees. Contact Pierre Pineault to apply for specific approval for higher levels of gearing. It is not necessary to maintain this level at all times due to market movements however LVRs must be managed by the adviser through consultation with the client and advisers must never recommend increasing LVRs to a higher level.
  - 3.1.1. If you wish to invest at an LVR greater than Lifespan's maximum then the client is required to have assets available to meet any margin call triggered by a 20% fall in the market, without selling the geared securities.
- 3.2. The interest costs of the gearing strategy must not exceed 20% of the client's gross annual income.

---

<sup>112</sup> If you want to use a lower risk profile, e.g. Balanced, then the LVR would need to be amended/lowered as well. You need to seek approval.

3.2.1. Interest should not be capitalised to the loan/facility unless absolutely necessary. This aims to reduce the risk of a margin call.

- 3.3. Recommending clients 'double gear' by redrawing on equity in their home to provide the equity for a margin lending facility is not allowed.

#### 4. Allowable Cost and Level of Gearing – Facilities other than Margin Lending

- 4.1. The interest costs of the gearing program must not exceed 20% of the client's gross annual income.

4.1.1. Interest should not be capitalised to the loan facility unless absolutely necessary. This aims to reduce the risk of a gearing strategy.

- 4.2. Recommending clients 'double gear' by redrawing on equity in their home to provide the equity for a margin lending facility is not allowed.

#### 5. Risk protection

- 5.1. At review or establishment of a gearing program for a client, adequate personal risk insurance **must** be recommended to the client in order to ensure that the client can maintain their investment in the event of unforeseen sickness or disability.

5.1.1. Income protection must be structured to cover the total amount of income required to service the debt as a minimum, and also with a view to covering their other lifestyle expenses. The maximum waiting period should be one month or as appropriate to client circumstances. Insurance should be taken for a minimum period of 5 years.

5.1.2. Life insurance and TPD insurance must be recommended to cover repayment of borrowed funds for the portfolio in case of premature death or incapacity. This allows the program to be continued and not unduly affect the clients' position or estate planning wishes.

- 5.2. **Insurance recommendations must be included even if not covered specifically in the scope of advice. If the client does not want any insurance advice, then just recommended levels of cover will suffice, it is not necessary to give specific product recommendations.**

#### 6. Cash Flow Projections

- 6.1. A cash-flow analysis that shows the client has the capacity to service the debt and has the resources to service a margin call (margin lending) **must be conducted**. Beware of symptoms for potential cash flow problems in the future.

- 6.2. The loan repayments must be based on the current interest rate of the lending institution to be used.

6.2.1. Unless the client otherwise directs or the product does not allow, interest rates should be fixed. This places a ceiling on the clients' funding cost and so supports future investment Statement of Advice decisions.

If the client directs to use variable rates, the Representative must ensure the client has sufficient disposable income to cover an increase in loan payments if interest rates go up.



A sensitivity calculation must be conducted and included as an annexure to the Statement of Advice. If the interest rate is not fixed then assume an increase in the rate of 2%. Also a calculation assuming a 10% reduction in income must be conducted.

- 6.3. All projection inputs must be justifiable and have a reasonable basis.
- 6.4. Your projections should clearly show whether the client receives or reinvests the income into the portfolio.

## **7. Statement of Advice Preparation**

- 7.1. Gearing cannot be proposed or implemented on an Execution Only basis.
  - 7.2. A Statement of Advice must be presented to the client.
    - 7.2.1. Demonstrating the suitability of the advice and its reasonable basis.
    - 7.2.2. Demonstrating advice satisfies all Lifespan gearing rules, namely:
      - Data collection
      - Risk Tolerance & Portfolio Construction
      - Allowable cost and level of gearing
      - Risk protection
      - Cash flow projections
  - 7.3. A discussion of directing distributions into existing investments or into cash if it is beneficial to reduce the LVR and reduce the loan must be included. Capitalisation of interest is not permitted.
  - 7.4. If you recommend margin lending you must include an example of the effect of gearing in the Statement of Advice. (see below for an example)
  - 7.5. If warrants are recommended you must also include the ASX Understanding Warrants booklet.
  - 7.6. All relevant disclosures including financial product initial and trail commissions, loan establishment fees, charges, and discharge penalties must be disclosed to the client in writing.
  - 7.7. Lifespan requires that geared clients receive a minimum of 2 reviews per year. Geared plans must receive regular assessments because they are inherently more volatile than non-geared plans.
  - 7.8. Geared clients need to sign the “Geared Portfolio - Client Confirmation Form”, which can be found on our secure website under Planning Tools/Documents as opposed to the general Authority to Proceed form for all other clients. A copy of the signed “Geared Client Confirmation” is required in the client’s file, which is available on our secure website under Planning Tools/Documents.
  - 7.9. The document, “Benefits and Pitfalls of Gearing,” needs to be attached to every gearing SOA which is available on our secure website under Planning Tools/Documents.
  - 7.10. Strategies like home equity loans must be considered before recommending margin lending.
8. Advisers joining Lifespan with clients who already have gearing strategies in place

- 8.1. Given that in this case, the advice to gear has been given under another AFSL it is not possible to change the original advice and follow all of the above guidelines. Therefore, in this case the following rules apply:
- 8.1.1. You must provide clients with the “Benefits and Pitfalls of Gearing” document no later than at the next review unless you can demonstrate to Lifespan that you have adequately disclosed the risks to the client.
  - 8.1.2. You must have a regular review program in place with each gearing client with no less than 2 reviews per year.
  - 8.1.3. Where a client has a current LVR of greater than 50%, you must consult with a member of Lifespan’s compliance team and receive permission to continue the gearing strategy.
  - 8.1.4. If the clients have a risk profile that is less conservative than Balanced, you must receive permission from Lifespan to continue the strategy.
  - 8.1.5. If Lifespan wishes to review the original advice and/or client file you will provide such information to Lifespan.

## Example For SoA Purposes

LIFESPAN PTY LTD

*Example of Statement of Advice text relating to Margin Lending and the effects of gearing.*

### What is your motivation behind Gearing?

**Prior to you proceeding with a gearing strategy, it is important that you understand your decision should be based on wealth creation and not solely a short-term desire to minimise tax. Given that investment returns are variable, it is essential to view a geared investment strategy as a long-term commitment, as this will enable you to benefit from the returns of growth assets and to manage any short-term negative market fluctuations.**

### What is Margin Lending?

A margin loan allows you to borrow money against shares or managed funds you already own, as well as enabling you to buy more shares/managed funds which form part of the security. A margin loan can be a powerful wealth creation tool, allowing you access to more managed funds/shares than would be possible under normal circumstances.

The main difference between a margin loan and a conventional property loan is that shares change in value each day. This means you can check the daily market value of your investments, and the lender will also monitor your portfolio value daily. If the value falls below an agreed minimum the lender will require you to meet a margin call.

#### Margin Calls

A margin call will be made if your equity – the value of assets that you contributed as to the investment falls below the agreed lending ratio. This lending ratio usually has a 70%-80% maximum with a 5%-10% buffer for market volatility. If this happens, the lender will ask you to provide additional funds to restore at least the minimum equity position.

To help protect against small market fluctuations there is usually a “buffer” (typically 5 -10 % of the total portfolio value) within which a margin call will not be made.

A margin call requires prompt action (usually within 24 hours) so it is important to plan what you would do if you are faced with one.

There are a number of ways you can satisfy a margin call. You can:

- Provide cash to reduce your loan balance
- Provide additional shares as security
- Sell shares/managed funds from your portfolio and use the proceeds to reduce the loan

If you do not initiate one of these actions, the lender will act on your behalf selling shares/managed funds to reduce the loan.

### How to reduce the risk of a margin call

The best way to avoid Margin Calls is to be conservative in the amount you borrow. Other ways to reduce the risk of a Margin Call include:

- diversifying your investments;
- making interest payments regularly rather than capitalising your interest;
- reinvesting dividends to reduce your loan as a proportion of your total portfolio;

- monitoring your investments closely; and
- taking a long term view of your investments.

If you invested in a portfolio at a Current Gearing Level of 50%, your portfolio would need to fall by 37% before a Margin Call (80% LVR) would be made.

#### Cash flow management of Gearing

The effect of you implementing a gearing strategy on cash flow available for living expenses would be as follows, ignoring any tax considerations

	Per Month \$	Per Annum \$
Projected income from investments (\$0) if reinvesting income		
Projected Loan repayments (Use current interest rates)		
<b>Approximate reduction in your cash flow</b>		

#### EXAMPLE OF LEVELS OF GEARING IN A PORTFOLIO

##### Initial Gearing

Initial Loan Balance	\$15,000
Initial Own Investment	\$30,000
Initial Value of Portfolio	\$45,000
Loan to Value ratio (LVR)	
= \$15,000/\$45,000	33%

##### Instalment Gearing

Own monthly contributions	\$250.00
Borrowed monthly contributions	\$500.00
Total monthly contribution	\$750.00
Loan to Value Ratio (LVR)	
= \$250/\$750	67%

##### Drop in Portfolio Value

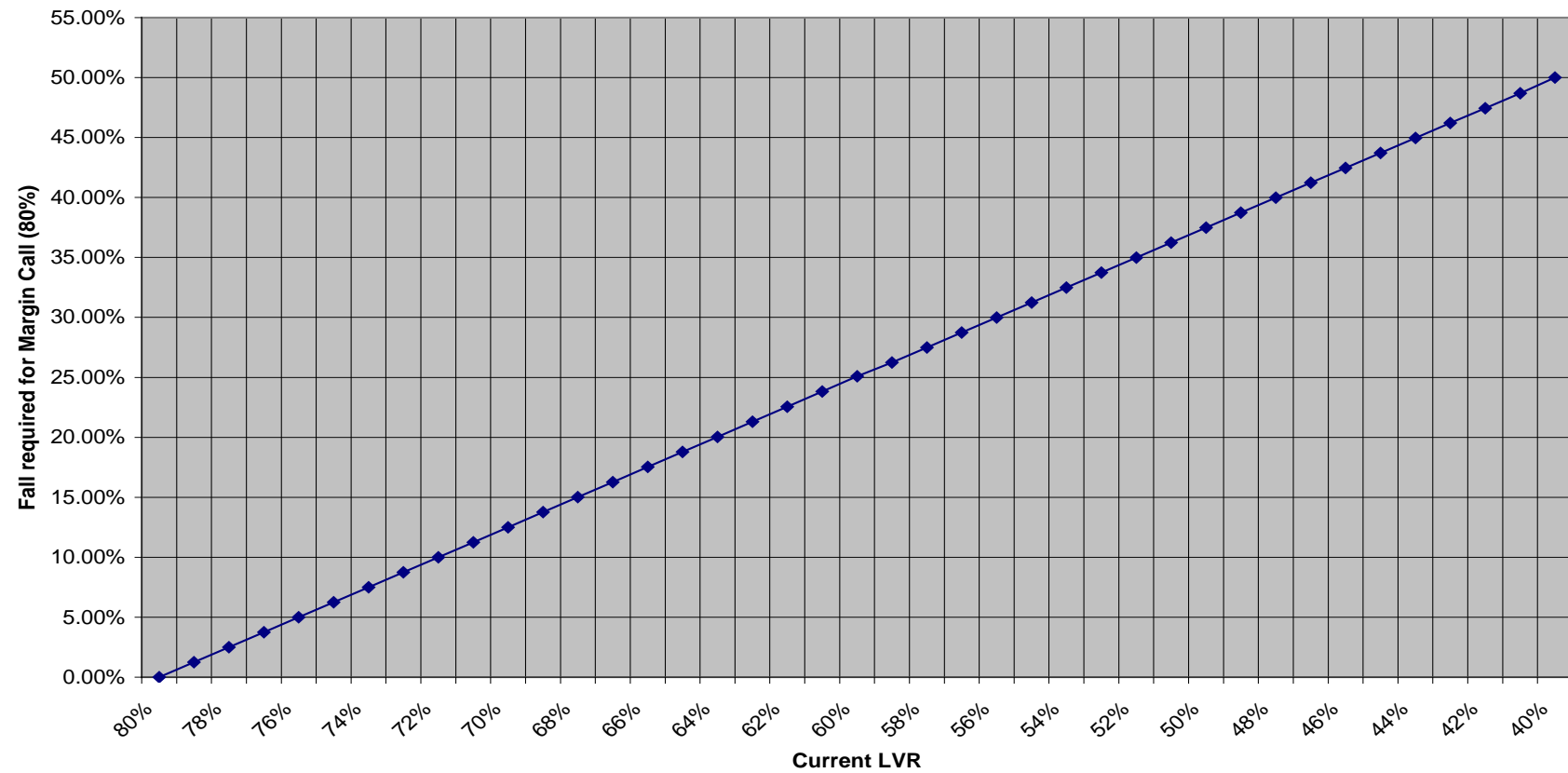
A portfolio that is:

- ✗ 50% geared needs a 37% fall in value for a margin call to be made.
- ✗ 66% geared needs a 17.5% fall in value for a margin call to be made.
- ✗ 70% geared needs a 12% fall in value for a margin call to be made.
- ✗ 80% geared will have a margin call made.

#### A warning to you

**Gearing not only magnifies profits, it magnifies losses as well.** Volatility becomes a problem if you don't have the time frame to ride out the rough patches. Remember that the value of share investments go through regular ups and downs, and you may be tempted to sell out of an investment after its value has fallen. However, it must also be remembered that historically, investors who stick with their strategy generally go on to recover and prosper.

### Fall before Margin Call



## Annexure 2 - Rules FOR Specific Strategies- Self Managed Super Fund

Significant consequences exist for you and your clients when you recommend the establishment of a Self Managed Super fund. It is extremely important that you recommend use of a properly drafted trust deed. Lifespan is concerned that you may not be able to satisfy your clients' goals if improperly drafted deeds are used by your clients. It is for this reason that all authorised reps must refer all clients to a relevant specialist in this area or use the services of a legal documents provider such as Clear Docs with whom LFP has an arrangement.

You must also be aware that if you are asked to assist with the drafting of the investment strategy that there are particular rules/requirements under the SIS Act that must be met. An incorrectly constructed Investment Strategy may affect the complying status of the Fund.

When providing advice you must do so using a Statement of Advice and have a reasonable basis for the establishment of the fund, the investment strategy (if involved), any insurance recommended and that any investments are in line with the investment strategy.

The current ASIC Policy in relation to the provision of SMSF Advice is as follows:

"A natural person who advises on SMSF's and holds an Australian financial services licence, or is a representative of a licence holder, must complete an approved Tier 1 course on superannuation to meet RG 146 requirements. While it is not mandatory that they also complete an approved SMSF course, ASIC encourages them to do so. Further, licensees have a legal obligation to ensure that they and their representatives are adequately trained and competent to provide the services covered by the licence."

Lifespan authorises its Representatives to provide advice in regard to superannuation. Further Lifespan believes that the SMSF area is a specialised area and encourages its representatives to attain competency in that area and keep abreast by completing ongoing annual training on the subject.

### Initial and Ongoing Advice to Self Managed Super Funds

When providing advice to Trustees of Self Managed Super Funds the following points should be considered:

#### 1. The SMSF Trust Deed

- Has the Trust Deed been reviewed?
- Does the Deed incorporate the latest options? TTR Pensions may not be covered.
- Does it allow eligible spouse contributions?
- In specie contributions?
- Insurance through the SMSF?
- Retirement payments before Age 65?
- Payments to members to cover assessed liability for excess contributions tax?
- Borrowing money in ways allowed by legislation?
- Is the Deed executed correctly and dated?

#### 2. The Investment Strategy

- Has the Investment strategy been reviewed this year.
- Does the Investment Strategy detail the investments that may be held?

- Have economic conditions changed necessitating a change in investments?
- Are hybrids included under Fixed Interest Products?
- Does the Investment Strategy allow for sufficient liquid assets to pay pensions?
- Is the Investment Strategy signed and dated by all Trustees?
- Does the Investment Strategy mention that the Trustees must consider Life & TPD for each member of the fund?

### 3. Trustee Suitability

- Has any Trustee been:
  - disqualified from acting as Trustee?
  - convicted for an offence involving dishonesty?
  - insolvent and/or under administration (or currently under or being considered for either)?
  - disqualified by a Regulator, ASIC, ATO or APRA.
  - subject to a civil penalty order under superannuation laws?
- Is the trustee an undischarged bankrupt?

### 4. Record Keeping and Changes to SMSF

- Is there a copy of Certificate of Registration of Company with the ASIC
- Is there a copy of ABN Registration with the ATO
- Has a copy of all minutes of trustee minutes been retained?
- Has the ATO been notified of any changes eg Members, change of address, contact person, name change of SMSF, fund ceasing to be an SMSF?
- Have the ATO returns been completed and submitted?
- Has the fund been audited by the nominated auditor and signed off?
- Has a copy of all reports and returns been provided to all members and signed off?
- Have all records been retained, must be kept for a minimum of 10 years?

## STRATEGIES

Two popular strategies that are used with SMSFs involve credit, one the SMSF lending funds as a form of investment and the other borrowing funds to purchase assets. Both are extremely risky as they can put the members accrued retirement benefits at risk. Therefore the Federal Government have restrictions in the SIS Act for the situation where a SMSF borrows funds to purchase investments; the arrangement must be a limited recourse borrowing which means only the asset which is the subject of the borrowing can be at risk if there is a default on the loan. We will cover this in more detail.

Please remember that the strategy must comply with the sole purpose test otherwise the SMSF will not meet the sole purpose test and will be non-compliant losing its beneficial taxation status.

While the Trustees are responsible for the compliant running of the SMSF if the benefits of the members were endangered by advice that is given to the SMSF and that advice was found to be inappropriate then the representative and its Licensee (i.e. you and us) will be on the other end of a complaint or legal proceedings in an attempt by the Fund to recover the losses.

### Lending funds

Before lending any money the Trustee/s should consider the fund's' investment strategy and determine whether the investment is appropriate and in particular, whether lending money to people is in the best long term interests of the fund.

In addition, the current Trust Deed should be reviewed to ensure that lending is permitted/endorsed in the Deed. If not and money is lent the Trustee/s may be deemed as acting in a non-compliant matter and may have further actions taken against them by the ATO.

If the Trustees still decide to go ahead and lend money they should seek legal assistance for an appropriate loan agreement and have it signed by all parties ensuring that all the terms of the loan are specified including;

- What the security for the loan is
- The repayment period
- When repayments will be made
- The amount of the repayments
- The interest rate

The Trustees should ensure that the interest and the repayments are received by the fund according to the loan agreement, to take appropriate action to protect the Fund's' investment if the loan agreement is not followed, ensure the loan is sensible and does not put the members benefits at risk and ensure that the conditions of the loan agreement do not provide the borrower with favourable terms.

## **Borrowing Funds**

Before borrowing any money the Trustee/s should consider the Fund's' investment strategy and determine whether the investment is appropriate and in particular, whether borrowing money is in the best long term interests of the fund.

In addition, the current Trust Deed should be reviewed to ensure that borrowing is permitted/endorsed on the Deed. If not and money is borrowed the Trustee/s may be deemed as acting in a non-compliant matter and may have further actions taken against them by the ATO.

If the Trustees still decide to go ahead and borrow money they should:

- Consider the scope and purpose of the borrowing
- Is limited recourse borrowing right for their SMSF
- Other matters Trustees should consider:
  - Requirements under the SIS Act for limited recourse
  - The arrangement and refinancing
  - The loan and the lender
  - Lenders recourse and charging the asset being acquired
  - The asset being acquired and replacement assets
  - The in-house rules
  - The holding trust

Basically legal advice should be sought on the structure which includes the establishment of a bare trust to hold the asset with beneficial interest held by the Trustees of the superannuation fund until such time as the loan is discharged. The SMSF will make the repayments on the loan, be responsible for maintenance and repairs of the asset if required and receives the income from the asset. No improvements can be made to the asset.

Care should be exercised in arranging the loan as some lenders, due to the nature of the limitation on the Fund, are seeking personal guarantees from the trustees or the directors of the Corporation acting as trustee for any shortfall as a result of default on the loan by the Fund.

Remember that the Trustees are the ones ultimately responsible for running their SMSF they must make sure they understand their duties, obligations and responsibilities. You as their adviser will also



carry some liability if the advice you provide is found to be inappropriate (or in the New World) does not leave the SMSF better off for having received your advice.

We require you to ensure that you also take into consideration in formulating any gearing advice for a SMSF not only the Investment Strategy and Trust Deed of the Fund but also our Gearing Policy where appropriate.

### **Lifespan's guidelines for SMSF Borrowing**

It is Lifespan's view that SMSF borrowing may be fraught with dangers and risks which could lead to SMSFs underperforming particularly when gearing into direct property. Experts around the globe are warning that residential property will stagnate or even go down in nominal terms over the next 5 to 10 years.

The levels of gearing into property and the packaging by investment banks who are now paying the price, is what arguably got the world into the recent financial stress we have seen of late. SMSF gearing into property can be seen as more of the same and has the potential to lead to problems for you, your clients and Lifespan.

We should be helping our clients to avoid unnecessary risk as much as possibly by explaining about all the options, risks, costs, benefits, diversification and the general need for prudence and common sense in financial affairs. We should not let ourselves and clients be driven by the obvious tax benefits of this strategy.

#### **the guidelines in detail:**

1. Prior to a SMSFs entering into an arrangement the adviser must ensure that the overall costs of the structure are viable. **ASIC HAS ISSUED A WARNING TO THE VARIOUS ACCOUNTING GROUPS STATING THAT ACCOUNTANTS MAY BE LIABLE IF THEY SIGN OFF ON A CLIENT'S ABILITY TO REPAY A LOAN.**

- As part of your analysis the following must be considered:
  - A full cash flow analysis must be undertaken to demonstrate that the fund has sufficient liquidity to service the loan and other associated costs. This will include all upfront and ongoing fees including loan set up costs, stamp duty, legal and accounting fees, ongoing costs in relation to property purchases i.e. rates, insurance, strata costs, ongoing maintenance etc. Adviser fees must also be taken into account. The analysis must also show the fund's ability to provide a buffer to meet any rise in interest costs over the term of the loan.
  - Lenders will need to sight the fund's previous 2 years tax returns to verify that contributions and investment income in conjunction with forecast rental income are sufficient to service the loan. The lender will also require proof of rental income from the valuation.
  - An appropriate evaluation may also be required of the underlying trading business or other sources that will be relied upon to make ongoing contributions.
  - In relation to direct property investments there must also be sufficient liquidity to fund ongoing improvement and maintenance costs as the ATO will not accept capitalisation of interest for the purposes of repairs and improvements.
- The following lender restrictions must also be taken into account:
  - LVR will generally be around 70% for residential and 60 – 65% for commercial.
  - No refinancing of existing property owned by the Super Fund.
  - No refinancing of an existing lending arrangement.
  - No construction or property development.

- No vacant land.
- No company title ownership structures.
- Some lenders may put restrictions on the purchase of specialised commercial property such as pubs, hotels, caravan parks, child care centres, service stations etc.
- Some lenders will not allow capitalisation of interest or funding of interest even if ATO requirements are satisfied.
- Some commercial loans will have to be repaid in full at expiry as some lenders will not allow loans to be rolled or extended into a subsequent loan for a further term.
- For residential property, lenders may require a Guarantee and Indemnity from all members of the SMSF (and the directors where it is a company). **The ATO is yet to confirm its treatment of Personal Guarantees therefore clients should at this stage avoid using loan products which require a Personal Guarantee from the member and trustees of the fund.**

➤ The following loan restrictions may also apply:

- No redraw facility.
- No offset facility.
- No security swaps.
- No limit increases.
- No rural lifestyle.
- If a related party loan is to be established to reduce costs, clients must be aware that the LVR must be established on an arms length basis i.e. in line with the industry standard of around 60 – 70% and with a commercial lending rate. (LVRs in excess of commercial arrangements will not be deemed as arms length therefore the SMSF would be in breach).

2. If the client has sought advice as to whether the purchase of a direct property is appropriate to their needs, a full Statement of Advice must be produced as a SMSF is deemed to be a financial product under FSR. All SoAs must be submitted to Lifespan for vetting prior to setting up the borrowing structure.
3. The SoA must refer the trustees of the fund to one of Lifespan's recommended SMSF experts to set up the structure and to update the SMSF Trust Deed and investment strategy. This should ensure the structure complies with the new borrowing rules— an incorrectly structured trust can lead to CGT problems when the asset is transferred to the SMSF. It is absolutely false economy to buy a cheaper deed which may be inadequate. It should be noted that **civil or criminal** penalties may apply if the structure is not set up correctly hence Lifespan's requirement that a SMSF expert be engaged in all cases to reduce the risk of advisers being involved in a breach of the rules. Our preferred list of superannuation experts will be forwarded to you under separate cover.
4. The SoA must also contain insurance recommendations sufficient to pay out the loan in the event of the death of a member of the fund.
5. TPD, income protection and trauma must also be recommended for the members of the fund to ensure they are able to maintain the level of contributions required to service the ongoing costs associated with the borrowing structure particularly if negatively geared.
6. A warning should be given within the SoA that gearing accelerates both gains and losses and that therefore it is an inherently risky strategy. Lifespan's standard paper on the pitfalls of gearing must be referred to as part of the SoA and the client must acknowledge that the adviser has both provided it and been explained it verbally and the client accepts the risks involved.

7. Advisers should ensure that trustees in no way breach any of the superannuation rules relating to SMSFs and general prudential requirements of diversification, liquidity particularly to pay pensions, and the general riskiness of gearing.
8. Advisers must also explain that while property has generally had positive performance, the world credit crisis according to many experts will cause property prices in developed economies to either stagnate or actually come down significantly. Stagnation over 10 years when inflation is 3% pa is actually a real fall of about 35% because the property would have needed to grow by 35% just to maintain its real value. If the property has nominally fallen 20% in those circumstances the real fall is more than 50%. The next 10 years may be one of the worst times in history to buy residential property. It may be one of the best times in history to buy good equities. The tragedy is that SMSF gearing will be used to mostly buy property and the loans will be brought down by further contributions.

## Annexure 2a – SMSF Accountant Limited Authority

As part of the Future of Financial Advice (FOFA) reforms, the 'accountants' exemption' was repealed on 1 July 2016. This exemption allowed recognised accountants to provide financial product advice about acquiring or disposing of an interest in a self-managed superannuation fund (SMSF) without being covered by an Australian financial services (AFS) licence. This means that all accountants must now be covered by an AFS licence to give advice about acquiring or disposing of an interest in an SMSF – that is, they must either hold an AFS licence or be a representative of an AFS licensee.

Accountants who are not licensed or authorised after June 30, 2016 and engage in this activity could face penalties of up to \$340,000 for companies and up to \$34,000 for individuals.

In broad terms Financial Product Advice is normally regarded as anything that a reasonable person may interpret to be a recommendation or statement of opinion that may cause a client to do something, or that may influence a client to take some form of action. 'Advice' may be seen to take the form of any conversation or discussion that could reasonably be regarded as being intended to influence a person or persons in making a decision about a particular financial product or class of financial products as they are defined under the relevant regulation.

### Where can I get more information?

For more information on financial products and services, see Regulatory Guide 175 Licensing: Financial product advisers—conduct and disclosure (RG 175).

A person providing financial product advice must also comply with provisions under the Corporations Act that ban conflicted remuneration: see Regulatory Guide 246 Conflicted remuneration (RG 246) for more details.

Other regulatory guides which are relevant to the provision of financial product advice are Regulatory Guide 244 Giving information, general advice and scaled advice (RG 244) and RG 245 Fee disclosure statements (RG 245).

For more information on your obligations, see the following regulatory guides and information sheets:

RG 246 Conflicted remuneration

INFO 205 Advice on self-managed superannuation funds: Disclosure of risks

INFO 206 Advice on self-managed superannuation funds: Disclosure of costs

INFO 216 AFS licensing requirements for accountants who provide SMSF services

### Authority

Depending on the type of authorisation, an accountant with limited SMSF authority may be able to give advice about:

- SMSFs
- a client's existing superannuation holdings in certain circumstances and
- 'class of product' advice about a range of products

If authorised to do so, an accountant with limited SMSF authority can give class of product advice about the following financial products:

- superannuation
- securities
- life risk insurance
- basic deposit products, and
- simple managed investment schemes.

The following tables are a guide to the authorisations and the SMSF service.

**Table 1: Possible authorisations**

Services	Products	Authorisation
Provide financial product advice	Interest in an SMSF  Superannuation products in relation to a client's existing holding to the extent required for making a recommendation to establish an SMSF, or providing advice to a client on contributions or pensions under a superannuation product	Lifespan "Access"  Restricted Authority   Lifespan "Advantage"  Strategic Advice
Provide financial product advice that is 'class of product' advice	Superannuation products, securities, life risk insurance and basic deposit products (as defined in the Corporations Act)  Simple managed investment schemes (as defined in the Corporations Regulations, reg 1.0.02)	Lifespan "Advantage"  Strategic Advice
Arrange for a person to deal in a financial product, including applying for, acquiring, varying issuing or disposing of financial products on behalf of another	Interest in an SMSF	Lifespan "Access"  Restricted Authority   Lifespan "Advantage"  Strategic Advice

**Table 2: SMSF services and the AFS licensing regime**

Type of SMSF service	What you may do without being covered by an AFS licence	Relevant legislation
Establishing, operating, structuring or valuing an SMSF, including advice and assistance on administrative and operational issues, and the process of winding up or exiting an SMSF	<p>You <b>may</b> provide advice on establishing, operating, structuring and valuing an SMSF, as long as you give your client the appropriate warnings. This includes:</p> <ul style="list-style-type: none"> <li>advice provided for the sole purpose of, and only to the extent reasonably necessary for, ensuring compliance with the superannuation legislation</li> <li>advice on the process of winding up or exiting an SMSF.</li> </ul> <p>You <b>may not</b> recommend that your client acquires or disposes of an interest in an SMSF.</p>	Regulation 7.1.29(5)
Asset allocation and investment strategy	<p>You <b>may</b> provide a recommendation or statement of opinion on how your client should distribute their available funds among different categories of investments.</p> <p>You <b>may not</b> advise your client to make particular investments through the SMSF.</p>	Regulation 7.1.33A
Tax advice on SMSFs and other financial products	You <b>may</b> provide tax advice on financial products, such as an interest in an SMSF and underlying investments held by the SMSF, as long as you do not receive a benefit as a result of your client acquiring a financial product (or a financial product that falls within the class of products) mentioned in the advice and you give your client the appropriate warnings.	Regulation 7.1.29(4)
Referring clients to an AFS licensee or representative	You <b>may</b> refer clients on to an AFS licensee or representative for financial product advice, as long as you make the appropriate disclosures.	Regulations 7.6.01(1)(e)–(ea)

Below is an outline of what areas you will need to be authorised under the new licensing arrangements. For services outside these items a referral to a suitably qualified financial adviser may be required.

Areas of SMSF Advice	Post July 01, 2016	
	NOT Authorised or Licensed	Authorised or Licensed Accountant
Recommend a client establish or wind up an SMSF	✗	✓
Establish or wind up an SMSF on client instruction	✗	✓
Provide advice about the different types of superannuation funds or recommend one structure over another	✗	✓
Recommend the Consolidation and rollover of any existing fund(s) into an SMSF	✗	✓
Highlight the possibility that members may lose benefits as a result of any rollover of existing funds	✓	✓
Provide factual information on superannuation related matters such as contribution caps, sole purpose test, related party transactions, including factual information on types of super funds	✓	✓
Discuss in the form of factual information the various contribution limits that may apply to a members' fund	✓	✓
Make a recommendation as to the amount of contribution the member should make into their SMSF including salary sacrifice	✗	✓
Make specific recommendations on contribution strategies with their SMSF	✗	✓
Recommend that a member commence a pension (including account based pension or TTR)	✗	✓
Determine the maximum and minimum annual pension amounts payable (including TTR) for the SMSF, based on the current account details.	✓	✓
Recommend the amount of pension payment to be taken from the SMSF including TTR	✗	✓
Prepare an Investment Strategy for <b>the trustee</b> of an SMSF. <i>(This is unlikely to arise for a non-authorised accountant as it forms part of a broader undertaking with either a new or existing SMSF client)</i>	?	✓
Prepare an Investment Strategy for <b>the members</b> of an SMSF. <i>(This is Class of Product advice and the accountant would need to be suitably authorised to undertake this work)</i>	✗	✓*
Recommend the suitability for a client to use their SMSF to purchase property	✗	✓
Recommend the suitability for a client to use their SMSF to purchase property with a Limited Recourse Borrowing Arrangement (LRBA)	✗	✓
Recommend the use of Binding Death benefit nominations for the SMSF	✓	✓
Discuss the merits of different types of Superannuation in addition to SMSFs	✗	✓
<b>Related activities</b>		
Recommend that members include insurance in their SMSF to replace any cover lost as a result of the rollover of existing funds	✗	✓
Provide accounting and audit support (where suitably qualified) for a member's SMSF	✓	✓

## The distinction between factual information and financial product advice

### Factual Information

Factual information is objectively ascertainable information, the truth or accuracy of which cannot reasonably be questioned: see RG 36.21. Good quality factual information can often be useful for clients wishing to better understand the financial products or strategies available to them

Factual information may be likely to be advice if it is presented in a way that is intended to, or can reasonably suggest or imply an intention to, make a recommendation about what a client should do: see RG 36.31.

ASIC have stated that they will not treat factual information given by you as general or personal advice if:

- you clarify at the outset that you are giving the client factual information where there is a reasonable likelihood of doubt; and
- the information is not intended to imply any recommendation or opinion about a financial product.

### **Financial Product advice (general or Personal)**

Financial product advice generally involves a qualitative judgement about or an evaluation, assessment or comparison of some or all of the features of a financial product: see RG 36.18.

If a communication is a recommendation or a statement of opinion, or a report of either of these things, that is intended to, or can reasonably be regarded as being intended to, influence a client in making a decision about a particular financial product or class of financial product (or an interest in either of these), it is financial product advice: s766B

### **General vs Personal Advice**

Advice may be regarded as personal advice if it is presented in a way that means a reasonable person might expect you to have considered one or more of the client's objectives, financial situation or needs: see RG 175.36. General advice about a financial product will not be personal advice if you clarify with the client at the outset that you are giving general advice, and you do not, in fact, take into account the client's objectives, financial situation or needs.

When you are giving general advice to a client, you must warn the client that:

- the advice has been prepared without taking into account their objectives, financial situation or needs;
- the client should, therefore, consider the appropriateness of the advice, in light of their own objectives, financial situation or needs, before acting on the advice; and
- if the advice relates to the acquisition, or possible acquisition, of a particular financial product, the client should obtain a Product Disclosure Statement (PDS) (if required) relating to the product and consider the PDS before making any decision about whether to acquire the product: s949A(2).

In addition to giving a general advice warning, it is good practice to take reasonable steps to ensure that the client understands at the onset that they are getting general advice and not personal advice and that you have not taken into account their objectives, financial situation or needs in giving the general advice. This will avoid confusion and help the client to understand the nature of the advice they are getting.

The following are scenarios that we see as being common. These are only guidelines and the opinions expressed may vary depending on specific circumstances. You are encouraged to consult with Lifespan head office staff when unsure if a particular scenario constitutes personal advice and what is required. Consideration must also be given to any applicable ASIC guidelines.

In all circumstances what transpires should be noted in the client file, whether it be as part of an advice document such as a SoA or file note or other. Also the adviser must give to the client factual



information detailing the risks and obligations of SMSF trustees, setup and ongoing costs and penalties that may apply for breaching.

1. Client has a significant amount of assets and directs AR to set up an SMSF, client does not want advice. Adviser provides general advice around different issues surrounding SMSFs and trustees by way of general discussion and by providing the client with a general advice warning. Adviser may or may not set up the SMSF on the direction of the client.
  - a. Our view is that a SOA is not required however general advice is provided and a general advice warning must be provided.
  - b. The adviser must offer to give advice on the suitability of SMSF
  - c. **There may be times that it is best to turn the client away.**
2. Client has significant amount of money in super and is thinking about setting up a SMSF but is unsure about the SMSF structure. Adviser provides general information/advice about SMSFs such as tax treatment of contributions, risks and obligations of SMSF trustees, setup and ongoing costs, information about the types of investments that can be accessed through SMSF. Adviser may or may not set up SMSF.
  - a. Our view is that so long as the adviser does not take into account personal circumstances of the client and does not make a recommendation and gives a general advice warning, then only General Advice has been provided.
3. Client has significant amount of money in a personal super fund and wants to know if an SMSF is right for them.
  - a. The adviser must consider the client's personal circumstances to provide this advice. Therefore personal advice will be given and a SOA must be provided.
  - b. Advisers must determine whether or not the existing fund has insurance.
    - i. If there is insurance in the existing fund, the adviser must consider whether or not it is appropriate to terminate it.
    - ii. Where this cannot be determined, the adviser must recommend that the client only do a partial rollover leaving enough money in the existing fund to keep the insurance going. The adviser must then recommend that the client seek advice as to the appropriateness of this insurance or as to whether they should seek insurance elsewhere.
  - c. Scope of advice must be clear about what advice is being given and what is not
    - i. Scope out advice relating to underlying investment products of each super vehicle(from and to fund)
    - ii. Adviser must state where relevant that these other costs such as MERs and Adviser fees do exist and that the client should obtain advice to obtain an accurate comparison between those of the from fund and the cost of their investment strategy
  - d. Cost Benefit Analysis (CBA) to compare the two vehicles, i.e. cost of funds without considering underlying investment costs or adviser fees. CBA should also disclose that these other costs exist and that the client should obtain advice on this before implementing the advice.
  - e. When recommending the client set up the SMSF, the adviser must recommend that the client obtain advice on the insurance needs of the members.
4. The adviser suggests the concept of an SMSF to the client. This can be general or personal advice depending on the conversation or marketing collateral used however it will be more

heavily scrutinised because it is suggested by the adviser and if also the accountant, the client's personal and financial information is already known to the adviser?

- a. At the very least, the adviser is giving general advice and if it ends there then the adviser should follow steps as per 2. above
- b. If the adviser takes into account 1 or more of the clients personal circumstances then they have given personal advice and the adviser should follow steps as per 3. and an SOA provided.
- c. In this scenario, because the idea for an SMSF has been driven by the adviser, advisers need to be extra careful and Lifespan or ASIC are more likely to take the view that personal advice has been given and an SOA needs to be provided when the result is that the client does set up an SMSF.

#### Advice on the continued suitability of an SMSF for the client

INFO 206 provides guidance about :

- the relevant conduct and disclosure obligations
- the need for advice on the cost effectiveness of an SMSF – in particular, if the starting balance is below \$200,000
- the need for advice on the costs of setting up, operating and winding up an SMSF
- **the need for advice on the continued suitability of an SMSF for the client**

It is paramount that representatives dealing in SMSF are well acquainted with the all relevant regulations and guides associated with SMSF advice.

The following is an extract from ASIC information sheet (INFO 206) regarding the last point; the need for advice on the continued suitability of an SMSF for the client information.

“Later advice should include an assessment of whether the client's relevant circumstances are significantly different from when the initial advice to set up an SMSF was given. This includes considering the ongoing appropriateness of the SMSF.

For SMSFs established with a starting balance below \$200,000, the later advice should also note whether the client is still expected to be in a better position. For example, if an SMSF was established with a balance below \$200,000 on the expectation of a large asset being transferred to the SMSF within a few months, this could be confirmed in any subsequent SOA or Record of Advice (ROA): regulation 7.7.10AE of the Corporations Regulations 2001.

Further advice should also assess whether an SMSF that drops below \$200,000 (e.g. while the SMSF is in pension phase) continues to be appropriate for the client.

The continued capacity, capability and time commitments of the client should also be considered.” ASIC are likely to look more closely at advice given to a client after a decision to set up or switch to an SMSF is made if the later advice does not clearly set out:

- how the adviser assessed whether the SMSF advice continues to be suitable for the client
- whether the SMSF continues to be suitable for the client.

Below is a series of examples outlining what documentation must be prepared and presented to the client as part of the advice process. This does not represent all possible scenarios, and you are encouraged to consult with Lifespan head office staff when unsure if a particular scenario constitutes personal advice and what is required.

Post July 01, 2016		
Areas of SMSF Advice	Type of Advice	Advice Document Required
Establishment of an SMSF on client instruction	N/A	No Advice Execution Only
Recommend a client establish an SMSF	Personal Advice	SoA
Provide factual information about the different types of superannuation funds	N/A	None
Recommend one superannuation structure over another	Personal / General	SoA *
Recommend the Consolidation and rollover of any existing fund(s) into an SMSF	Personal / General	SoA *
Discuss in general terms the possibility that members may lose benefits as a result of any rollover of existing funds	General Advice	None
Provide factual information on superannuation related matters such as contribution caps, sole purpose test, related party transactions	N/A	None
Discuss in the form of factual information the various contribution limits that may apply to a members' fund	N/A	None
Make a recommendation as to the amount of contribution the client should make into their SMSF	Personal Advice	RoA / File note
Make specific recommendations on contribution strategies with their SMSF	Personal Advice	SoA / RoA *
Recommend that a member commence a pension (either Account based or Transition to Retirement Pension (TTR))	Personal Advice	SoA / Further Advice
Determine the maximum and minimum annual pension amounts payable (including TTR) for the SMSF based on the account balance at the relevant time.	N/A	None
Recommend the amount of pension payment to be taken from the SMSF including TTR	Personal Advice	RoA
Prepare an Investment Strategy for the members of an SMSF	N/A	None
Recommend the suitability for a client to use their SMSF to purchase property	Personal Advice	SoA
Recommend the suitability for a client to use a Limited Recourse Borrowing Arrangement (LRBA) in their SMSF to fund the purchase of property	Personal Advice	SoA
Recommend the application and use of Binding Death benefit nominations for the SMSF	N/A	None
Discuss the merits of different types of Superannuation in addition to SMSFs	General Advice	None

## Annexure 3 - No Advice Acknowledgement

### NO ADVICE EXECUTION ONLY FORM

Version April 2016

#### WARNING TO CLIENTS

Lifespan strongly recommends that you should always obtain professional advice before making any investment or selecting insurance, particularly an investment involving thousands of dollars, to determine if the investment or insurance is suitable for your particular needs and circumstances.

You should only sign this form in very limited circumstances explained below. Usually this form is only used for share transactions where you research the share yourself and ask your adviser to buy or sell it.

It is rare that this form is used for any other investments than shares since most people prefer to receive advice on managed funds, insurances and other financial products due to their greater complexity.

This is an important document because by signing it you acknowledge that Lifespan and its authorised representative referred to below has not provided you with any advice about the financial product you have decided to invest in nor did you require Lifespan or its representative, the representative's employer, referrers or any of their associates, to give you any advice about the product.

Before you invest you should be aware that the particular investment may not be appropriate to your needs or circumstances, might not have been researched or approved by Lifespan, or might be too risky or overpriced, and you will be entirely responsible for any negative consequences or financial losses resulting from the investment.

You should only ever sign this form where you have researched and selected the investment yourself without any assistance from Lifespan or its representative and where you are prepared to take full responsibility for the consequences such as possible complete loss of capital that may result from proceeding with this investment.

**You should NOT sign this document unless you agree to the following:**

1. You can read, speak and understand English.
2. You are aware that Lifespan or its representatives, for a fee or receipt of commissions from the product issuer, can provide you with personal advice about the investment or insurance product and whether it is appropriate for you.
3. Neither Lifespan nor its representatives, their employers, referrers, nor any of their associates, discussed the product with you prior to you deciding you wanted to invest.
4. Neither Lifespan nor its representatives recommended the investment or insurance product or expressed any opinions in favour of proceeding with the transaction..
5. You have conducted your own research on the investment or insurance product and you obtained a copy of the Product Disclosure Statement from a source other than Lifespan or its representatives.

6. You have read the Product Disclosure Statement and understand the information in the document, in particular, the risks of investing in the product.

**Description of Product:**

**Product Amount: \$**

I/We authorise <Adviser Name>, an Authorised Representative of Lifespan Financial Planning Pty Ltd to implement the above product.

I/We confirm that I/we have sought the services of <Adviser Name> **solely on the basis of executing** the above named product which has been researched by **myself / ourselves**.

I/We acknowledge that **no advice**, research or commercial information has been requested or received from the representative named above or his employer, referrer or associates.

I/We do not require <Adviser Name> to determine my financial needs goals, risk profile, and level of insurance cover or to make any investigation or recommendation in relation to the above named product.

I/We take full responsibility for any losses resulting from investing in this product with **no advice** from Lifespan Financial Planning Pty Ltd or my adviser. I/We acknowledge that this product may not be appropriate to my financial needs and objectives.

I/We acknowledge that this product may be speculative by nature and may involve a high degree of commercial risk. Neither Lifespan Financial Planning Pty Ltd nor < Adviser Name> **guarantees** the performance or the return of capital through execution of the above product. Capital values and income distributions may fluctuate sharply up or down due to changes in economic and other conditions.

**Brokerage and Fee Disclosure**

The following table shows all the costs to you as well as detailing both the total commission and/or fees paid (upfront and ongoing) as split between myself and the Licensee (Lifespan Financial Planning). Our fees are inclusive of our time spent for the implementation of your product(s).

Product Description	Amount Invested \$	Cost to client \$	Lifespan xx% \$	Adviser xx% \$
<b>Upfront Fees</b>				
Administration Costs for Implementation of Product				
<b>Total Upfront Fees</b>				
<b>Ongoing Annual Fees</b>				
Adviser Service Fee				
Product MER				
<b>Total Ongoing Fees</b>				

## Client Declaration

I/We have read and understood this acknowledgement and confirm that the investment(s) in the product(s) **named in the table below**, for the amount specified in the table, was done **without any advice** from Lifespan Financial Planning Pty Ltd and I/We take full responsibility for any future loss that may result from this decision. **We also confirm that we have read the warnings at the beginning of this document and the 6 statements.**

Delete if not applicable: I acknowledge that my adviser recommended that I do NOT proceed with this transaction however I have instructed the adviser to proceed with it on an execution only basis.

**Client Name**

**Client Name**

\_\_\_\_\_  
**Client Signature**

\_\_\_\_\_  
**Client Signature**

Date \_\_\_\_/\_\_\_\_/20\_\_\_\_

Date \_\_\_\_/\_\_\_\_/20\_\_\_\_

## Adviser Declaration

I have obtained prior approval from Lifespan to use this form where the investment exceeds \$10,000 or where insurance is involved.

I declare that I have provided **no advice** to <Client Name> concerning the above product (s) and **this / these** product (s) decision (s) **was / were** made solely at the client (s) discretion.

I also understand that Lifespan and its directors will not be held responsible for any adverse consequences resulting from this product decision as this decision is at the sole discretion of the client(s).

Delete if not applicable: I recommended that the client should NOT proceed with this transaction however the client(s) has/have instructed me to proceed with it on an execution only basis.

**Adviser Name:**

\_\_\_\_\_  
**Adviser Signature**

Date \_\_\_\_/\_\_\_\_/20\_\_\_\_

## Annexure 4 - Client Direction Authority – Scope of Advice

To: Lifespan Financial Planning Pty Ltd ABN 23 065 921 735  
PO Box R686  
Royal Exchange  
Sydney NSW 1225

I hereby request (**Representative name**) (the Representative) to provide advice in relation to the following specific objectives and/or products.

- It has been explained to me that it would be preferable to permit the Representative to **[undertake a full review of my objectives, financial situation and particular needs] or [provide a review and possibly a recommendation relating to [state other topics of advice that you have recommended the client obtain advice on]** but I have indicated that I do not want such a review at this time;
- I am aware that by restricting advice to the specific objectives I risk making a financial commitment that may not be appropriate to my objectives, financial situation and/or particular needs;
- I will provide separately, to this document, all information that is relevant to the specific objectives and/or products and which is required in order that the Representative can have a reasonable basis on which to provide advice to me.

Requested by:

\_\_\_\_\_  
Please Print Full Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Confirmation by \_\_\_\_\_ an Authorised Representative of Lifespan Financial Planning Pty Ltd

I confirm that I have provided to the client the explanations outlined above.

\_\_\_\_\_  
Please Print Full Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Annexure 5 - Complaint Record

Complainant

Date Received

Contact made by: Telephone

☐

Letter

☐

In person

☐

Contract Number

**Contract Type** (eg Term insurance, Investor Choice, etc)

**Type of Complaint** (please tick appropriate box)

Product Fees and charges

☐

Alleged Fraud

☐

Poor service from adviser

☐

Investment returns

☐

Policy conditions

☐

Clerical/systems errors

☐

Misrepresentation in promotional material

☐

Inappropriate advice

☐

Company Practices

☐

Service delays

☐

**Details of Complaint including remedy required** (use the section below to record the specific details)


**Action Taken** (please tick box and provide details below including specific actions required, names of people involved and dates referral made or action to be completed by)

Resolved in client favour

☐

Referred to manager

☐

Resolved in company favour

☐

Requested further details from client

☐

Resolved by mutual agreement

☐

Requested client to put details in writing

☐

Your name and date form completed



## Annexure 6 - Breach Record

Lifespan Financial Planning

Breach of Corporations Act Section or Licence Condition:

Date breach identified:

Breached by: on:

Details of breach

Action Taken

Your name and signature and date form completed:

Office Use Only	
Register details	
Entered by:	Registered Date:
Register Id:	Attended by:
Compliance Manager name and signature and date:	

## Annexure 7 - Financial Services Guide

Financial Services Guide 4 April 2016

A Guide to our relationship with you and others



### Financial Services Guide

4 April 2016

A Guide to our relationship with you and others

Distribution of this FSG by your adviser, who is a Lifespan Authorised Representative, is authorised by the licensee, Lifespan Financial Planning Pty Ltd (Lifespan).

This Financial Services Guide ("FSG") dated 4 April 2016 outlines your rights as a client and our obligations and responsibilities as the licensee and your adviser.

You have the right to ask us about our charges, the type of advice we will provide to you, and what you can do if you have a complaint about our services. This FSG is intended to inform you of certain basic matters relating to our relationship, prior to us providing you with a financial service.

#### Who provides the financial services offered in the guide?

The financial services are provided by Lifespan and your adviser. Lifespan's Australian Financial Service Licence and contact details are stated on page 4.

#### The key matters covered by the FSG include the following:

- who Lifespan and your adviser are;
- how we can be contacted;
- how Lifespan and your adviser are paid;
- what services we are authorised to provide to you;
- details of any potential conflicts of interest ;
- details of our dispute resolution procedures and how you can access them

#### This FSG comprises and must be read in conjunction with:

- your Adviser's Profile Insert that includes details of your adviser's remuneration;
- an Acknowledgment of Receipt of Key Documents form for you to sign.

#### Statements of Advice and Product Disclosure Statements

You should also be aware that you must receive a *Statement of Advice* (SOA) and Product Disclosure Statements when personal advice involving a financial product is provided to you, i.e. advice that takes into consideration your personal objectives, financial situation and needs. The *Statement of Advice* will contain the advice, the basis on which it is given which may have influenced the advice. If your adviser provides further advice to you, but not in writing, and that further advice is

related to the advice provided in a previous Statement of Advice, that further advice will be recorded in a Record of Advice (ROA). You may request an ROA from your adviser or Lifespan up to seven years after the further advice was provided at no additional cost. In the event we make a recommendation to acquire a particular financial product (other than securities), we must also provide you with a Product Disclosure Statement containing information about the particular product that will enable you to make an informed decision.

#### Who is responsible for the financial services provided to me?

Your adviser acts on behalf of Lifespan who is responsible for the advice given to you. However, your adviser may operate separate businesses which do NOT involve Lifespan in any way, such as: accounting; auditing; tax return preparation; self-managed super fund compliance and administration; property sales and referrals; and other products and activities. Therefore Lifespan is NOT responsible for advice and work associated with products and services where your adviser is not acting as an authorised representative of Lifespan. If you are uncertain you should ask either your adviser or Lifespan Head Office who is responsible for that particular advice or transaction.

#### Who is Lifespan?

Lifespan is a holder of an Australian Financial Services Licence which enables it to act as a financial services provider under the Corporations Act. Lifespan was established in August 1994 and is privately owned by the family interests of the Joint Managing Director, John Ardino who has over 30 years experience in financial planning. Lifespan is a Professional Partner of the Financial Planning Association of Australia Ltd, and abides by their Code of Ethics and Rules of Professional Conduct. Lifespan provides a wide range of services to a large network of representatives across Australia to enable them to provide sound advice.

These services include: compliance; supervision; investment research and advice; ongoing professional development and training; an adviser help desk across all financial planning issues and general technical support and advice.

#### Does Lifespan have any relationships or associations with product issuers?

Lifespan and Omniport Ltd have the same shareholders. Omniport Ltd is an unlisted public company, which issues the Omniport Wrap Service.

Omniport Ltd is also a product sponsor of the Omniport Superannuation and Pension Service, which is issued by Avanteos Investments Ltd, the Approved Trustee of Omniport. If appropriate for your needs and objectives, your adviser may recommend the Omniport products to you.

The transactional, administrative and custodial systems underlying Omniport are provided by Avanteos Investments Ltd, a company fully owned by the Commonwealth Bank. Lifespan has no ownership connections with any other financial product issuers.

#### What financial services are available to me?

Financial planning basically involves determining your current situation; establishing your realistic and reasonable goals and needs including your risk profile; and exploring the costs and benefits, potential risks and returns, advantages and disadvantages of the various options reasonably available to you to reach those goals within the limits of relevant laws and available solutions. A course of action is recommended, selected and implemented. The results are periodically reviewed in the light of changes in investment markets, legislation and your own circumstances, needs and goals.

Unless their authorisation is restricted (see the Adviser Profile) Lifespan advisers can generally provide you with sound advice relating to a wide range of important areas such as wealth creation, retirement, redundancy, superannuation, risk insurance, estate planning, centrelink payments, cashflow management, budgeting and debt repayments, structuring of investment portfolios, borrowing to invest, complex company and trust structures, and so on. Lifespan's research and technical support services enables advisers to provide value added advice on a broad spectrum of financial problems which takes into account relevant regulations pertaining to your situation and goals.

Lifespan is licensed to deal in and provide financial advice on the following range of financial products: Deposit and payment products, standard margin lending, managed investment schemes including Investor Directed Portfolio Services and Managed Discretionary Accounts, securities including shares, Retirement Savings Accounts, superannuation, life insurance investment and risk products and government issued debentures, stocks and bonds.

Lifespan advisers act on your instructions following your acceptance of their advice in the *Statement of Advice*. They should not act independently of your specific instructions. Any special instructions you provide should be communicated to your adviser in writing. These instructions should be forwarded in an email, fax or posted letter to your adviser.

#### Lifespan provides tailored, general and ongoing advice

Lifespan usually provides advice tailored to your individual circumstances and we generally have the capacity of implementing the advice we give, except

where this may require the use of other professionals (accountants and lawyers). You may choose to enter into an agreement with your adviser to provide you with both initial advice and ongoing advice. If appropriate, we may also provide general advice only, where you are ultimately responsible for ensuring that this advice is suitable to your particular needs, personal circumstances and financial situation. In this case, you should also obtain any related product disclosure statements to assist in this purpose.

#### Should I ever make out cheques for investment monies to a Lifespan Representative's account?

Lifespan does not allow representatives to receive your investment funds into their own accounts or into any Lifespan trust account. You should at all times only write out cheques for financial products to those approved financial institutions recommended by your adviser (as specified in the Product Disclosure Statement or similar document), and never to any entity or person other than those institutions.

You should also not sign any blank forms; appoint your adviser as your attorney or authorised signatory without the approval of Lifespan; or appoint any other person as your attorney or authorised signatory unless you have received legal advice.

#### What information should I provide to receive personalised advice?

You will need to provide us with your current personal and financial situation such as details of assets, liabilities, income and expenses and personal objectives. This can best be accomplished by completing a Lifespan Client Data Form. The amount and type of information we will require from you depends on what financial services you require.

If you choose not to supply the required information, the advice you receive may not be appropriate to your needs, objectives and financial situation. You should read the warnings contained in the Statement of Advice carefully before making any decision relating to this limited advice and obtain any related product disclosure statements to assist you.

#### How will I pay for the services provided?

Your adviser's specific method of remuneration and fees, including referral fees are detailed in the Adviser Profile. The exact details will be disclosed to you in an invoice or in the Statement of Advice.

Where the Adviser charges you a fee the cheque will need to be payable to "Lifespan Financial Planning Pty Ltd". If the adviser's remuneration includes commission paid by the product provider, such commission payment will be made to Lifespan. Lifespan pays 75% or more of all commissions and fees to your Adviser depending upon their total revenue.



### How are any commissions, fees or other benefits calculated for providing the financial services?

All commissions are payments made by the product provider to Lifespan and are calculated as a percentage of the initial insurance premium. Commissions are of two types: (a) upfront or initial which apply only to insurance products; and (b) risk insurance products renewal commissions.

The precise amount of all these commissions and any other fees charged is provided in your Statement of Advice.

The typical range of commission and fee rates for investments and insurance products is as follows.

Upfront fees can vary between nil and 5.5% on investment products. Upfront commissions can be up to 135% of the premium paid on insurance products. Example: \$100,000 invested in a wrap service may involve an upfront fee payment of say 3% or \$3,000 which would be deducted from your investment account and paid to Lifespan leaving a net investment of \$97,000.

Your adviser may agree with you to charge fixed dollar or percentage based service fees which are collected by platforms and other product providers and the percentage based fees can be up to 2% pa but normally in the range of 0.5% to 1.5% pa depending on the size of the portfolio. Example: A portfolio of \$300,000 may be subject to an ongoing portfolio review fee of 1% per annum paid quarterly. This would amount to \$3,000 per annum.

Volume based payments are described in another section below but the same calculations and examples apply as for trail commissions.

- Fees can be based on either:
  - a percentage of funds invested or funds under advice, or
  - hourly rates multiplied by the hours worked, or
  - an agreed dollar cost for the value of the specific service being performed, or
  - a combination of these.

The three stages of financial planning are Initial Advice, Implementation and Ongoing Reviews. There is usually a separate fee for each of the three stages. Your adviser's remuneration structure for each advice stage will be found in their Adviser Profile and the exact amount disclosed to you in the SOA.

### Fund Manager Sponsorship and Other Benefits

Other forms of remuneration refer to what is commonly called 'soft dollar benefits' and is defined as benefits other than standard commission payments or a direct client fee. Soft dollar benefits include monetary payments as well as non-monetary payments. These soft dollar payments may be paid by product providers or the licensee to authorised representatives or may be paid by product providers to the licensee. Lifespan and its authorised representatives

may receive the following direct dollar and business benefits:

- Sponsorship of the Lifespan Annual Conference and professional development training seminars.

Lifespan seeks and sometimes obtains sponsorship from product providers and platform operators who have been previously approved, following our research conducted into the product providers and platform operators. The amount of sponsorship varies from year to year and is provided for costs associated with the general operation of Lifespan's business as well as to provide speakers for educational sessions at professional development days or conferences. The specific sponsorship amounts are entered into our Alternative Remuneration Register which can be provided to you on request within 7 days.

Lifespan and its authorised representatives also receive non-financial assistance from product providers relating to technical and professional educational services, receipt of economic research, business development management support, client seminars and presentations.

Lifespan representatives and staff may also receive entertainment benefits, for example, tickets to sporting events and theatrical performances, the value of which is restricted to \$300 and these will be recorded in the Alternative Remuneration Register.

### Alternative Remuneration Registers

The Financial Planning Association (FPA) has developed an Industry Code of Practice requiring that Lifespan, your adviser and Omniport each maintain a Register detailing alternative forms of remuneration paid and received. You may ask your adviser or Lifespan to see any of the above registers and it will be provided within 7 days.

### Additional Payments

Lifespan has negotiated or will negotiate volume based and other additional volume based payments with several fund managers and platform providers including Omniport, and also with risk insurance providers. These volume based payments are sometimes referred to as rebates or platform margins or other names. Volume based payments on various wholesale and retail managed funds and platforms range from 0.05% pa of funds under advice (FUA) to potentially 0.30% pa of FUA. These percentages may vary from year to year. Additional volume based risk insurance commissions may range from 10% to 40 % of the premiums paid. A share of this volume based commission currently ranging from nil to 60% may be payable to your adviser.

This share may vary from year to year and is dependent upon Lifespan's gross profit from your adviser's activities and other criteria. All relevant details of Lifespan's additional commissions on any financial products and the share your adviser receives will be fully disclosed in your Statement of Advice.

Please note that the ranges of all commission percentages referred to in this document may vary up or down at any time. The actual amounts relevant to you are provided in your SOA.

**What should I know about any risks of the investments or investment strategies you recommend to me?**

Lifespan advisers may only recommend to you investment products that are researched, analysed and approved by Lifespan. Your adviser should explain any significant risks of investments and financial planning strategies. If the adviser does not do so, you should contact us to explain those risks to you.

**What information do you maintain in my file and can I examine my file?**

We maintain a record of your personal profile including details of your personal objectives, financial situation and needs. We also maintain records of any recommendations made to you. We are committed to implementing and promoting a privacy policy, which will ensure the privacy and security of your personal information. If you wish to examine your file please ask us. We will make arrangements for you to do so.

**Who do I complain to if I have a problem with your services?**

If you have a complaint about the service provided to you, you should take the following steps:

Contact your adviser and tell your adviser about your complaint;

If your complaint is not satisfactorily resolved within 3 business days, please contact The Compliance Manager, by telephone on (02) 9252 2000 or, in writing, at Level 23, 25 Bligh Street, Sydney NSW 2000. We will try to resolve your complaint quickly and fairly;

If you still do not receive a satisfactory outcome, you have the right to complain to the Financial Ombudsman Service at GPO Box 3, Melbourne, VIC 3001 or on the local call number -1300 780 808. Lifespan is a member of this disputes resolution service.

Alternatively, you may contact the Australian Securities & Investments Commission (ASIC) on their free call Info Line on 1300 300 630 which you may use to make a complaint and obtain information about your rights.

**Compensation Arrangements**

Lifespan holds Professional Indemnity Insurance that complies with the compensation arrangements under Section 912B of the Corporations Act. The Professional Indemnity Insurance policy we hold covers the financial services provided by Lifespan's past and present representatives. This insurance is not intended to cover product failure or general investment losses. Lifespan's policy covers loss or damage suffered by retail clients

due to breaches of all obligations under Chapter 7 of the Corporations Act by the licensee and its representatives. This includes negligent, fraudulent or dishonest conduct.

**Our Privacy Policy**

Our business is governed by legislation protecting your personal information, including the Privacy Act 1988 and Australian Privacy Principles (APPs) Privacy Amendment (Enhancing Privacy Protection) Act 2012 which replaced the National Privacy Principles established under the Privacy Amendment (Private Sector) Act 2000. Our privacy policy is available on our website or on request from us direct as detailed below.

**Contact Us**

If you have any further enquiries please contact:

The Compliance Manager  
Lifespan Financial Planning Pty Ltd  
Suite 3, Level 23, Bligh Chambers, 25 Bligh Street  
Sydney NSW 2000

Postal Address:  
PO BOX R686  
Royal Exchange  
Sydney NSW 1225

Telephone: (02) 9252 2000  
Facsimile: (02) 9252 2330  
[eugene@lifespanfp.com.au](mailto:eugene@lifespanfp.com.au)

Lifespan Financial Planning Pty Ltd  
(ABN 23 065 921 735)  
Australian Financial Services Licence No: 229892  
[www.lifespanfp.com.au](http://www.lifespanfp.com.au)

**Additional Privacy Information**

Further information on privacy in Australia may be obtained by visiting the website of the office of the Australian Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au)



*Security, Growth & Understanding*

## Annexure 8 - Selected Information About Consumer Protection<sup>113</sup>

Historically consumer protection has been the domain of the Australian Competition and Consumer Commission (formerly the Trade Practices Commission) and the relevant State departments of Fair Trading. The legislation has been the Trade Practices Act ('TPA') and the Fair Trading Acts or equivalents in the various States. The Wallis Report recommended that consumer protection for the Financial Services Sector be included under the gambit of the single regulator that it had put forward to the government. The government accepted those recommendations made in the report.

In June 1998 the Financial Sector Reform (Consequential Amendments) Act 1998 No 48 received assent. It amended the Australian Securities and Investments Commission Act 1989 (formerly the Australian Securities Commission Act 1989) to include consumer protection provisions in relation to the supply of financial services and for unconscionable conduct. This brought the consumer protection under the administration of the Australian Securities and Investments Commission (ASIC). It essentially copied the provisions from the Trade Practices Act. The Trade Practices Act was amended at the same time to exclude the above practices in relation to financial services. The provisions relating to third line forcing though have been retained in the Trade Practices Act or the equivalent Fair Trading Act of the appropriate State.

In 2010 the legislative scene was amended again. The Trade Practices Act no longer exists. It has now been incorporated into the Competition and Consumer Act 2010. The requirements are the same (even the sections are numbered the same) and financial services in the main is still excluded. There was the addition of the Unfair Contract Terms into both Acts so for financial services unfair contract terms are covered under the ASIC Act. The ASIC Act was amended by the new legislation passed as the Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010 and became fully effective from 1 July 2011.

The three broad aims are to encourage fair and ethical competition, efficiency in business and to provide protection for consumers.

This annexure is to provide you with a brief summary of sections that could impact on your activities on behalf of Licensee Name. For further information or if you are unsure of the validity of an activity in relation to consumer protection contact Licensee Name immediately.

### Competition and Consumer Act 2010 Part IV – Restrictive Trade, Division 2

#### *Third line forcing – s.47*

This is a form of exclusive dealing which is prohibited by the Act. It involves the supply of goods or services on condition that the purchaser acquires goods or services from a particular third party. For a contravention of the TPA to occur the following prerequisites must exist:

2 products. There must be one product which the purchaser or acquirer desires and another which is forced upon them.

3 parties. The supplier of goods or services must "force" the goods or services of another party onto the purchaser of another party onto the purchaser or acquirer.

A condition. The purchaser or acquirer of goods or services will not gain those goods or services without also being required to obtain the goods or services of a nominated third party.

If two products are sold independently – even if by the same seller – there is unlikely to be a contravention.

---

<sup>113</sup> These Notes are not a complete summary but focus on issues that are most relevant to you in your activities on our behalf.

There are authorisation and notification provisions that empower the ACCC to grant immunity from legal proceedings.

A party involved in the arrangement must apply to the ACCC who will then assess the circumstances before making a decision.

### *Penalties and Remedies*

Various penalties and remedies are available.

These are:

- ✗ Monetary penalties of up to \$10 million for companies and \$500,000 for individuals **(s76)**.
- ✗ Injunctions **(s80)**.
- ✗ Damages **(s8L)**.
- ✗ Ancillary orders of various kinds in favour of persons who have suffered loss or damages because of the conduct **(s87)**.

A finding of fact made by a court may be used as prima facie evidence in subsequent related proceedings by a person for compensation **(s83)**.

## The Australian Securities and Investments Commission Act

### Subdivision C — Unconscionable conduct

The ASIC Act prohibits unconscionable conduct in both **commercial dealings(s. 12CA)** and in **consumer transactions(s. 12CB)**.

#### *Commercial transactions — s. 12CA*

Section 12CA provides that a corporation must not, in trade or commerce, engage in conduct in relation to financial services that is unconscionable within the meaning of the unwritten law of the Australian States and Territories — that is, the general non-statutory or common law as it has evolved through decisions of the Courts. 'Unconscionability' is accordingly not defined in the Act.

Section 12CA **does not apply** to situations covered by s. 12CB.

The term **unconscionable conduct** has come to refer to circumstances that have the following elements:

- ✗ one party to a transaction suffered from a special disability or disadvantage, in dealing with the other party; and
- ✗ the disability was sufficiently evident to the stronger party; and
- ✗ the stronger party took unfair or unconscionable advantage of its superior position or bargaining power to obtain a beneficial bargain.

#### *Consumer transactions — s. 12CB*

Section 12CB prohibits unconscionable conduct by corporations when they supply or possibly supply financial services to consumers.



In such a transaction the stronger party may not take advantage of its position by behaving in an unfair or unreasonable manner.

Although the Act does not define 'unconscionable conduct', s. 12CB does include a non-exhaustive list of factors which may be taken into account by the Court. These are:

- ✗ relative bargaining strengths of the parties;
- ✗ whether the consumer understood any documentation used;
- ✗ the existence of undue influence or pressure, or unfair tactics;
- ✗ the imposition of conditions not reasonably necessary to protect the supplier's legitimate interests; and
- ✗ how much the consumer would have had to pay, and under what circumstances, to buy equivalent goods or services from another supplier.

Examples of conduct that might be found unconscionable are:

- ✗ high pressure sales techniques;
- ✗ harassment;
- ✗ use of standard form contracts which leave no room for negotiation; and
- ✗ taking advantage of people who, due to limited command of English or for some other reason, did not understand the documents involved.

## Remedies

Individuals and the ASIC can bring civil actions in the Federal Court for unconscionable conduct seeking monetary compensation, rescission or variation of a contract, refund, or specific performance of a contract. Damages under s. 12GF are not available as a remedy for unconscionable conduct, but other equivalent orders can be made by the Court under s. 12GM(7)(e). Actions under ss 12CA and 12CB can also be brought in State or Territory Courts of competent jurisdiction, and the extent of remedies available depends on the particular Court's jurisdiction.

## Subdivision D — Consumer Protection

Subdivision D of the Act contains a range of provisions aimed at protecting consumers and corporations that qualify as consumers.

The ASIC has responsibility for unfair practices (Division 2).

Protection is also afforded through:

- ✗ conditions and warranties in consumer transactions (Subdivision E); and
- ✗ actions against a person who breaches this Act (Subdivision G).

•

## Unfair practices — ss 12DA-12DN

Division 2 Subdivision D imposes strict liability — ie. intention does not have to be proved.

## General prohibitions — s. 12DA

### Misleading or deceptive conduct

Section 12DA is a very broad provision. It prohibits conduct by business which is misleading or deceptive, or which is likely to mislead or deceive. Whether or not conduct is held to be misleading or



deceptive will depend on the particular circumstances of each case. It should be remembered that there does not need to be intention to mislead or deceive someone.

Generally, sellers are required to tell the truth or refrain from giving an untruthful impression. Failure to disclose material information may in some circumstances be a breach of the Act. The duty to disclose can arise even where there is no particular relationship between the parties — such as trustee and beneficiary or principal and agent.

Only civil proceedings can be brought for breach of s. 12DA.

### *Specific prohibitions — ss 12BB, 12DB–12DN*

#### *Misleading representations*

Section 12BB prohibits the making of representations about the happening of any future event without reasonable grounds (eg projections or predictions, without reasonable assumptions). A business is deemed not to have had reasonable grounds for making a prediction unless it can produce evidence to the contrary (eg projections or forecast must have a reasonable basis and the onus of proof rests with the person providing the projection or forecast).

#### *False or misleading representations*

Section 12DB specifically prohibits false claims about:

- ✗ the standard, quality, value, or grade of services (s. 12DB(a))
- ✗ the agreement of a particular person to acquire the services (s. 12DB(b));
- ✗ the sponsorship, approval, performance characteristics, uses or benefits of services (s. 12DB(c));
- ✗ the sponsorship, approval or affiliation of a corporation (s. 12DB(d));
- ✗ the price of services, for example that it is less than a competitor's price (s. 12DB(e));
- ✗ a consumer's need for any services (s. 12DB(f)); and
- ✗ the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (s. 12DB(g)).

#### *Not specifying the full cash price*

**Section 12DD** requires corporations to specify the full cash price when it advertises part of the price of the supply or possible supply of financial services, for example the deposit or the terms of repayment.

#### *Falsely offering prizes*

**Section 12DE** prohibits corporations from offering gifts, prizes or other free items in connection with the supply or possible supply of financial services if it does not intend to provide them as offered.

### *Misleading the public as to the nature or characteristics of financial services*

**Section 12DF** prohibits a corporation from engaging in conduct which is liable to mislead the public as to the nature, , the characteristics, the suitability for their purpose or the quantity of any financial services.

### *Bait advertising*

Under **s. 12DG** financial services must not be advertised at a specified (not necessarily a 'special') price if the seller is or should reasonably have been aware that it would not be able to supply reasonable quantities at that price for a reasonable period. What is 'reasonable' will depend on the particular circumstances, including the market in which the goods are sold and the nature of the advertisement.

### *Referral selling*

**Section 12DH** prohibits the sales technique of inducing consumers to acquire financial services by offering them a rebate, commission or some other benefit in return for suggesting potential customers' or assisting in any way in supplying financial services to other consumers if the inducement is contingent on an event occurring after the sale is made.

### *Accepting payment without intending to supply*

**Section 12DI** prohibits a corporation from accepting payment or other consideration for financial services where it does not intend to supply them or intends to supply services materially different from those paid for.

It may also be a breach if there are reasonable grounds, of which the corporation was (or should be) aware when accepting payment, that it would not be able to supply.

### *Harassment or coercion*

**Section 12DJ** prohibits the use of physical force, undue harassment or coercion by a corporation (or its servants or agents) in relation to the supply or possible supply of financial services to a consumer, or payment by a consumer for supply or possible supply of those services.

### *Pyramid selling*

**Section 12DK** prohibits the promotion of, or participation in, pyramid selling schemes in which a person makes a payment to a corporation with the prospect of receiving payments for the introduction of other participants to the scheme.

### *Unsolicited credit and debit cards*

**Section 12DL** prohibits a corporation from sending a person a debit card or an equivalent that provides access to a financial product unless it is a renewal or replacement or the person specifically requested it in writing.

The section also prohibits a corporation from amending a credit card to be used as a debit card unless it is complying with a written request from the person.

### *Unsolicited financial services*

**Section 12DM** prohibits a corporation from demanding payment for unsolicited financial services unless it has a reasonable basis for believing it has a right to payment.

### *Defences and exemptions*

A defendant can be excused liability in a criminal prosecution (for fines) for contravention of Subdivision D or E if it can be shown:

- ✗ the contravention was due to a reasonable mistake;
- ✗ the defendant relied on information supplied by another person (but not an employee or an agent of the business);
- ✗ the reason for the alleged contravention was:
  - the action or failure of another person (but not a director, employee or agent of the defendant);
  - an accident; or
  - some other matter beyond the defendant's control; and
  - the defendant took reasonable care and precautions to avoid the contravention (**s. 12GI**).

### *State of mind*

In proceedings against a corporation, the state of mind of its directors, servants and agents can be attributed to the corporation. A person's 'state of mind' includes knowledge, intention, opinion, belief or purpose. For the person's state of mind to be so attributed, the conduct in question must be within the scope of his or her actual or apparent authority (**s. 12GH**).

### *Penalties and remedies*

The Act provides a range of penalties and remedies for breaches of the unfair practices provisions of Subdivision D or E.

These are:

- penalties of up to 2000 penalty units for individuals and up to 10000 penalty units for companies (s. 12GB) other than an offence under 12 DA; [penalty units are converted to a dollar equivalent by multiplying the number of units by the prescribed dollar amount under Section 4AA of the Crimes Act 1914]
- injunctions to prevent the prohibited conduct continuing or being repeated or to require that some action be taken (s. 12GD);
- damages (s. 12GF);
- corrective advertising (s. 12GE);
- ancillary orders of various kinds in favour of persons who have suffered loss or damage because of the conduct, including:
  - specific performance;
  - rescission and variation of contracts; and
  - damages (s. 12GM).

Jurisdiction basically is conferred on the Federal Court. Several courts of the States have limited federal jurisdiction and several of the courts of the Territories have jurisdiction conferred subject to the Constitution (**s. 12GJ**).

The ASIC, the Minister or any other person can ask the Court for an injunction (**s. 12GD**). The ASIC or the Minister can apply for an order requiring a person who has breached one of these provisions to publish corrective advertising or disclose information to the public (**s. 12GE**).

**Section 12GG** provides that if in a proceeding it is proved that a person has contravened a provision of 12GD, 12GE, OR 12GB of the Act, a finding of fact made by a Court may be used as *prima facie* evidence in subsequent related proceedings by a person for compensation.

## Annexure 9 - Explanatory Notes<sup>114</sup>About The Financial Transaction Reports Act

### Introduction

"The Financial Transaction Reports Act (the Act) is an initiative to assist in the detection of tax evasion and other criminal activity, including offences against Australia's corporate laws and money laundering from drug trafficking and organised crime"<sup>115</sup>.

As outlined earlier in the manual, it is a condition of the licence held by your principal that it acquaint itself with, and comply with, the Financial Transaction Reports Act and s243D of the Australian Securities and Investments Commission Act. Your principal is also required to ensure that all people to whom it issues proper authorities are similarly acquainted with and comply with the legislation.

A key provision of the Act is that a cash dealer that is involved in certain types of financial transactions is required to complete a report about the transaction and send it to AUSTRAC. "Cash dealer" is widely defined and includes securities dealers such as your principal as well as banks, building societies, credit unions, insurance companies such as Licensee Name, insurance intermediaries and trustees or managers of unit trusts.

AUSTRAC (Australian Transaction Reports and Analysis Centre) is the body established to oversee the operation of, and compliance with, the Act. AUSTRAC analyses the reports it receives about financial transactions and, where appropriate, distributes information about those transactions to the taxation and law enforcement authorities.

The types of transactions that are to be reported are:

- |   |   |
|---|---|
| • Suspect transactions                      | any amount and any transaction that is suspicious (not just cash transactions). |
| • Significant cash transaction              | A\$10,000 or more in cash.  |
| • Transfer of cash into or out of Australia | A\$10,000 or more in cash.  |
| • International funds transfer              | All transactions, not just cash.(eg. telegraphic transfers).                    |

### Key definitions

Two definitions that are important in the application of these broad obligations are:

- |               |   |
|---------------|---|
| "cash"        | Refers to actual currency, such as paper money and/or coins, and can be Australian or foreign currency.   |
| "transaction" | Can be any business dealing. It can also include negotiations or discussions that may not result in an actual dealing. However, it does not include mere enquiries. |

### Suspect transaction

<sup>114</sup>These Notes have been extracted from material provided by AUSTRAC. They are not a complete summary but focus on issues that are most relevant to you in your activities on our behalf.

<sup>115</sup> Extract from Guideline No. 1 issued by AUSTRAC.

A suspect transaction may be considered to be any transaction (or negotiations to a transaction) where a cash dealer has reasonable grounds to suspect that information about it may be relevant to an investigation of an evasion or attempted evasion of a taxation law or offences against other Australian laws, including the Corporations Act 2001.

A suspicion might be anything that causes a cash dealer to have a feeling of apprehension or mistrust about the transaction. This may arise from factors such as the unusual nature or circumstances of the transaction itself, the person with whom the cash dealer is dealing, or any other circumstances of the transaction or overall dealings.

A suspect transaction is not restricted to only cash transactions, nor is there an upper or lower limit on the amount. It can apply to any amount.

It is not possible to provide a complete list of circumstances where a transaction could be considered suspect. However some instances which might give rise to such apprehension are where:

- ✗ A statement or comment by the client, or the behaviour of the person (such as undue nervousness) indicates that the transaction might be suspect;
- ✗ You have information or suspicions about the source of the funds or the business background of the client;
- ✗ Some aspects of the transaction do not appear to be consistent with normal investment or commercial considerations;
- ✗ Specific structuring of the transaction is requested. This could be where a client offers cash for investment, with the cash broken into smaller parcels, or spread over a number of days or between more than one person, in an apparent attempt to avoid the completion of a significant cash transaction report;
- ✗ A false or incomplete name, or seemingly false identification, is produced;
- ✗ Large or frequent payments are made by bank cheque or travellers cheques, particularly in circumstances that are not in keeping with normal commercial arrangements or the client's normal dealings; or,
- ✗ A client declines to proceed with a proposed large cash transaction on becoming aware that a significant cash transaction report will be required.

If you encounter a situation that you reasonably believe may be a suspect transaction you should complete a Suspect Transaction Report and forward it to us immediately, so that we can lodge it with AUSTRAC.

If you encounter a suspect transaction situation you must not disclose to the client that you have such an apprehension, or that you will be lodging a Report. To do so is an offence under the Act, which would render you liable to a penalty. Please see the later section on penalties.

#### Significant cash transaction - A\$10,000 or more

This is any transaction involving cash (paper money and/or coins) for an amount of \$10,000 Australian or more or its equivalent in a foreign currency. It could arise, for example, where a person hands over cash for investment or in payment for goods or services. A cash dealer involved in such a transaction is required to complete a Significant Cash Transaction Report and lodge it with AUSTRAC.

It is possible for a significant cash transaction to also represent a suspect transaction. In such an instance, both the Significant Cash Transaction Report and the Suspect Transaction Report should be completed.

In practice, the licence under which you and we operate forbids you to accept any cash whatsoever from a client. Consequently, in your activities on our behalf, you should never receive a significant cash amount that will require reporting.

As mentioned earlier, the definition of “transaction” can include negotiations that do not result in an actual dealing. For example, if a client proposes to make an investment in cash and then, on learning that a report would be required, declines to proceed, the circumstances may create the apprehension that requires you to lodge a Suspect Transaction Report.

#### Transfer of \$10,000 or more in cash into or out of Australia

There is no limit on the amount of cash (paper money and/or coins) that a person may carry with them when they enter or leave Australia, or send via mail or other means. However, where the amount is A\$10,000 or more, or its equivalent in foreign currency, it must be reported to AUSTRAC.

Where a person carries the cash with them while travelling, the person must complete an International Currency Transfer Report, to be given to the Customs Officer on arrival or departure. If the cash is sent by mail or shipped, the Act requires that the person in Australia who receives or sends the cash must complete a similar form and lodge it with AUSTRAC.

The disclosure requirements for these types of transfers apply to all members of the public. As mentioned earlier, the conditions of our licence under which you operate forbids you to be involved in any cash transactions in your activities on our behalf.

#### International funds transfer instruction or telegraphic transfer

A cash dealer that receives or sends such a transfer of funds is required to complete and lodge an International Funds Transfer Instruction Report and lodge it with AUSTRAC.

There is no upper or lower amount limit and the general situation is that all such transactions must be reported, although banks and similar organisations can obtain an exemption for the more common transactions.

These transactions are usually arranged through a bank, in which case it is the bank that transfers the funds and provides whatever information is required to AUSTRAC. However, if a cash dealer arranged a transfer directly, say by telex or similar, the dealer would be required to notify AUSTRAC. It seems likely that transfers by cash dealers via the Internet would be similarly subject to the Act.

In your activities on our behalf you should not be involved in any direct transfers of funds into or out of Australia.

## Penalties

The Act sets out a number of offences. For example, in relation to cash dealers the Act makes it an offence for a cash dealer to refuse or fail to report these transactions to AUSTRAC. It is also an offence to knowingly lodge a report that is false or misleading in a material particular or knowingly omit material information from a report. Some examples of indicated penalties upon conviction are as follows:

Offence	Individual Penalty
Failing to report a suspect transaction	Imprisonment for up to 2 years. (See note below)
Communicating about a suspect transaction to anyone other than AUSTRAC:	Imprisonment for up to 2 years.
Knowingly making a false or misleading statement	Imprisonment for up to 5 years.

Note: The Crimes Act allows a court to impose a fine instead of, or in addition to, imprisonment, the fine being designated in penalty units. On the current (Feb, 1998) amount set for penalty units the 2 years imprisonment equates to a maximum fine of \$13,200. A fine for a corporation could be up to 5 times this amount.

## s243D - Australian Securities and Investments Commission Act

This section is a specific reinforcement of the obligations imposed under the Financial Transaction Reports Act, requiring a cash dealer that is party to a suspect transaction to report the information to AUSTRAC. The effect of the Section is to also bring the obligation within the jurisdiction of the Australian Securities Commission. This is reflected in the fact that the obligation is made a condition of the securities licence under which you and we operate.



You should contact us if you have any queries about any of this information or if you encounter a situation which you believe any of the above circumstances may apply.

## Summary of key information

The following table is a summary of key information about the transactions that require reporting under the Financial Transaction Reports Act. Some have been included only for information, for you should not encounter them in your activities on our behalf.



Type of transaction	Amount	Action required *	When **
Suspect transaction (may be any type of transaction, not just a cash transaction)	Any amount	"Suspect Transaction Report" ( <i>Form 16</i> ) to be completed and sent to: AUSTRAC *** P O Box 5516W CHATSWOOD, NSW 2057 Do not tell client.	As soon as practicable. If urgent : HOTLINE 1800 021 037
Significant Transaction - Cash within Australia	\$10,000 or more	"Significant Cash Transaction Report" ( <i>Form 7</i> ) to be completed and sent to : AUSTRAC Locked Bag 1 Gippsland Mail Centre VIC 3841	Within 15 days. (Within 1 day if foreign currency is involved)
Carrying cash into or out of Australia	\$10,000 or more	"International Currency Transfer Report" ( <i>Form 15</i> ) to be completed and sent to : Customs Officer	On arrival or departure.
Mailing or shipping cash into or out of Australia	\$10,000 or more	"International Currency Transfer Report" ( <i>Form 14</i> ) to be sent to : AUSTRAC Locked Bag 1 Gippsland Mail Centre VIC 3841	As soon as practicable.
International funds transfer instruction – telegraphic transfer	Any amount	"International Funds Transfer Instruction Report" ( <i>Form 17</i> ) to be sent to : AUSTRAC Locked Bag 1 Gippsland Mail Centre VIC 3841	Within 14 days.

\* Arrangements may also be made for reports to be lodged electronically. Further details about this may be obtained from the AUSTRAC forms or directly from AUSTRAC.

\*\* This is the period within which we must lodge the return. Your report must reach us very promptly so that we will be able to comply with the lodgement timetable.

\*\*\* AUSTRAC website address is <http://www.austrac.gov.au/>

## Annexure 10 - Explanatory Notes<sup>116</sup> About The Anti-Money Laundering And Counter Terrorism Act

### Introduction

"The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML) is designed to assist in combating money laundering and financing of terrorism." To achieve these aims, the AML places certain obligations on "reporting entities" (defined in Section 5 of the Act).<sup>117</sup>

As outlined earlier in the manual, it is a condition of the licence held by your principal that it acquaint itself with, and comply with, financial laws. Consequently there is an obligation under the Corporations Act as well as the AML. Your principal is also required to ensure that all people who act for or on its behalf are similarly acquainted with and comply with the legislation.

A key provision of the Act is that a reporting entity that is involved in certain types of financial transactions is required to complete a report about the transaction and send it to AUSTRAC. "Reporting entity" is widely defined and includes Australian Financial Services Licensee Names such as us as well as banks, building societies, credit unions, insurance companies, and trustees of superannuation funds or managers of unit trusts.

AUSTRAC (Australian Transaction Reports and Analysis Centre) is the body established to oversee the operation of, and compliance with, the Act. AUSTRAC analyses the reports it receives about financial transactions and, where appropriate, distributes information about those transactions to the taxation and law enforcement authorities.

### Anti-Money Laundering and Counter-Terrorism Financing Act 2006

From the 12<sup>th</sup> December 2007, verification of identity is required *when a representative arranges for a client to:*

- ✗ Obtain or be issued with new or additional interests/units in a managed investment scheme;
- ✗ Open or make a deposit in a cash management trust;
- ✗ Buy/sell shares/options in a listed company or trust;
- ✗ Pay a premium or be issued with Investment life insurance policy with a regular premium policy: with an annual premium greater than \$1,500; or a single premium policy: with a single premium greater than \$3,000;
- ✗ Obtain or be issued with an Annuity;
- ✗ Obtain or be issued with a Pension;
- ✗ Obtain an interest in or have the ability to transact through a WRAP/Platform/IDPS &
- ✗ Cash out all or part Superannuation interest.

Representatives are required to conduct a client identification procedure whenever one of the above circumstances arises for all new and existing clients and provide the appropriate identification to each Service Provider with the application form.

Please note the client identification procedure is only required to be completed once for each client, not every time one of the above circumstances arises.

---

<sup>116</sup> These Notes have been extracted from material available from AUSTRAC and the Attorney Generals websites. They are not a complete summary but focus on issues that are most relevant to you in your activities on our behalf. AUSTRAC website address is <http://www.austrac.gov.au/>

<sup>117</sup> Extract from Guidance Note No. 1 issued by AUSTRAC

The client identification procedure must be performed by the representative prior to the arranging of the designated service. The person conducting the procedure must be reasonably satisfied that the client is the individual he or she claims to be.

If circumstances arise such that a representative has reason to doubt that a previously identified Client is the person they claim to be, the representative should confirm the accuracy of Client identity details held, and if necessary re-verify the Client's identity (notifying their AFS licensee as soon as possible).

If, after a representative conducts a Client identification procedure, they are not reasonably satisfied that the Client is the individual he or she claims to be, and the representative is unable to conduct a further Client identification procedure to address this doubt, then they should not arrange for the provision of the financial service or product.

At the same time, the representative, if acting as an Authorised Representative, should notify their AFS Licensee Name as soon as possible (preferably within 24 hours) of this fact.

To comply, representatives are required to follow the Client identification procedures depending on the Client type they are dealing with.

- ✗ Individuals
- ✗ Companies
- ✗ Trustees of a trust
- ✗ Partners in a partnership
- ✗ Associations (incorporated and unincorporated)
- ✗ Registered co-operatives
- ✗ Government bodies
- ✗ Client Agents

#### Who can certify documents:

Accountants, Authorised representative with 2 + years experience, Justice of Peace, Magistrate, Registrar or deputy registrar of a court, Lawyer, Chief executive officer of a Commonwealth court, Judge of a court, Notary, Police officer, Postal agent, Permanent post office employee, Australian consular officer or an Australian diplomatic officer.

## Annexure 11– Managed Discretionary Account Service

### **What is a Managed Discretionary Account Service?**

A Managed Discretionary Account Service ('MDA') is a financial service that allows an Australian Financial Services licensee (and its representatives) to manage a portfolio of assets (financial products) for a retail client on an individual and discretionary basis.

This means the client gives the licensee the Authority to acquire or dispose of financial products on behalf of a client at the licensee's discretion (ie, without having to make a recommendation to the client prior to the transaction).

For this service to be offered and operated by a licensee, the licensee must be authorised by the Australian Securities & Investments Commission ('ASIC'), through a condition of its Australian Financial Services licence, to advise and deal in an MDA service, and the client must enter into an MDA contract with the licensee.

### **What is a Limited Managed Discretionary Account service?**

ASIC has granted relief for licensees who do not have an MDA licence authorisation and who wish to offer clients an efficient portfolio management service. This relief, commonly referred to as a 'Limited Managed Discretionary Account service' ('LMDA'), means that these licensees do not have to comply with all the MDA licensing requirements under the following conditions;

- Where a client has accepted a licensee's recommendation to invest in financial products via a regulated platform; and
- The client gives the licensee an Authority, through an MDA contract, to discretionarily transfer the money invested in one financial product to another within the same regulated platform; and
- The financial products must be offered by, and form part of, the regulated platform; and
- The discretion does not permit the licensee to contribute new money to, or withdraw money from, the regulated platform on a discretionary basis.

The LMDA allows the licensee to rebalance a client's portfolio, or replace a financial product with another within the platform for a particular reason, without having to contact the client to make a recommendation to do so and to obtain the client's approval.

Examples of times when the licensee may take this action include, in times of unusual and uncertain market volatility or the portfolio is overweight in a particular asset class. A reason the licensee may take this action is to maintain the client's portfolio in line with the original recommended strategy.

If the client agrees that the licensee can manage the portfolio on a discretionary basis the client must enter into an MDA contract with the licensee and sign a section of the regulated Platform's application form which directs the Platform operator to take instructions from the licensee, on behalf of the client, and act on those instructions.