

FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA



# Annual Report on Professional Standards

FOR THE YEAR ENDED 30 JUNE 2014



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All information is current as at December 2014. First published October 2010.

## A message from the FPA General Manager Policy & Conduct

The 2013/2014 financial year presented many challenges for the profession including areas of trust and confidence in financial planners. However it also presented opportunities to discuss and debate the merits of higher education qualification and professional standards, code of conduct and the role of professional bodies.

With increased focus and scrutiny on the provision of advice, the FPA has continued to advocate and restore confidence by acting in the public interest by setting, promoting and enforcing the highest standards of professional conduct amongst its members.

The FPA appeared in a number of Senate and Parliamentary Inquiries and presented on the merits of a co-regulatory regime which includes lifting the education standards for entry into the profession to an approved degree and membership of an approved professional association with a Code of conduct.

The FPA produced an industry first Consumer Code that was lodged with ASIC as an Opt-In only Code for approval in August 2013.

Professionalism is also more than a word and is more than just education. A degree qualification as an entrance requirement is consistent with a true profession, however professionals must also demonstrate in their actions, their commitment to higher standards, their adherence to a Code of conduct and their willingness to be subject to ongoing scrutiny through monitoring and supervisory activity by a professional body.

The FPA accountability team is tasked with holding members to account for their action and conduct in accordance with our Code of Professional Practice and associated rules. The general public and other members can lodge complaints against a member directly to the association or anonymously through FPA Confidential, which the accountability team will investigate as guided by the disciplinary regulations. This activity is critical to the integrity and evolution of the profession and we must continue to invest and promote in the work that is to be done in holding our members to account.

2013/2014 provided many regulatory challenges for the profession with the implementation of the Tax Agent Services Act (TASA) and the ongoing issues with the Future of Financial Advice legislation. However, it also provided many opportunities for financial planning businesses to review and re-think how they and their business was delivering advice that placed the interest of their client ahead of all else. This evolution of thinking and the many adjustments made by FPA members bodes well for the future of the profession.

Dante De Gori  
General Manager Policy and Conduct  
December 2014

The Financial Planning Association of Australia Limited is the leading professional body for financial planners in Australia, representing approximately 10,750 individuals and businesses. Over 8,050 members are practising financial planners. The FPA and its members strive to improve the financial wellbeing of all Australians.

The FPA provides the leadership and professional framework that enable members to deliver quality financial advice to their clients. FPA members include financial planners from a variety of backgrounds and disciplines, including over 5,500 CERTIFIED FINANCIAL PLANNER® professionals – the global symbol of excellence in financial planning. All FPA practitioner members are bound by a code of ethics, high professional standards and must meet continuing professional education requirements.

## Executive Summary

Much of our focus during the 2013/14 financial year was again on the FoFA reforms and the application of the Tax Agent Services regime to financial planners. However 2013/14 also re-commenced the debate on adequate education and professional standards for financial planners.

The FPA was successful in delivering and negotiating improved outcomes for members in relation to these changes, including:

- As part of our commitment to support and protect our members by promoting best practice in financial planning, the FPA developed 'TASA a guide for members', a practical education and resource toolkit for members to ease their transition to the TASA reforms. To this end the FPA conducted road shows around our 32 local chapters.
- Successfully negotiated amendments to the FoFA legislation including the repeal of the Opt-in notice, removal of retrospective FDS obligations, removing the catch all 'clause g' provisions of the best interests duty, enabling scaled advice and amending the grandfathering arrangements for advisers to change licensees and purchase advice businesses.
- The FPA lodged the Consumer Code to ASIC that once approved will enable members with ongoing fee arrangements with clients, to be granted relief from the FoFA Opt-in requirements.

Our **Professional Accountability** systems continued to hold members to account to the highest professional standards. We utilised the benefits of our enhanced Disciplinary Regulations (2011) designed to improve the efficiency of the process.

By publishing the Conduct Review Commission (CRC) determinations we demonstrate to the community that FPA members are professional, accountable and we enable members to learn directly from the CRC's work.

The FPA's Professional Accountability Program resulted in the following activity and outcomes:

- We received a total of 22 formal complaints, a 33% reduction on last year;
- We finalised a total of 24 complaints, 86% of which were new complaints finalised within the same year received.
- As at 30 June 2013 the FPA had seven outstanding complaints, down 32% on last year.
- The CRC delivered two determinations, expelled one member and issued infringement notices against three members for failing to provide reasonable assistance. One of these members was terminated from membership for failing to pay a fine.
- We achieved a corrective professional regulatory outcome by finalising one disciplinary matter by Summary Disposal facility (under the watchful eye of the CRC).
- We automatically terminated the membership of two members under the provisions of the FPA Constitution, a 63% reduction on last year.
- We further fostered the protection of the profession and the community in responding to more than 330 enquiries from members, consumers, and other stakeholders in relation to professional standards related activity.
- We maintained a vigilant Professional Conduct Program with continued focus on implementing the world class Code of Professional Practice.

It should be noted that during the 2013/14 period ASIC banned 14 individuals from practising as financial planners and of these, only one was a member of the FPA.

Measures to screen for Professional Membership resulted in:

- A number of practitioner membership applications being rejected.
- Only a small number of FPA Professional Practices being approved.

The FPA continued its ongoing program to proactively identify and bring timely remedy of 'Unauthorised Use' and 'Misuse' of the FPA brand.

# A Professional Regulatory Framework

Financial Planners wishing to differentiate their professionalism in the marketplace for financial advice in Australia make 3 important commitments:

- They join a professional body and maintain their professional membership;
- They commit to the highest standards of professional conduct; and
- They are prepared to be held professionally and publicly accountable to those standards.

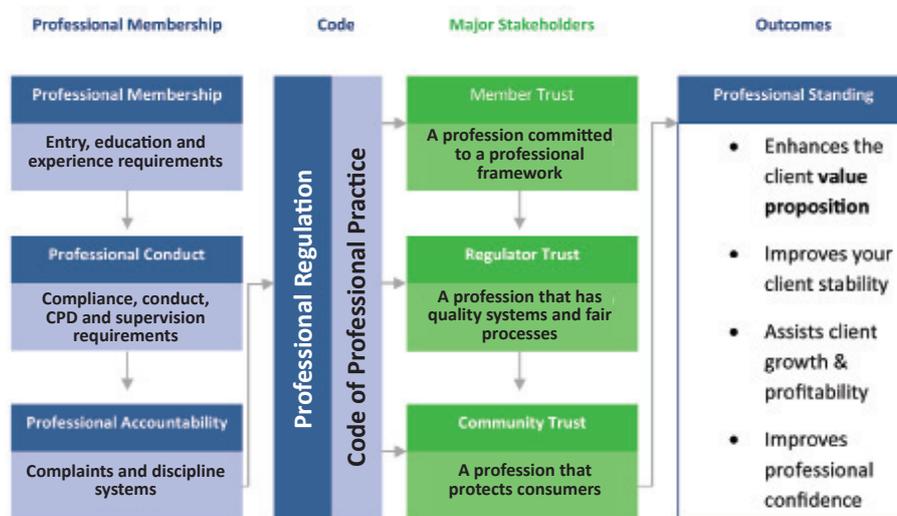
**1. Professional Membership** - entry, education, and experience determine eligibility for membership of the professional association for financial planners in Australia.

**2. Professional Conduct** – compliance, conduct, CPD and supervision requirements ensures that members adhere to the Code of Professional Practice: the high standards set for the profession, and that they are supported in following professional ideals.

**3. Professional Accountability** – professional discipline systems hold members accountable to the Code of Professional Practice, protecting the profession and the public from malpractice.

Professional Regulation comprises the set of professional standards and other requirements developed and administered by the profession in relation to the practice of financial planning in Australia. By establishing and holding its members to account against high standards of ethics and professional conduct, a profession distinguishes that its members are prepared to place the public interest, that clients receive quality financial advice, ahead of every other motivation.

These components combine to form a strong professional framework that’s designed to build the trust and confidence of the community in professional financial planning, in the members of the profession that serves this community and in the professional association.



The Code elements are summarised in the following diagram:

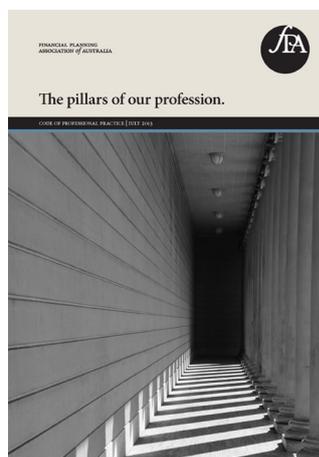


## Changes to Professional Regulation - New edition of the Code July 2013

As the leading Professional Association for financial planning in Australia, the FPA has a world respected Code of Professional Practice that governs the conduct of members and that is used by FOS, COSL, the Courts and the FPA's Conduct Review Commission as the recognised set of standards for the provision of financial planning services in Australia. The FPA commits to maintaining the Code and to modify it as necessary to respond to changes in the regulatory and professional environment.

Effective 1 July 2013, the updated Professional Code responds to the previous Labor Government's Future of Financial Advice (FoFA) reforms to the Corporations Act 2001 (Cth); maintaining our commitment to our professional community and the public benefit it serves to ensuring the FPA Code is the leading standard for the professional practice of financial planning in Australia.

The following Schedule of amendments depicts these recent amendments as well as a historical snapshot of all amendments and transition & enforcement periods. The updated Code is effective from 1 July 2013.



Component	Commencement	Amended	Summary of amendments
Code of Ethics	1 July 2009	-	-
Practice Standards 1-6	1 July 2009	1 July 2013	PS 1.1, (with expanded explanatory elements in PS 1.2 and PS 1.3)
Practice Standard 7	1 July 2010	1 July 2013	New PS 7.4, 7.5 and 7.6
Practice Standard 8	1 July 2010 - 30 June 2011	30 June 2011	Replaced by Annexure A
Rules 1.1 - 7.37	1 July 2010	1 July 2013	Rules 1.1, 1.5, 1.8, 2.4, 4.2, 5.2, 6.3, 6.6, 7.12
Rules of Professional Conduct 8.1 - 8.45	1 July 2010 - 30 June 2011	30 June 2011	Replaced by Annexure A
Annexure A – FPA Professional Expectations for Licensees	1 July 2011	1 July 2013	Expectation 17

The FPA Rules of Professional Conduct (Regulation 1/97 as amended) remains in force in combination with more recently introduced components of the Code of Professional Practice, for some conduct.

## What is new in the Professional Code

The changes to the Code apply to both new client engagements and new advice to existing clients. The main changes are the key elements of the FoFA reforms: Best Interest Duty, Opt-In, Scaled Advice and Conflicted Remuneration.

The revised Code will serve to help members to meet their FoFA obligations and work to best practice professional standards both now and well into the future.

Additions to the Code are centred on the FPA's 'client first' principle in the form of both new and modified Practice Standards. These new Practice Standards, summarised in the table below, will assist members in prioritising the client's interests over all other issues of conflict, which is the paramount professional duty.

Practice Standard	What it addresses
Practice Standard 1: Engagement (modified)	The modifications place greater emphasis on members' professional role and entering client engagements fairly.
Practice Standard 7.4: Professional Judgment	Introduces new expectations for exercising professional judgment with particular reference to limiting and scoping professional engagements.
Practice Standard 7.5: Conflicts of Interest and Prioritisation	Provides a roadmap for practical conflicts of interest management centred on the duty to the client.
Practice Standard 7.6: Charging and Renewal	Extends the suitability principle to recommending, implementing and renewing professional services.

## Assisting Members to meet the new regulatory and professional obligations

There is always a need for new resources, education and tools to aid an updated Code of Professional Practice coming into effect.

The updated Code featured in FPA delivered face-to-face 'Bullet Proof' presentations to members nationally across 32 chapters from April to June 2013, and was also communicated in media interviews, in the trade press and via dedicated member communication channels. The updated Code is available to both members and the public on the FPA website.

In addition the Policy and Conduct team designed, developed and delivered a dedicated series of free videos and webinars for practitioner members and FPA Professional Practices.

In keeping with the professional body's obligations to ensure its members are appropriately trained about the Code, the FPA will further facilitate the implementation of the Code over the next 12 months through education and training for members.

We are also working closely with our CFP Education team to systematically review course material and incorporate specific content on the Code so that all new CFP certificants have a sound grounding in the Code requirements.

The FPA has also committed to an e-learning module for the Code which will be launched to Members in 2014/2015.

## Implementing the Code of Professional Practice

The Policy & Conduct team has been assisting our members to implement the Code of Professional Practice across a wide variety of businesses. The team are available to take calls from members seeking guidance on how the Code may respond to a particular issue in your practice. With the eight (8) ethical principles in the Code of Ethics as our guiding light we aim to bring you the profession's perspective on these day to day challenges of practice.

## Reviews of the Code of Professional Practice

To maintain its currency and effectiveness and relevance to professional practice the Code is subject to regular reviews. The FPA Professional Standards and Conduct Committee is charged with the responsibility for maintaining and regularly reviewing the Code to keep it alive to the current issues of practice. The Code is due for a review after 01 July 2016. Professional peers on the committee continue to welcome member comments and feedback on operational aspects of the Code.

## New FPA Consumer Code to obviate the need for Opt-In

s.962CA of the Corporations Act 2001 was introduced with the FoFA amendments and enables ASIC to exempt persons who are subject to an ASIC approved code of conduct from the FoFA 'Opt-in' legislative requirement.

In August 2013 after a lengthy pre-approval engagement with ASIC, the FPA lodged a limited Consumer Code with ASIC for approval seeking access for FPA members to the regulatory exemption. This code has been developed to operate as a best practice supplement to the FPA Code of Professional Practice for members seeking relief from the 'Opt-in' requirements in the law. It offers enhanced consumer protection through FPA aligned businesses adopting the code's ongoing professional servicing and charging requirements. However a change of government at the September 2013 federal election brought a commitment by the Coalition to repeal the 'Opt-in' requirement in the law and saw ASIC place the FPA's limited Consumer Code application on hold.

# Professional Membership

New applicants for FPA membership agree to be bound by the FPA Constitution, Code of Professional Practice, Disciplinary and other Regulations.

As a measure to protect the community and the good standing of the profession we screen applicants to ensure that only the right people can join the FPA. We ask the applicant to complete a self-declaration of any matters which could impact his or her eligibility to practice. Applicants who have a previous history of bankruptcy, who have been a director of a failed corporation, or who have been previously banned by ASIC or expelled by another professional body are generally considered ineligible for membership.

Under the FPA Constitution, the FPA may accept or reject an application for membership at its absolute discretion.

During the last financial year we continued to screen for Professional Membership resulting in a number of applications being rejected due to the applicants declaring one or more of the following:

- bankruptcy (both discharged and undischarged at the time of application)
- an expired banning by ASIC
- having been convicted of a criminal offence for which the maximum penalty is a imprisonment for a term of more than 6 months.

## Bad Apples

We ask our FPA Professional Practices and FPA Professional Partners to play their part in protecting the profession and the public by preventing the circulation of 'bad apples' in the industry. The FPA encourages its Practices and Partners to adopt and apply the ASIC and FPA approved voluntary standard: Reference Checking in the Financial Services Industry (HB-322 2007).

The voluntary standard provides guidance on how licensees can balance privacy and other legal requirements to ensure that the representatives they hire are properly vetted, and to enable the previous licensee to share adverse information to a prospective licensee when requested.

## Reference Checking

Annexure A of the FPA Code sets out specific Expectations for FPA Professional Practices and Professional Partners, including that The Financial Planning Licensee has reasonable and appropriate standards for the appointment of Representatives, as defined for the purposes of the FPA Code, responsible for the provision of professional services (paragraph 39).

The FPA Policy and Conduct team provides a reference checking facility for FPA Professional Practices and Partners who are considering employing or authorising a representative who purports to be a member of the FPA or a former member of the FPA. This facility is only one component of a diligent reference checking exercise.

This facility involves the potential representative completing an FPA Reference Checking Consent Form (available from the FPA) which is then provided to the FPA to:

- check that the person is in fact a member of the FPA
- release all information regarding any current complaints and any past disciplinary proceedings.

In 2013/14 the Policy and Conduct team actioned a limited number of reference checks. The FPA intends to encourage higher uptake of this facility, and one of the steps taken during the year was publication of an article about this facility in the Quarterly Complaints & Discipline Report in the March 2014 edition of Financial Planning Magazine.

## Checking new Professional Practice members

New applicants for FPA Professional Practice Membership are subject to the eligibility criterion, including the majority of Financial Planners in the practice being FPA practitioner members.

### FPA Professional Practice Eligibility Criterion

FPA Professional Practices must meet the following requirements:

- 75% of practitioners are FPA members (AFP or CFP)
- 50% of practitioners are already CFP professionals or will be within three years
- Commit to upholding the FPA's Code of Professional Practice
- Agree to conduct a three yearly review to confirm adherence to the licence criteria

FPA Professional Practices are subject to our policies and procedures including the FPA Code, FPA Regulation 02/04, FPA Disciplinary Regulations and other requirements.

FPA Professional Practices are required to regularly review their adherence to the licensing criteria of being a FPA Professional Practice, with particular focus on adhering to the Code of Professional Practice, Quality, Ethics, Conflicts of interest Management, and a client directed charging model.

With significant consolidation occurring in the industry, the FPA takes a protective stance in responding to the potential for failed businesses to phoenix and avoid obligations to consumers in respect of complaints.

We encourage our members acquiring existing businesses, or permitting representatives to acquire other practices to closely scrutinise the risks and to actively consider their ethical obligations to the clients of merged or acquired businesses.

## FPA Professional Practices

### Value Propositions

For Financial Planning Practices accredited as a Professional Practice of the FPA, they are endorsed with the public recognition of the business' high professional and ethical standards. They are able to use the FPA Professional Practice brand in their offices, website and business collateral to clearly identify itself as a high quality, professional business.

### Referral Programs

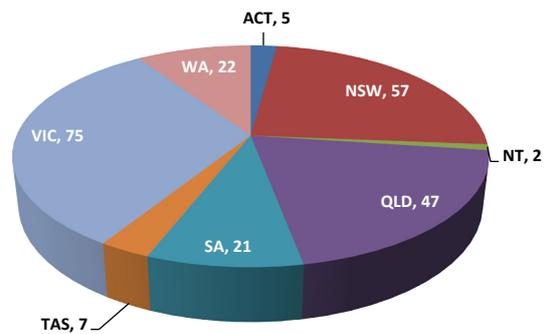
In September 2014, we commenced the rollout of our first National Advice Referral Program in collaboration with the Construction & Building Industry Super Fund (Cbus). The program enables us to connect eligible CFP's from our FPA Professional Practices with Cbus members seeking quality financial planning advice. The initial program has been deemed a success and the upcoming year will see us delivering new referral programs to connect Australian's with CERTIFIED FINANCIAL PLANNERS from FPA Professional Practices.

### Growth

We currently have 236 FPA Professional Practices being promoted nationally with exclusive use of the brand. There have been more than 5 Professional Practices approved throughout 2014, driven predominantly by the eligibility criteria for our Advice Referral Programs. The majority of Professional Practices are located in Victoria, New South Wales and Queensland.

Not all practices that apply to be a Professional Practice are successful in their application; generally on the basis that certain quality measures were not met during the vetting process. Over and above the eligibility criteria, quality checks are also in place to ensure professional obligations and trust of the community are assured.

The pie chart shows the current spread of Professional Practices by state – figures as at 31 October 2014.



**FPA Professional Practice Quality**

- Practitioners and business reputation in the community
- Commitment to the profession evidenced in the proportion of planners who hold the CFP designation and the AFP designation
- Knowledge and commitment to upholding the FPA Code of Professional Practice.

**Assurance to professional obligations and earning trust from the community.**

## The Year Ahead

The Quality Practice Assessment Program will initially involve Professional Practices completing questionnaires and surveys. Information collected will be used for a more strategic plan to continuously improve quality of advice from FPA Professional Practices.

Opportunities such as further training and education, practice management, business growth, and culture will be some of the factors considered in the benchmarking process. Valuable information in the report will benefit members and practices to evaluate their own standards, comparison and implementation of improvements.

# Professional Conduct

## FPA Confidential (Anonymous Reporting)

The introduction of FPA Confidential (Anonymous Reporting) service in February 2010 added a new dimension to the data available concerning our members. We can now combine anonymous information with FPA complaints data, compliance data and our ongoing monitoring of trade and other media to inform our Professional Conduct Program interventions.

This initiative demonstrates the profession's commitment to put clients first by holding financial planners accountable through anonymous reporting. It helps to protect consumers and the reputation of financial planners doing the right thing.

### Activity

Since February 2010 (till 30 June 2013), there have been a total of 63 complaints made via FPA Confidential. A number of these relate to multiple individuals and/or companies. Of the 63 complaints, 64 related to individuals and seven related to companies only – on two of which were Professional Practices – Figure 1 illustrates the breakdown of individuals by membership type.

The Policy and Conduct Team has successfully resolved 90% of these matters.

### Informants

The service has been effective in soliciting information anonymously. Over 70% of all informants to date have elected to remain anonymous.

Not surprisingly, almost 60% of complaints received are from an individual financial planner or an employee of the party being complained about, and where identified, 47% of complaints were received from FPA Members.

Alternatively, we have had a number of informants who were former employees, work associates or clients of the financial planner named in the incident reports.

## Individuals & Associated Organisations Reported

About 33% of individuals reported to FPA Confidential to date have been non-FPA members. Figure 1 below illustrates the breakdown of individuals reported by FPA Membership type.

CFP	AFP	Associate	Non Member	Total Individuals
28	12	3	21	64

Figure 1 illustrates individuals reported to FPA Confidential by FPA membership.

## Types of Matters

FPA Confidential matters are categorised into matter types for reporting purposes.

Matter by Type	No. of Matters	Resolved
Bankruptcy	2	2
Complaint about fees	4	4
Complaint about investment performance	1	1
Fraud	2	2
Inappropriate advice	13	10
Inappropriate strategic advice	4	3
Other – Holding out FPA member	1	1
Other – Insolvency	1	1
Other – Misuse of Brand	1	1
Other – Suspect of unauthorised advice	1	1
Other – Unethical conduct	20	20
Other – Use of restricted words	1	1
Reasonable basis for advice	2	2
Reportable misconduct	8	7
Statement of Advice not provided	2	2
<b>Total</b>	<b>63</b>	<b>58</b>

Figure 2 illustrates all FPA Confidential matters received to date by matter type together with resolved matter statistics.

Allegations of unethical conduct are the most common type of matter reported through FPA Confidential and are also, generally speaking, the easiest to resolve. In some cases the conduct complained of, though considered unethical by the informant, would not by itself amount to a breach of professional expectations and can be resolved by the FPA without the need for any further action.

## Risk Assessment

Upon receipt by the FPA, all incident reports are reviewed by the Policy and Conduct Team to determine their potential seriousness and overall level of risk.

The risk assessment methodology applied to FPA Confidential matters was specifically created by the Policy and Conduct Team in accordance with the Australian Standard, 'AS/NZS ISO 31000:2009, Risk management - Principles and Guidelines'

### Other Compliance Inquiries of Members

Compliance inquiries arise one of two ways:

- either the FPA is specifically concerned about a practice's activities, potentially through a complaint, an anonymous report or media;
- or the FPA needs to assess the level of exposure across the membership to a particular issue in the market.

The FPA attempts to limit the queries it takes across the entire membership on compliance matters because we understand that it is often challenging at times but it is also vital for the FPA to assess the exposure of consumers and the membership to specific market activities.

## Continuing Professional Development (CPD)

The 2013/2014 financial year, brought an end of another CPD triennium for practitioners. For the CPD area it was business as usual with the Board approving some minor enhancements to recognize the change in FPA membership categories and contextual changes recognizing the 'new' Policy has been implemented and embedded for over three years now.

The demand for CPD accreditation has reached record levels this year, as a result of an increased industry drive for professionalism. The FPA continues to be recognised as the industry's leading approval body for high quality CPD education. Approximately 90% of all CPD available to financial planners is FPA accredited. Today, 240 Learning and Development professionals working in the licensee community are FPA accredited assessors.

This year, we rolled out a diversified CPD program, through webinars and countless physical events. Our comprehensive suite of live and recorded CPD webinars attracted over 5,200 registrations throughout the year and generated feedback that exceeded an 80% satisfaction rating overall.

The 2013 Inaugural Professionals Congress provided members with two full days of technical and practical learning, plus the opportunity to earn a total of up to 36 CPD points. Members also had the opportunity to attend regular Chapter events in their local area, for additional CPD points.

## CPD and Marks Audit

The FPA is committed to ensuring high professional development standards are maintained by all practitioner members. As such, we introduced a rolling CPD auditing process that takes place during March and September each year. The audit is primarily designed to educate and assist members in meeting their CPD obligations, but also includes an audit of their usage of the FPA and FPSB brands.

In 2013/14, 382 practitioner members were audited. We have significantly streamlined the process, improved audit communications and reduced turnaround time from 4 to 6 months in 2012, down to just eight weeks.

A total of 605 (renewed) practitioners were contacted as part of the audit. This was 10% of the CFP practitioner base and 5% of the AFP practitioner members at that date.

## FPA Brand

The FPA brand represents a seal of quality and professionalism for financial planners. It is important that the FPA brand is consistently applied at every interaction to preserve the distinctiveness and integrity of the brand and the valuable reputation flowing from membership of the FPA.

According to the **Regulation 02/04 - Use of the FPA Brand by Members**, the FPA brand is defined as the FPA name, logos, membership category descriptions, professional designations (post nominal), and the CERTIFIED FINANCIAL PLANNER® mark, CFP® and CFP Logo® ("FPA brand").

The CERTIFIED FINANCIAL PLANNER® mark, CFP® and CFP Logo® are collectively known as – CFP Marks. The FPA strictly controls the correct usage of these registered CFP Marks. The CFP Marks are solely owned by the Financial Planning Standards Board Ltd (FPSB) in the United States of America and used and administered by the FPA under license. Any instance of misuse of the CFP Marks compromises the validity of the marks and the FPA's licensing arrangement with the Financial Planning Standards Board Ltd (USA).

The FPA defines 'Unauthorised Use' as the use of the FPA brand without any entitlement to do so, and 'Misuse' as the use of the FPA brand in circumstances where authorised by the FPA although inconsistent with Regulation 02/04.

Use of the FPA brand by Members is a privilege, which if used without authority, or to a lesser extent, misused, may seriously prejudice the interests of all Members and cause an offending Member to be liable to disciplinary action which may involve censure, expulsion or in extreme cases or cases of repeated misuse, legal action.

The FPA has an ongoing program to proactively identify and bring timely remedy of 'Unauthorised Use' and 'Misuse' of the FPA brand, and in recent years this has consistently been the most prominent means by which 'Unauthorised Use' and 'Misuse' have come to notice. This includes reviews of exited Members, CPD and Marks Audits of Member, checking against media articles and searches of the internet.

In the 2013-14FY, 36% of matters were proactively identified by the FPA. The next highest means was consumer reporting (32%), which reflects increased consumer awareness about the value of the FPA brand; followed by Member reporting (20%), which reflects the esteem in which Members hold the FPA brand. Other means (12%) were the FPA Confidential anonymous reporting facility (origins unknown), media articles and ASIC.

### FPA Brand Cases 2013-2014

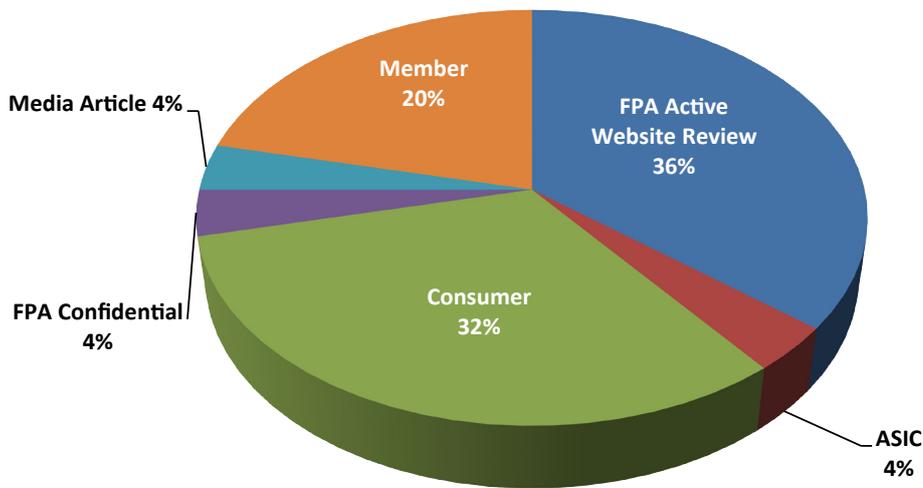


Figure 3 depicts the source of FPA Brand cases for the 2013-14FY.

# Professional Accountability

## Complaints and discipline process

Under the FPA Professional Accountability Program, an FPA Investigating Officer investigates complaints and prepares a report for the Conduct Review Commission (CRC) Chair to determine whether a Notice of Charge should be issued against a member for a Breach. Where the Member defends the allegations, a Disciplinary Panel of the CRC is convened to determine the matter. If proven, the CRC Disciplinary Panel may impose Sanctions against the Member ranging from reprimand, fine or supervision, through to expulsion.

## Conduct Review Commission

The CRC is an independently chaired Board appointed committee with the objective of experienced members of the financial planning profession, relevant experts and members of the public regulating the conduct of members of the FPA and upholding the highest ethical standards within the financial planning profession.

## Role of the CRC

The CRC is a privately constituted disciplinary tribunal with an independent Chair. Its role differs from that of a dispute resolution body: it does not recompense a client who has suffered harm at the hands of a member. Rather, it conducts a disciplinary process directed towards the maintenance of standards within the financial planning profession. Its methods are more inquisitorial than adversarial. When imposing sanctions for identified breaches of professional standards it is concerned with the protection of the profession and the public from malpractice. It may do so by admonishment, fine, and requirements for further training or supervision. Where the conduct so offends professional standards it may expel the member from the profession.

## Composition of the CRC

The CRC panel can consist of up to 15 members, including the Chair and a Deputy Chair(s). The CRC currently comprises 13 members, including the Chair, with three legal practitioners, eight CFP members, a compliance and risk management consultant and a financial advice consultant. Some panel members also have legal qualifications and/or legal experience, although not as their primary occupation or experience.

After seven very successful years, Professor Kingsford Smith, the inaugural Chair of the CRC, decided to not seek re-appointment as Chair or as a Member of the CRC panel when her tenure expires after 31 July 2014. Professor Kingsford Smith built, in the reasoned determinations of the CRC, a significant body of work – the early jurisprudence of the private tribunal – a legacy for those who come after. Professor Kingsford Smith built the foundations of a professional accountability system that will promote public trust and confidence in an emerging profession of financial planning in the years to come.

Professor Kingsford Smith will be replaced by Dr. June Smith, who is the current Deputy Chair of the CRC. Dr. Smith currently holds a number of other appointments where she works with different stakeholder groups on matters related to ethics, professional standards and industry codes of practice. Her knowledge of financial planning ethics, corporations law and the professional standards of the FPA, is recognised by many stakeholders as extensive. Dr. Smith also has significant and ongoing experience and expertise in the operation and procedures of professional tribunals and relevant decision-making bodies.

Dr. Smith has a PhD in Law specialising in ethics and organisational decision making within financial services organisations. Her thesis explored the factors that influence the ethical conduct and decision making of financial planners.

As at 30 June 2014 the CRC panel consisted of:

- Professor Dimity Kingsford Smith (Chair)
- Dr. June Smith (Deputy Chair)
- Chris Benson CFP
- Sandra Bowley CFP
- Guyon Cates
- Bruce Christie CFP
- Greg Cook CFP
- James Cotis CFP
- Cherie Feher CFP
- Dacian Moses CFP
- Michael Perkins
- Brett Walker

## Publication of Sanctions

From June 2010, where the Disciplinary Panel determines a Breach against a member, the FPA is required to publish the CRC's findings. This is in keeping with the public interest in ensuring that FPA members who breach professional standards are held accountable. For consumers it's another reason for dealing with an FPA member – it provides a further level of assurance that your financial planner is fully accountable for his or her actions. For members, it's a mechanism to protect the reputations of the vast majority of our members and ensure your professional peers are adhering to the same rules you are.

The publication of CRC Disciplinary Panel findings also plays an important role in educating members, consumers and other stakeholders about the professional standards and ethical expectations for the professional practice of financial planning.

## Provision for Summary Disposal

Under the FPA's Disciplinary Regulations, the FPA may, after a Breach Notice is issued to a Member, invite the Member to enter into without prejudice discussions with a view to the summary disposal of the disciplinary action against the member by agreement. Significant benefits can flow from the Member's cooperation and acknowledgement of wrong-doing. For example, it may be unnecessary to name the member in publication of the disciplinary outcome where the restoration of the member, professional good standing and the protection of the public can be achieved by anonymised reporting. Whereas matters proceeding to CRC panel hearing and determination are published often naming the Member.

The benefits of the summary disposal provision were again utilised during the 2013/14 year.

## Current Matters to 30 June 2014

The FPA received 22 new complaints in the financial year 1 July 2013 to 30 June 2014, which is a 33% reduction from last year. Figure 4 depicts the downward trend in complaint numbers post the GFC. Refer to Figure 4.

Unsuitable advice complaints continued their decline over recent years as the shift continued away from advice related complaints. This is probably influenced by generally positive investment markets and higher expectations of more general professional behaviour. More prevalent professional behaviour related complaints have included unprofessional communications to clients and the transferring of clients without client choice and notification. There has also been an increase in plagiarism (academic misconduct) being detected, investigated and referred to the Professional Designations Committee. Figure 5 depicts the break-up of the primary type of complaints received during the 2013/14 financial year, while Figure 6 depicts the trend of primary complaint types received over the past five financial year periods (2009-2014).

The FPA finalised 24 complaints in the 2013/14 financial year, 86% of which were new complaints that were finalised within the same (2013/14) year they were received. Although a reduction in percentage terms from the past two years, this may be explained by the high proportion of complaints that were received within the last quarter. Refer to Figure 7.

Current investigations relate to complaints referred to the FPA by consumers, an FPA Professional Partner as well as FPA initiated complaints. These complaints are at various stages of the complaint process as depicted in Figure 8.

During the year the FPA also received a number of complaints from FPA Members, which provides reassurance that Members are committed to ensuring fellow members are held accountable to the FPA's high professional standards.

## Total number of new complaints 2005-14 financial years

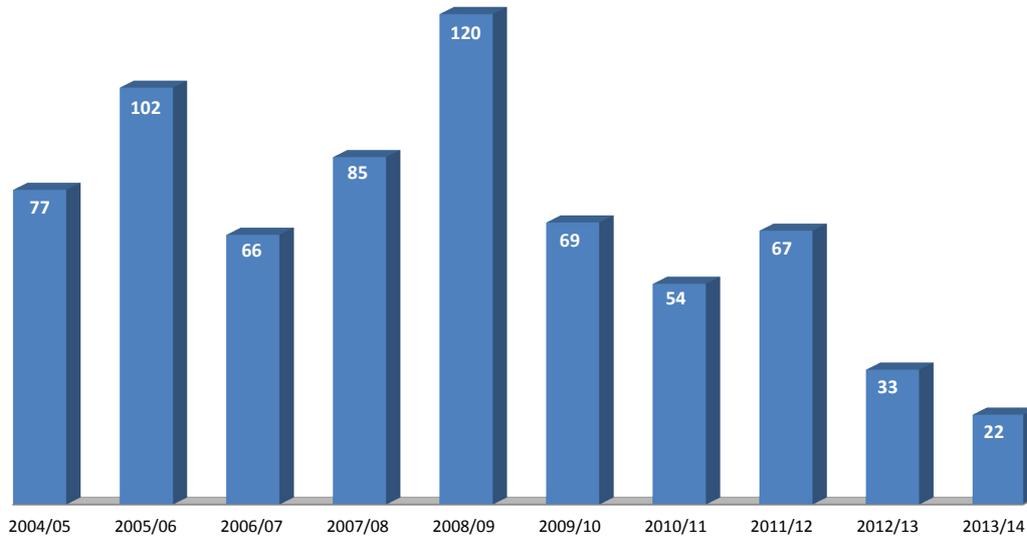


Figure 4 depicts the trend in the number of complaints made to the FPA each year from 1 July 2004 to 30 June 2014.

## Primary Complaint Type 2013/14

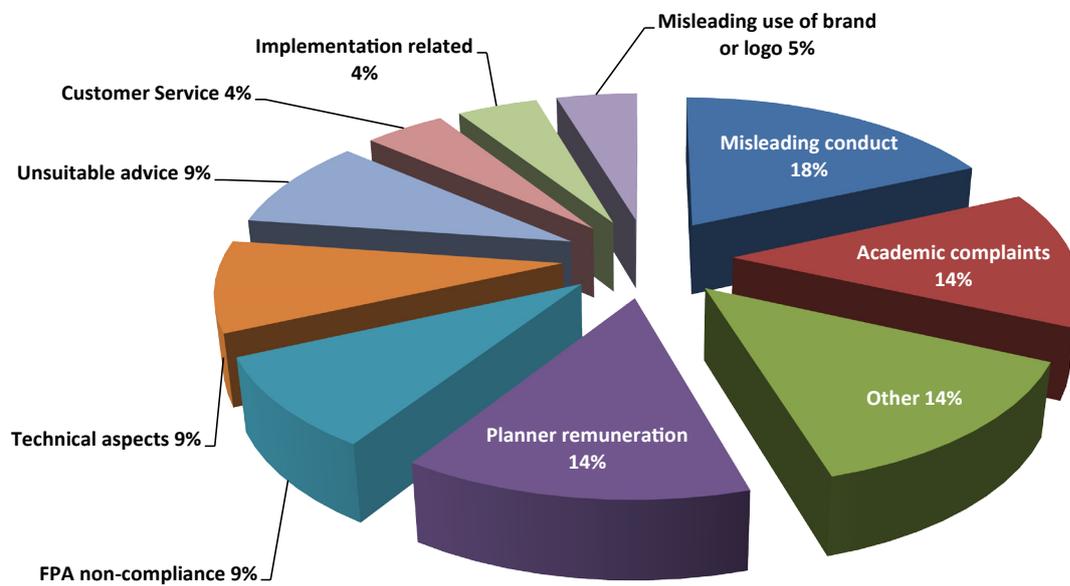


Figure 5 depicts the primary complaint types made to the FPA during the 2013/14 financial year.

Primary Complaint Type Comparison for the years 2009-2014

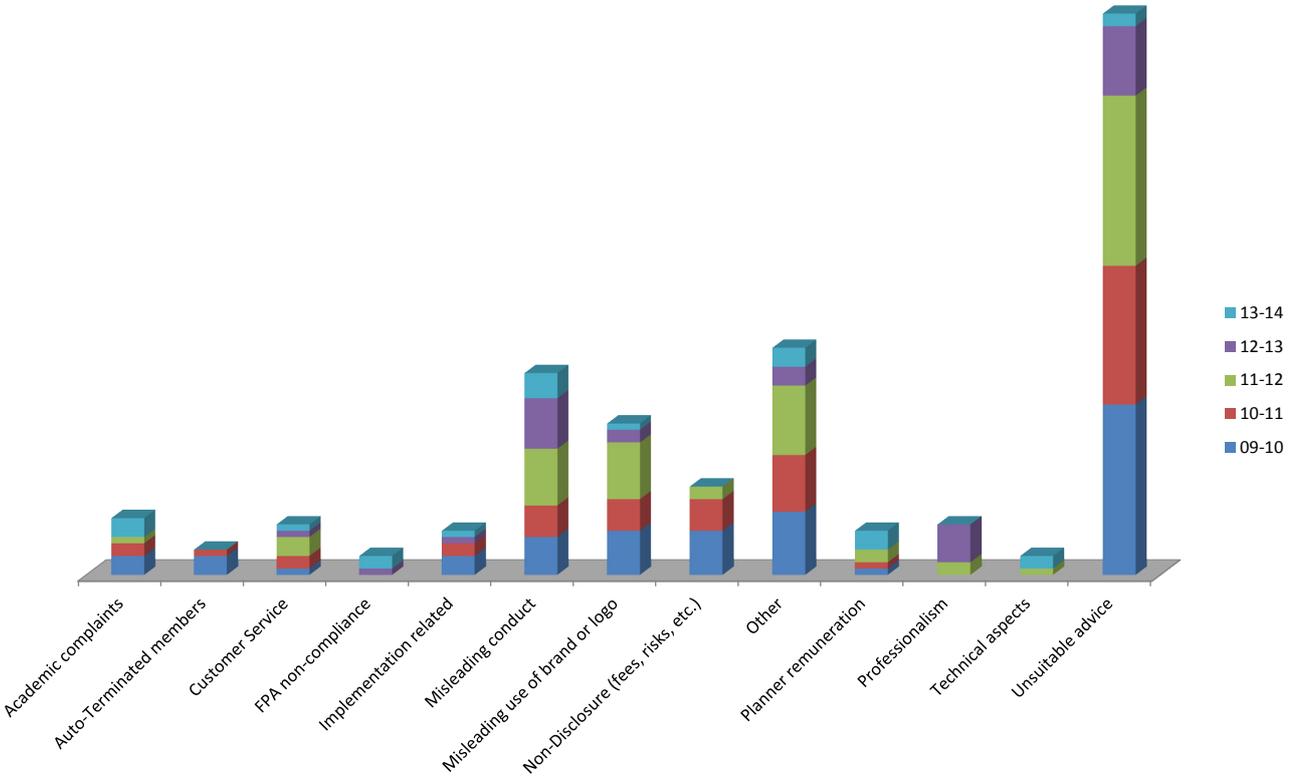


Figure 6 depicts the trend over the last five financial year periods for the primary complaint types made to the FPA.

Complaints opened and closed within the same financial year – last four years

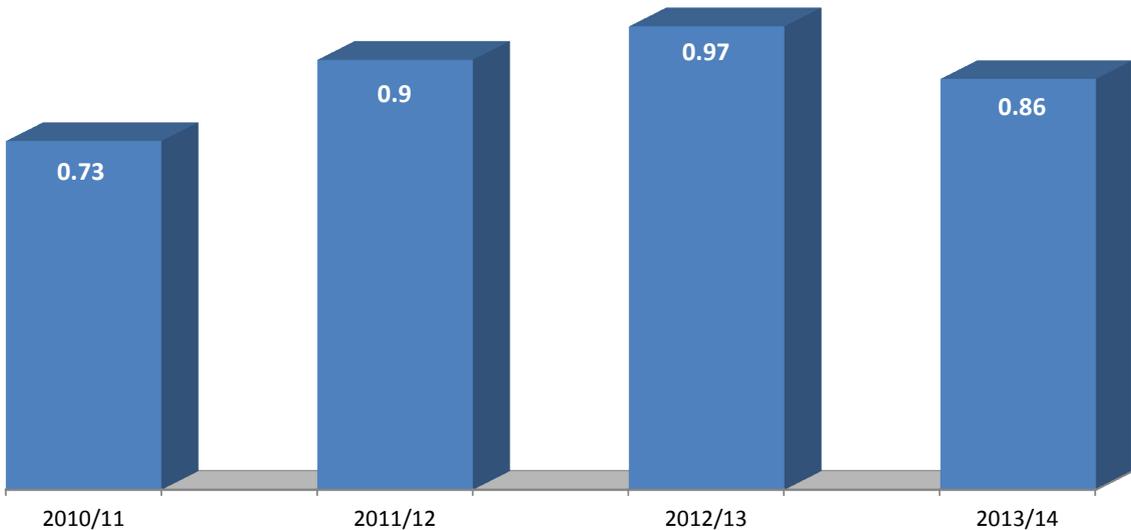


Figure 7 depicts the trend over the last four years in the percentage of complaints finalised within the same financial year in which they were received.

## Open Cases – Number of matters in each phase as at 30 June 2014

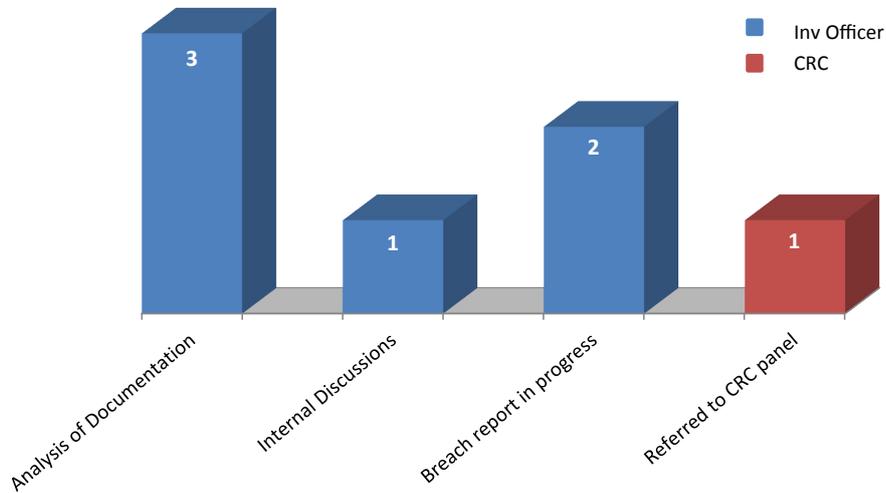


Figure 8 depicts the stage of each of the nine cases remaining open as at 30 June 2014.

## New Complaints under the new FPA Code

The FPA Code of Professional Practice was published in November 2009 and became fully enforceable from July 2010. In the financial year 2013/14, 19 of the 22 (86%) new complaints concerned allegations of breaches under the FPA's Code of Professional Practice or revised Code

of Ethics rather than the Rules of Professional Conduct (Regulation 1/97 as amended). Figure 9 depicts the steady shifts to complaints under the new Code over the past four years and follows the shift away from complaints relating to the GFC.

## Code of Ethics & Rules of Professional Practice -v- Code of Professional Practice

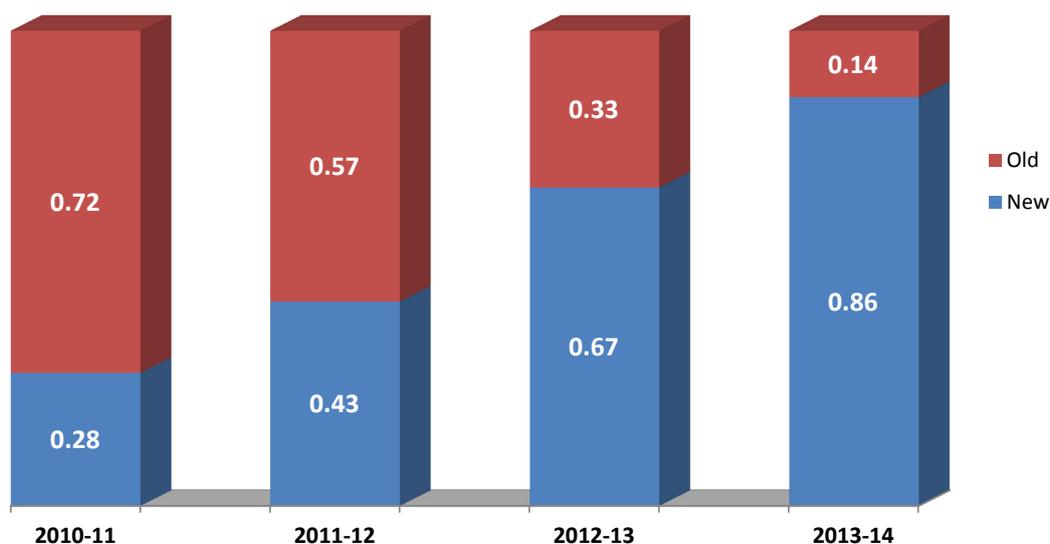


Figure 9 depicts the break up of cases investigated under the previous Code (FPA Rules of Professional Conduct Regulation 1/97 as amended) v's New Codes (Code of Professional Practice 2009 & 2011) since the 2010/11 financial year.

## Terminated Members

Under the FPA Constitution members may be automatically terminated upon entering administration or personal bankruptcy, being banned by ASIC, failing to comply with a disciplinary sanction and for other reasons.

Details of members automatically terminated during the 2013/14 financial year appear in Figure 10 below. Details of members automatically terminated are regularly updated on the FPA website.

Member	Member Number	Effective Date	Member Category	Reason
Paul Foster	20533	03 June 2014	CFP	Failure to pay monetary penalty
Grant Thompson	32066	23 June 2014	AFP	Banned ASIC

*Figure 10 depicts Members automatically terminated pursuant to the FPA Constitution.*

### Publication of Professional Accountability functions, activity and outcomes

The Financial Planning Association (FPA) is committed to informing members and the community of the FPA's professional accountability activities, including trends and outcomes of complaints and disciplinary action in the financial planning profession. It is important for members and the community to be confident that the profession takes a strong position on the protection of the reputation of financial planners by responding to breaches of its professional expectations.

As well as communicating the activities of professional accountability, the FPA's goal is to assist members in appreciating the types of complaints received, to encourage members to consider their own practices, and to provide guidance for complaint protection.

During the 2013/14 financial year this again included publishing:

Copies of the CRC panel and summary disposal determinations on the FPA website.

- Details of automatically terminated members on the FPA website.
- The Quarterly Complaints & Discipline Report in Financial Planning Magazine, including case studies on conflicts of interest and suitability of advice arising from CRC panel and summary disposal determinations, as well as educative & informative articles including Notifiable Events and reference checking.

## Conduct Review Commission Activity

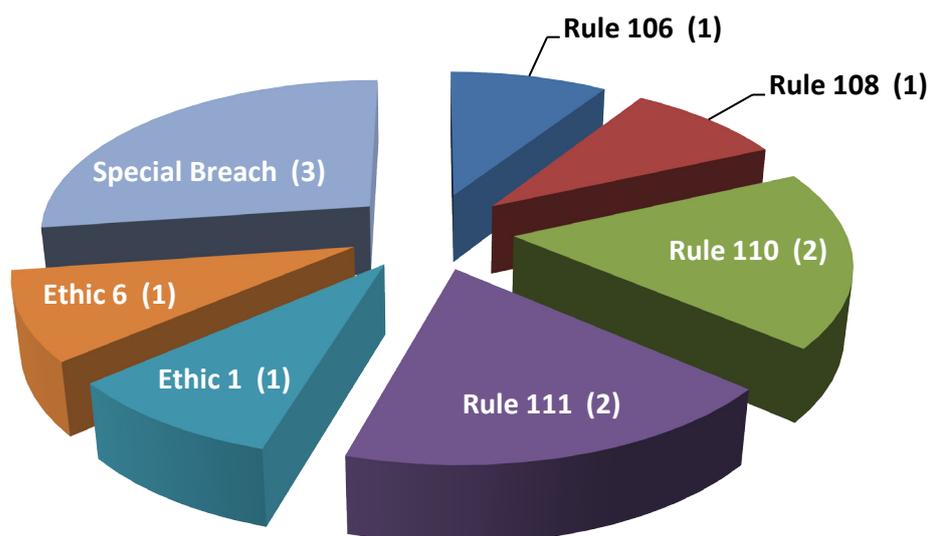
As at 30 June 2014 there was one complaint that had been referred by the Investigations Officer to the CRC Chair to determine whether a Notice of Charge should issue to the member for a Breach. This is down from seven at the same time in 2012 and four at the same time in 2013.

During the year, the CRC delivered a determination and issued three Infringement Notices for Special Breaches – failing to provide reasonable assistance to the FPA in a complaint investigation, a compliance review and a CPD Audit. One member was expelled, three members were sanctioned fine, one of which was subsequently automatically terminated from membership for failing to pay a fine. One matter was awaiting a determination.

There was also one matter finalised by summary disposal. Similar to other summary disposals, the practitioner's level of professional experience was a contributing factor. Sanctions imposed were professional education and fines.

The matters finalised by determination of hearing and summary disposal related to breaches of the previous rules. The matters finalised by Infringement Notice were dealt with under the provisions of the 2011 Disciplinary Regulations rather than the FPA Code. The breakdown of the breaches and the sanctions imposed for those breaches are depicted in Figures 11 and 12 below, respectively.

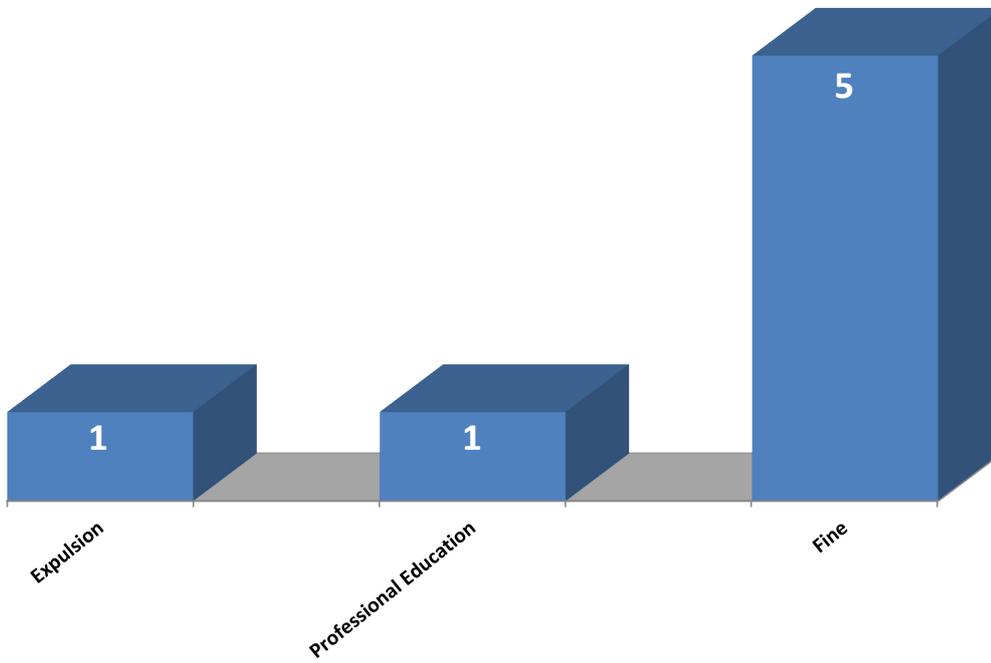
### Breaches confirmed by Determination of CRC Panel and Summary Disposal 2013/14



- Rule 106 - Written recommendation to a client must disclose particulars
- Rule 108 - Collect sufficient information to ensure appropriate advice can be given
- Rule 110 - Develop a suitable financial strategy or plan
- Rule 111 - Provide explanation of investment risks in terms the client is likely to understand
- Ethic 1 - Integrity
- Ethic 6 - Professionalism
- Special Breach

*Figure 11 depicts breaches of FPA rules that were substantiated during the 2013/14 financial year.*

## Sanctions imposed by Determination of CRC Panel and Summary Disposal 2012/13



*Figure 12 depicts all Sanctions delivered by the CRC during the 2013/14 financial year.*

Disclaimer:

In exercising its Professional Conduct and Professional Accountability functions, investigating particular members of the FPA and taking (or not taking) disciplinary action against members, the FPA is NOT certifying or representing that the work done or the opinions given by the member (or by any other members) is correct or of a high or any particular standard. The FPA expressly disclaims all liability for any loss or damage arising from any reliance upon the fact that the FPA has or exercises Professional Conduct and Professional Accountability functions (either directly or via the Conduct Review Commission), or exercises them in a particular way, or has investigated particular members and taken (or not taken) disciplinary action against members, or upon any annual reports, overviews, reports on particular members or practices, or other materials produced by the FPA regarding or in connection with its Professional Conduct or Professional Accountability functions.



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