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A message from the FPA General Manager Policy & Conduct

The 2014/2015 financial year presented several key challenges in the financial planning profession’s continuing journey to build trust and confidence with the Australian public. It was also a year that saw opportunities to debate the merits of higher educational entry qualifications and professional standards, the introduction of codes of conduct and the role of professional bodies.

It was a year of consolidation as firms continue the task of implementing the Future of Financial Advice reforms to investment and superannuation advice. Yet for many it was also a year of frustration with some of the practical inefficiencies of generating records to demonstrate compliance with new legislative requirements threatening to get in the way of professional quality advice. Time will tell whether opt-in and fee disclosure statements offer any real benefit to consumers, of whether the forced termination of professional services relationships where a client failed to opt-in in time has caused more harm than good. The courts and EDR schemes will unfortunately be the final arbiters of whether scaled advice solutions can meet the ‘any other steps’ requirement for the ‘best interest duty’ ‘safe harbour’.

We also saw in ASIC Report 413, Trowbridge and FSI a recommendation for far-reaching changes in remuneration for life risk advice.

Throughout this increased public scrutiny on the provision of advice, the FPA has continued to advocate a simple message. Having and holding to the highest standards of professional membership, conduct and accountability for its members and acting in the public interest will restore public trust and confidence in our profession.

We know integrity matters. Across the globe, it is the most significant influencer on public trust and confidence of our institutions, corporations, government and non-government agencies. People judge whether to trust a corporation based on their perception of the integrity of the professionals and technical insiders who work for the corporation – not what the corporation says it will do – but by the integrity of its key people. Whether it’s insisting our practitioner members hold an approved degree or equivalent qualification, meet experience requirements, be and remain ‘fit and proper persons’, commit to and are held accountable to our Code of Professional Practice, or undertake and are held accountable for Continuing Professional Development. By establishing and reporting on these measures we demonstrate the financial planning professional community’s commitment to serve the public interest.

Dante De Gori CFP®
FPA General Manager Policy and Conduct

December 2015
EXECUTIVE SUMMARY

Much of our focus during the 2014/15 financial year was in assisting our members to implement the FoFA reforms and in advocacy to Treasury and Government on measures to streamline the reforms. Public debate centred on moving beyond the advice failures – key drivers of legislative reform – to setting new benchmarks for future entry into the financial advice profession.

The joint committee of the Australian Parliament on Financial Services took up the financial planning profession’s call to mandate Education and Professional Standards, together with professional membership, allowing for professional recognition via the ASIC Financial Adviser Register, and supporting enshrinement of the terms ‘financial planner’ and ‘financial adviser’ in legislation.

At the same time the Murray Financial System Inquiry picked up FPA’s recommendations to extend ‘gatekeeper’ accountability to product designers.

As part of our commitment to assist members to manage the reforms we:

- delivered road shows to our 32 local chapters including a booklet ‘Taking other steps: Best interest advice in a strategic world’;
- released an Opt-in tool kit (released to members in June 2015) to guide members on issuing their first opt-in renewal notices due out from July 2015;
- obtained a commitment from Government to introduce legislation (due early 2016) to extend the time frame for advisers to send renewal opt-in notices and fee disclosure statements to retail clients from 30 to 60 days.

With the introduction of the ASIC Financial Advisers Register from March 2015, the reliability of the information on the register concerning professional membership and educational qualifications will depend in part on the accuracy of professional body member records. The FPA’s role in screening member entry to the profession will become more significant.”

Professional Membership screening programs ensured that only the right individuals and practices were accepted into our professional community.

We maintained a vigilant Professional Conduct program with continued focus on Advice Reviews of FPA Professional Practices on the Cbus referral program.

Our Professional Accountability systems continued to hold members to account to the highest professional standards through the following activities and outcomes:

- We received a total of 30 formal complaints, a 36% increase on last year.
- We finalised a total of 29 complaints, 83% of which were new complaints finalised within the same year received.
- As at 30 June 2015 the FPA had eight outstanding complaints, which is on a par with last year.
- The CRC delivered two determinations, expelling one member and issuing an infringement notice against one member for failing to provide reasonable assistance. This member was subsequently terminated from membership for failing to pay the 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 four members (Includes the Member who failed to pay the fine) under the provisions of the FPA Constitution, double the number of last year.

It should be noted that during the 2014/15 period ASIC banned 19 individuals from practising as financial planners and of these, only one was a member of the FPA.

Additionally:

- We enhanced our methods of using learnings from our activities and the CRC’s activities to educate the profession and consumers.
- We further fostered the protection of the profession and the community responding to more than 360 enquiries from members, consumers, and other stakeholders in relation to professional standards related activity.
- The FPA continued its ongoing program to proactively identify and bring timely remedy of ‘Unauthorised Use’ and ‘Misuse’ of the FPA brand.
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 below:
Professional Regulation - unchanged

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.

We introduced amendments to the Code effective 1 July 2013, in response to the 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.

With constant regulatory change a significant risk for practice we made no further amendments to the Code during the reporting period. We have focused instead on developing and delivering CPD material to assist Members to apply the Code to meet and exceed statutory expectations in practice.

The next review of the Code is scheduled to take place after 1 July 2016.

Assisting Members to meet new regulatory and professional obligations

We launched an e-learning module for the Code with a focus on fair client engagement and identifying and managing conflicts of interest.

In our national roadshow presentations to members across 32 chapters from April to June 2015, we delivered face to face training with a practical case study designed to show how the FPA Code assists to meet the FOFA Best Interest Duty and related obligations.

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 design and develop further CPD material over the next 12 months 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.

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 is 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 – ASIC approval sought

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.

Identifying civil liability risk for practice

During the reporting period the FPA undertook project work with the Professional Standards and Conduct Committee to identify the leading civil liability risks in practice.

The project work included legal data base searches and analysis of the leading civil liability cases concerning financial planners and financial advisers over the last 10 years, FOS claims data analysis, ASIC banning analysis, FPA complaints analysis and APRA National Claims Data.

This work has enabled the committee to develop a civil liability master risk register and is part of ongoing work to improve the identification and management of civil liability risk for the profession.

The committee has classified practice civil liability risk into 6 key categories and 46 subcategories and applied a standard significance and consequence matrix analysis to rate the risks and the mitigants being deployed by the professional body to manage these risks.

In future years we anticipate this classification and analysis will influence how we collect, categorise and report on data gathered in the course of our professional membership, professional conduct and professional accountability activities.

The analysed and synthesised risk information will also start to inform the FPA’s Quality Practice Assessment Program and the design and development of FPA Standards, Guidance and CPD material aimed at mitigating key practice civil liability risks.
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 matters on the application form that caused them to not meet the eligibility criteria, such as bankruptcy and criminal convictions. An equal level of diligence is applied to both new applicants and those seeking to re-join.

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 financial planning licensee have 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; and
- release all information regarding any current complaints and any past disciplinary proceedings.

In 2014/15 the Policy and Conduct team actioned only six reference checks. The FPA would like to see a much larger uptake of this facility, and will take further steps in the coming year to make this happen.
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 Code of Professional Practice
- Agree to conduct a three yearly review to confirm adherence to the licensing 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**

**Growth**

As at 30 June 2015, we had 268 FPA Professional Practices being promoted nationally with exclusive use of the brand. Over this year, we saw 19% growth in the number of Practices from 226 in 2013/14 to 268 in 2014/15 driven by the eligibility criteria for our Advice Referral Programs along with the desire to be able to promote the FPA brand in their practice.

*Figure 1* illustrates FPA Professional Practices by State as at 30 June 2015
The majority of Professional Practices continue to be located in Victoria, New South Wales and Queensland and our practice community is comprised of over 590 CFPs and over 220 Financial Planner AFP members. We also know that approximately 62% of practices in the Professional Practice program have 3 or less financial planning practitioners in their businesses.

**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.

Through a partnership we secured with Business Health this year, all FPA Professional Practices were offered the opportunity to obtain a complimentary Business HealthCheck. The HealthCheck provided these practices with a comprehensive, independent and objective benchmarking review against the industry average.

**Referral Programs**

As at 30 June 2015, we had delivered over 1377 member referrals in the 9 month period since the commencement of the Cbus National Advice Referral Program (Cbus Referral Program). The program has enabled us to connect eligible CFP’s from over 50 of 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 PLANNER professionals from FPA Professional Practices. We are currently engaged in discussions with a number of interested large industry funds along with a smaller retail fund to deliver a similar program.
PROFESSIONAL CONDUCT PROGRAM

Quality Practice Assessment Program - Advice Reviews

During 2014/15 we ‘fine-tuned’ our Advice Review process. We also conducted 74 Advice Reviews of financial planning advice provided to retail clients by practitioner members within our FPA Professional Practices as part of the Quality Practice Assessment Program. Our Advice Reviews had particular focus on both strategic and financial product advice provided to retirees and pre-retirees through the Cbus Referral Program, ensuring that the key findings of ASIC Report 279 (Shadow shopping study of retirement advice – March 2012) continue to be implemented into the Best Interest world. The Advice Review program also considered the findings of ASIC Report 362 (Review of financial advice industry practice: 2 – July 2013) and, although limited in application to pre-retirees and more-so to retirees, ASIC Report 413 – Review of retail life insurance advice – October 2014).

The Advice Reviews were particularly successful in obtaining the buy-in of individual practitioner members and Professional Practice principals, by taking a practical, educative approach and response rather than that typically associated with ‘compliance’ activities. We note real signs of commitment amongst particular licensees in raising the bar to meet professional responsibilities rather than merely meeting statutory obligations. This provided a strong foundation for us to provide feedback, both positive and educative and to varying degrees, during the Advice Review process. Of the Advice Reviews conducted, feedback was provided to our Professional Practices as follows:

- Four Professional Practices were placed on an extended Advice Review program.

The main area of feedback through the program was in relation to the ability of the reviewed Statement of Advice documents to meet their purpose – to enable retail clients to understand the advice and to make an informed decision whether to rely upon all or part of the advice. Some common tips were:

- It is helpful when preparing advice documents to remember that the client doesn’t know what the client doesn’t know.
- Use language the client is likely to understand and write in a tailored way that reflects the actual situation rather than being confined to template material - ‘talk’ to the client.
- Clearly separate strategy from product so that clients can make separate decisions at each and every decision point. Common examples of this not occurring are:
  - A recommendation to consolidate super accounts and under the same heading referring to the general product benefits of the recommended product (which may or may not have been one of the existing accounts) – there are separate decision points around consolidating and end product.
Comparing product costs of existing investment option within existing product with a different, recommended investment option and product – there are separate decision points around investment option and product.

- When recommending a client change product, clearly and specifically demonstrate:
  - That any existing product has been considered;
  - Whether or not the client is likely to meet their goals, needs, circumstances and priorities in the existing product;
  - How the recommended product meets their goals, needs, circumstances, and priorities. In cases where these things are likely to be met in the existing product, demonstrate how the recommended product places the client in a better position;
  - The consideration of alternative products and why they were not recommended. Care should be taken to provide reasonable alternatives rather than token alternatives and that in comparing existing, alternative and recommended products, consideration has been given to more than just fees. Other considerations for benchmarking include performance history over an appropriate period, product features and risk.

- If it’s not a professional recommendation, don’t express it as such in the Statement of Advice. Do not express client instruction as a professional recommendation if it is not what you would recommend otherwise. If a client is seeking professional advice yet insists upon a particular path, document professional recommendations and also document the client instruction. Common examples of this are Transition to Retirement strategies and Self-Managed Super Funds. Of course these circumstances may cause a financial planner to consider whether to decline a client engagement.

We have also noticed a significant trend in recommending actively managed portfolios without demonstrating on either or both a qualitative or quantitative basis how it places the (retail) client in a better position, especially considering the additional servicing and transaction costs usually involved.

For more detail on how to meet In addition to other methods referred to both earlier and later in this Report, it is intended that the findings from this program will be used to the benefit of all members through various CPD accredited activities in the 2015/16 year, including case studies and a webinar(s).

Ad-Hoc Inquiries

The FPA monitors the media and various government, regulatory and other public activities relating to financial services to identify instances where they may relevant or related to FPA practitioner members in some way. This includes where there may be concerns that members may not have met the obligations and standards commensurate with their FPA membership.

The two largest, collective sources of ad-hoc inquiries by the FPA during the year were

- 15-036MR ASIC takes action on deficient advice on complex structured investment products; and
- Two Senate Committee hearings.

There was some overlap in these.

15-036MR ASIC takes action on deficient advice on complex structured investment products

In December 2013, ASIC released Report 337 – Review of advice on retail structured products which found that in approximately half of the files reviewed, there was insufficient evidence to show that advisers had met their obligations to investigate clients’ relevant circumstances, the subject matter of the advice and then to provide appropriate recommendations.

This led to ASIC media release 15-036MR, which was issued on 24 February 2015 and named 10 licensees who were required to take corrective action – which was summarised in the release.
The FPA recognised the need to write to seven of the 10 licensees to determine whether any FPA practitioner member(s) had been identified as having provided deficient advice, or otherwise engaged in activity that might constitute a breach of the FPA Code. All licensees engaged cooperatively with the FPA.

This resulted in the FPA conducting further enquiries with one practitioner member, which led to their membership being automatically terminated pursuant to the provisions of the FPA Constitution (clause 16.1(d)) – the Member is a Representative of an Australian financial services licensee, and the Member has been dismissed or has had the Member’s authorisation as an Authorised Representative revoked by the Member’s authorising Australian financial services licensee because of breach of the law.

**Senate Committee Hearings**

In February 2015 there were media articles relating to a number of individuals who, over the past two years, had been “suspended, terminated or ensured resignations” by their licensee for alleged misconduct. The article named some individual financial planners. On 25 February 2015, the matters reported in these articles were raised before the hearing of the Senate Economics Legislation Committee – Estimates.

On 6 March 2015 and 21 April 2015, the Senate Economics References Committee held hearings into the “Scrutiny of financial advice”. The terms of reference for this inquiry was to inquire and report on implications of financial advice reforms and included various aspects of unethical and misleading financial advice. Four licensees were represented at the hearings.

Monitoring of the media and the hearings resulted in the FPA writing to seven licensees to seek clarification in relation to both the media articles and evidence before the hearings, as well as to identify whether any FPA practitioner member(s) had engaged in activity that might constitute a breach of the FPA Code or their membership obligations. Again, the FPA was pleased with the level of licensee cooperation.

The FPA also made direct contact with three individual members who had been named in either the articles or Senate hearings. For the three members, this resulted in:

- no action in respect to one;
- the FPA initiating a complaint against one – this matter is ongoing and is unable to be progressed until the outcome of other proceedings; and
- One member’s membership being automatically terminated – the same member referred to in relation to Structured Products (above).

**ASIC Media Releases**

The Professional Accountability team monitors all ASIC media releases, including to identify instances of enforcement action against financial planners and advisers – both those who are (the vast minority) and those who are not FPA members. This monitoring resulted in various courses of action during the year, including:

- the automatic termination of one member’s membership as a result of them being subject of a banning order under the Corporations Act; and
- to inform the FPA Professional Membership Program – to ensure that only the right people can join the FPA.
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 has been no more evident than 2014/15, with a total of 87 reported incidents of ‘Unauthorised Use’ or ‘Misuse’, 85% of these matters were proactively identified by the FPA. This is an increase of 49% on the previous year and demonstrates the FPA's commitment to prevent consumers from being misled and to protect the FPA brand to the benefit of Members. These proactive activities include reviews of exited Members, CPD and Marks Audits of Members, a conscious approach to BAU activities and examination of media, as well as internet and other targeted inquiries. The second highest means was FPA Members (8%) and, although 'reactive', it reflects the esteem in which Members themselves hold the FPA brand. Other ‘reactive’ sources were consumers and financial services participants who are not FPA members.

**Figure 5** depicts the source of FPA Brand cases during 2014/15
Continuing Professional Development (CPD) and Marks Audit

This year, the FPA continued its commitment to maintaining high professional development standards within FPA membership.

We undertook two CPD and Marks audits during 2014/15, the first in September 2014 and the second in March 2015.

A total of 566 practitioner members were audited – 409 CFPs and 157 AFP’s. Of these, 531 practitioner members passed the audit and 35 were re-audited.

The auditing process is primarily designed to help practitioner members meet their CPD obligations, and ensure correct use of FPA and FPSB branding. The FPA believes the practical taken has resulted in a higher level of member engagement with FPA CPD obligations.

Unlike previous years, during 2014/15 it was not necessary to refer any matters to the Professional Accountability team for consideration of the FPA initiating a complaint against a Member on the grounds of non-cooperation and/or another serious breach of the CPD Policy.

FPA Confidential (Anonymous Reporting)

The FPA Confidential (Anonymous Reporting) service has been operational since February 2010 and provides the FPA with enhanced intelligence on the activities of our members though anonymous ‘whistleblowing’ reports. It enables the FPA Policy and Conduct team to combine anonymous information with 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.

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.
**Activity**

Since February 2010 (till 30 June 2015), there have been a total of 79 reports made via FPA Confidential. A number of these relate to multiple individuals and/or companies. Of the 79 reports, 77 related to individuals and 11 related to companies only – only two of which were Professional Practices and two of which were Professional Partners.

Of the 16 reports received during 2014/15, 14 related to individuals and two related to companies.

**Informants**

The service has been effective in soliciting information anonymously. Over 75% of all informants to date have elected to remain anonymous. Not surprisingly, of the total reports made since 2010, where identified almost 60% of reports were received from an individual financial planner or an employee of the party being complained about.

During 2014/15, 100% of informants elected to remain anonymous, 44% of reports were received from FPA Members and in 25% of reports the informant type was unknown – all significant increases on the average since 2010. Similar to the average, 57% of reports were received from an individual financial planner and 19% of reports were received from or on behalf of consumers or clients. About 13% of informants were financial planners who were not FPA members, a decrease of about 50% on the average.

![Figure 6](image-url) illustrates the breakdown of informant types during 2014/15

**Individuals & Associated Organisations Reported**

Since 2010, about 35% of individuals reported to FPA Confidential to date have not been an FPA member. During 2014/15, a lesser proportion of reports related to an FPA member with 44% of reports relating to individuals who are not a member of the FPA.

![Figure 7](image-url) illustrates individuals reported to FPA Confidential by FPA membership during 2014/15
Types of Matters

FPA Confidential matters are categorised into matter types for reporting purposes. Matters reported during 2014/15 were:

<table>
<thead>
<tr>
<th>Matter by Type</th>
<th>No. of Matters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unethical conduct</td>
<td>9</td>
</tr>
<tr>
<td>Reportable misconduct</td>
<td>2</td>
</tr>
<tr>
<td>Unauthorised financial advice</td>
<td>2</td>
</tr>
<tr>
<td>Statement of Advice not provided</td>
<td>1</td>
</tr>
<tr>
<td>Inappropriate advice</td>
<td>1</td>
</tr>
<tr>
<td>Misuse of Brand</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>16</strong></td>
</tr>
</tbody>
</table>

Allegations of unethical conduct remain the most common type of matter reported through FPA Confidential. In the 2014/15 year there were nine matters reported in this category, a 50% increase on the highest previous year. Of these matters, and three related to FPA Members, one of whom was subject of two reports about separate conduct, three related to individuals who were not FPA Members and two related to companies. The most common unethical conduct reported related to bias to conflicted products, including in-house products of ‘non-aligned’ licensees. While whistle-blower reports of Inappropriate Advice were down, there was a strong increase in this category through the ordinary complaints process (referred to later in the Professional Accountability Program section).

The much lower incidence of inappropriate advice reported via this channel as compared to the 2011/14 average seems to be explained by an increased incidence of these reports through the formal complaint process, which means that less complainants have chosen to remain anonymous.

Outcome of all Matters

Of the 16 matters reported in 2014/15, 12 were finalised in the same year and four remained open – each of these four were subject of ongoing inquiries. One Member’s membership was terminated as a result of inquiries into one finalised matter.

Figure 9 depicts the primary outcome of each of the 16 matters – some matters had more than one course of action. For example, in some of the matters where the FPA conducted active inquiries, the FPA considered it prudent to report the matter to the Licensee at the same time. The FPA may report a matter to a Licensee at any stage of an investigation.

if it considers it may be in the public interest to do so, and the referral of these particular matters demonstrates the continued progress of professional regulation.

The six matters depicted as having been referred either to the licensee or to ASIC related to matters where the FPA was unable to take any action due to the subject of the report not being a member of the FPA, or the FPA being unable to identify the individuals involved. On the basis of the information provided in the report, and potentially also other inquiries made by the FPA, the FPA considered it prudent to refer the matter to the licensee or ASIC.
The treatment of all 16 reports made during 2014/15 was as follows:

![Diagram illustrating the outcomes of FPA Confidential matters reported during 2014/15]

As at 30 June 2015, there were five matters open in total, most of which were subject of ongoing inquiries. One matter had been carried forward.

**The Year Ahead**

The various components of the Professional Conduct Program, referred to in this section, will continue.

The Quality Practice Assessment Program will include completion by Professional Practices of an FPA survey during the second quarter of 2015/16 FY. 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.

Additionally, the surveys will be used by the FPA to manage risk. This will include prioritising the timing and type of activity for Triennial Review of each Professional Practice.
PROFESSIONAL ACCOUNTABILITY PROGRAM

Complaints and discipline process

Under the FPA Professional Accountability Program, an FPA Investigating Officer investigates complaints. Where initial investigation identifies the need to progress the matter to a Disciplinary Investigation, the Investigating Officer 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.

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.

Where the ember 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.

Complaints 2014/15

The FPA received 30 new complaints during the year, which is a 36% increase from last year. The increase may be attributed to heightened consumer awareness off the back of various FPA consumer awareness initiatives, among other things. This resulted in a number of complaints where the complainants were not aware that FPA membership is voluntary and/or their primary purpose was to obtain compensation, either in the first instance or after unsuccessful complaints via IDR and/or EDR.

During the year 23%, of complaints were about individuals (and companies) who were not FPA members and 40% of complaints related to conduct alleged to have occurred more than three years prior to the complaint (see matters summarily dismissed below).

Of the 30 complaints received during 2014/15, 21 were from clients, three were from the FPA Professional Designations team, two were initiated by the FPA Professional Accountability team, two were from FPA members and two were from other sources.

Unsuitable advice complaints went against its trend of decline over recent years, increasing from 9% last year to 27%, or eight complaints. While there was an aggregate increase in this type of complaint across all reporting channels, there was a strong shift away from anonymous reporting to this complaint channel.
Four of the unsuitable advice complaints related to individuals who were not FPA members (IO has no power to deal with), two were summarily dismissed because of the period of time since the alleged conduct (2006-2010) and two were in the assessment phase, both of which related to conduct alleged to have occurred between 2006 and 2009.

One of the summarily dismissed matters was a repeat complaint to the FPA after the initial complaint was also summarily dismissed in 2012 because the complainant failed to provide supporting material requested by the FPA. At the time of the initial complaint the conduct was alleged to have occurred only two years prior. The two matters summarily dismissed resulted from the Investigating Officer’s decision to not make a determination that it was fair and just to deal with the complaints having regard to the delay and the reason for the delay or that the complaints involved an allegation of malpractice and it is in the public interest to deal with the complaints.

Of the seven other category complaints, only three were considered to have merit. One matter was in relation to a member borrowing a substantial amount of money from a client and was awaiting a CRC determination following a panel hearing, and the remaining two matters were dismissed after initial investigation.

Misleading conduct complaints were at a similar level to recent years and of the five complaints only three were considered to have merit. Of these three, one was considered too old to investigate fairly, one member failed to cooperate and had their membership terminated and one member was reported to the CRC and was still ongoing at the end of the year.

The FPA closed a total of 29 complaints within the year. In 20 of the 24 complaints that were both received and closed during the same year, either the complaint did not relate to an FPA member, the FPA did not consider there to be any professional regulatory benefit in dealing with the complaint. Of the remaining four complaints, three matters of Academic Misconduct referred to the Professional Designations Committee for consideration of appropriate sanction and one member had their membership terminated for failing to cooperate with the complaint investigation and to pay the resulting sanction.
The rate of closure within the year of receipt did decline slightly on the rate in recent years, and this may be explained by the timing in the period when some of the complaints were received.

However, of these matters closed 83% of were finalised within three months of being received and 96% were finalised within six months of being received. Of the four matters that took more than three months to finalise, two matters were due to delays by complainant or member, one matter was a Special Breach reported to the CRC but remained within procedural time limits and one matter related to conduct alleged to have occurred about nine years earlier and was supported by a large amount of material – this matter was assigned a lower priority than other matters.

Figure 13 depicts the time taken to finalise new matters received during the 2014/15 financial year.

At the end of the financial year there were eight open complaints at various stages of the complaint process, six of which had been received in that same year and two of which had been carried forward. Figure 14 depicts the stage of those eight complaints.

Figure 14 depicts the stage of each of the eight cases remaining open as at 30 June 2015.

Of the six new complaints that remained ongoing at the end of the financial year, one matter was awaiting a written determination by the CRC Chair following a disciplinary hearing, one matter had been referred to the CRC Chair following completion of the disciplinary investigation, two matters were undergoing analysis of information gathered during the investigation, one matter had stalled due to proceedings elsewhere, and one matter was only received two days prior to the end of the period. One of the matters carried forward was in the process of being reported to the Conduct Review Commission.
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 2014/15, 21 of the 30 (70%) 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 15 depicts the steady shifts to complaints under the new Code over the previous four years and follows the shift away from complaints relating to the GFC. The exception of 2014/15 may be explained by the heightened consumer awareness of the FPA – referred to earlier.

Terminated Members

Under the FPA Constitution members may be automatically terminated for various reasons that cause the FPA to deem that they no longer meet the requisite standards of FPA membership.

Details of members automatically terminated during the 2014/15 financial year appear in the table below. Details of members automatically terminated are updated on the FPA website as they occur.

<table>
<thead>
<tr>
<th>FPA Action date</th>
<th>Member Name</th>
<th>Member Number</th>
<th>Effective Date</th>
<th>Member Category</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 Jul 2014</td>
<td>Stuart Jamieson</td>
<td>29884</td>
<td>17 May 2012</td>
<td>CFP</td>
<td>Authority revoked by AFSL - breach of law</td>
</tr>
<tr>
<td>22 Sept 2014</td>
<td>Michael Irwin</td>
<td>13235</td>
<td>18 Sept 2014</td>
<td>CFP</td>
<td>Banning Order under Corporations Act</td>
</tr>
<tr>
<td>12 Jan 2015</td>
<td>Alan Kenyon</td>
<td>00592</td>
<td>29 May 2012</td>
<td>AFP</td>
<td>Insolvent under Administration</td>
</tr>
<tr>
<td>18 Feb 2015</td>
<td>Shane Thompson</td>
<td>26732</td>
<td>17 Feb 2015</td>
<td>CFP</td>
<td>Failure to pay penalty imposed by CRC</td>
</tr>
</tbody>
</table>
Conduct Review Commission Activity

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 10 members, including the Acting Chair, who is a Barrister at law, eight CFP practitioner members and a compliance and risk management consultant. The vacancies provide further opportunity over and above recent appointments to ensure that the CRC has a broad mix of experience, skills and knowledge.

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. 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.

On 1 August 2014 Professor Kingsford Smith was replaced by Dr June Smith, who was previously a Deputy Chair for a number of years.

Dr Smith made an outstanding contribution as a panel member and in her short time as Chair, departing from the role on 30 June 2015 after being appointed Lead Ombudsman, Investments and Advice, Financial Ombudsman Service. Dr Smith’s new appointment is strong recognition of the standing of the CRC as a private regulatory tribunal and the calibre of candidates we have been able to attract to the role.

The Deputy Chair, Mark Vincent, will act as Chair until a decision is made on a replacement.

In June 2015, the Board approved the appointment of the following CRC members, effective 1 August 2015:

- Mark Vincent (Acting Chair)
- Sandra Bowley CFP
- Guyon Cates
- Michael Chalmers CFP
- Greg Cook CFP
- James Cotis CFP
- Cherie Feher CFP
- Dacian Moses CFP
- Lisa Palmer CFP
- Ragnhild Sky CFP

The FPA wishes to thank the following retiring Members for their valuable contributions to the CRC:

- Chris Benson
- Bruce Christie
- Michael Perkins (prev. Deputy Chair)
- Dr June Smith (Chair & prev. Deputy Chair)
- Brett Walker
**CRC Workshop 2014**

The FPA hosted a CRC Workshop during August 2014. The workshop was successful in: greeting and inducting the two most recent panel members appointed to the CRC; refreshing the knowledge of the existing panel members with recent developments and in considering the future directions of the CRC. The workshop also signified the transfer of the reigns of the CRC Chair from Professor Dimity Kingsford Smith to Dr Smith.

**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 for one matter during the 2014/15 year. Although the complainants withdrew from this matter after obtaining compensation and the conduct occurred in 2006 & 2007, the FPA saw the benefits of becoming the complainant in the matter and, with the cooperation of the Member, were able to achieve an outcome where the Member could continue within the professional community.

**Disciplinary Proceedings 2014/15**

During the year the FPA recommended the CRC institute disciplinary proceedings against four members, one under the old Code and three under various versions of the New Code. Two of these matters were finalised in the same period by summary disposal determination and Infringement Notice, one matter was awaiting a determination following a disciplinary panel hearing and the other matter was pending a decision on whether to institute disciplinary proceedings against the Member. A determination was also issued by the CRC from a disciplinary panel hearing held in the previous period.

The two matters finalised were the subject of a case study in FP Magazine to demonstrate that the FPA complaint process is not intended to be unnecessarily punitive and that an important part of the process is for practitioners and the practising profession to learn not only from their own mistakes but also from those of others. The case study was titled ‘A tale of two Members’ (the worst of times - the best of times) and specifically demonstrated how a Member who embraces accountability within a professional regulatory model and can demonstrate capacity to continue as a professional financial planner can remain a member of a professional community. Conversely, the case study demonstrated how a member who fails to cooperate with the accountability mechanisms should not remain within a professional community, in some cases necessitating termination of membership.
Of the four matters referred to the CRC with a breach recommendation(s), the CRC agreed with all breach recommendations and found an additional breach for one of those matters – refer Matter 2 in Figure 16. This reflects not only the accuracy of the FPA in its assessment of misconduct, but also the independence of the CRC in not being confined by FPA recommendations.

<table>
<thead>
<tr>
<th>Referred to CRC</th>
<th>Breach recommendations</th>
<th>Breaches approved by CRC</th>
<th>Additional breaches approved by CRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matter 1</td>
<td>1. Unsuitable advice 2. Explanation of risk</td>
<td>1. Unsuitable advice 2. Explanation of risk</td>
<td>n/a</td>
</tr>
<tr>
<td>Matter 3</td>
<td>1. Non-cooperation</td>
<td>1. Non-cooperation</td>
<td>n/a</td>
</tr>
<tr>
<td>Matter 4</td>
<td>Not disclosed - matter still being considered by CRC</td>
<td>In-progress</td>
<td>In-progress</td>
</tr>
</tbody>
</table>

Figure 16 depicts each breach recommendations made by the FPA to the CRC during 2014/15 and the CRC’s determination.

The breakdown of the breaches and the sanctions imposed for those breaches are depicted in Figures 17 and 18 below, respectively.
Returning to the Profession and Community

The Financial Planning Association (FPA) is committed to making practical and beneficial use of the learnings from its Professional Membership, Conduct and Accountability program. The main benefits of reporting on trends and outcomes are to:

- provide confidence to members and the community that the profession takes a strong position on the protection of the reputation of financial planners by responding to breaches of its professional expectations;
- encourage members to consider their own practices, to assist members in appreciating the types of complaints received, to and to provide guidance for complaint protection; and
- increase consumer financial literacy.

During the 2014/15 financial year, the FPA again published:

- 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 FPA Magazine, including case studies arising from CRC panel hearing and summary disposal determinations on matters with elements including unsuitable advice, cooperation -v- non-cooperation with FPA complaint investigation and conflicts of interest. Additionally, the Report included articles on cooperating with FPA complaint investigations and academic misconduct (with some reference to recent cases).

Separate to publishing, the FPA:

- An educative approach to responding to consumer inquiries, both by telephone and email;
- A similar approach in responding to member inquiries;
- Rolled out the ‘Understanding the Code of Professional Practice’ e-Learning program, an interactive course to introduce FPA members to the rationale and components of the Code of Professional Practice (the Code). The program was rolled out during October 2014 and is based on a series of case studies requiring the Member to navigate through real life planner/client dilemmas and to use the Code to solve them. Upon successful completion of the quiz (80% mark), members receive 1.5 CPD hours. The program takes about 45 minutes to complete;
- The ‘Taking Other Steps – Best Interest Advice in a Strategic World’ toolkit, based on a practical assessment of the best interest obligations and the Code. The toolkit was introduced during the 2015 FPA National Roadshows (Roadshows) between April and June 2015, which were held at 33 locations nationwide and attended by 1750 FPA Members and 866 individuals who were not FPA members. The toolkit has subsequently been made available to all FPA members; and
- Provided practical feedback to FPA Professional Practices through the Advice Review program.
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.