

# LIMITATIONS OF FINANCIAL ADVISER STANDARDS AND ETHICS AUTHORITY'S CODE OF ETHICS

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**P**CCORDING to the Corporations Amendment Act 2017 (Australia) and Corporations Act 2001 (Australia), the Financial Adviser Standards and Ethics Authority has issued a final version of Financial Planners and Advisers Code of Ethics (FASEA's Code of Ethics) that will commence on 1 January 2020. Focused on FASEA's Code of Ethics, our paper argues that the adoption of this Code of Ethics and accepting the fiduciary responsibility by financial advisers will be challenging as the code lacks integration and preciseness.

**Research Design/Methodology:** This a study based on secondary sources, taken from varied journals, reports and online sources.

**Findings:** FASEA's Code of Ethics is not aligned with the code of ethics of other professional bodies who are to monitor its implementation. Our paper also raises the question about legislation of standards for ethics based on general values. The new code of ethics fails to build the connection between unethical behavior and its consequences. Our paper discusses the components of FASEA's Code of Ethics and the new increased educational requirements that are proposed by the FASEA's Code of Ethics. Also, the problem of 'informed consent' conflict is not resolved. Therefore, its acceptance by the professional financial bodies is unlikely to help enhance the clients' perception about the competence and integrity of the financial adviser, which was one of the main goals of the FASEA's Code of Ethics.

**Research Limitations:** Financial Planners and Advisers Code of Ethics need an ongoing observation, the data we have is constantly being adjusted by official authorities.

**Originality/Value:** Our suggestions include evaluation of value added by additional layer of the FASEA's Code of Ethics and indicate clearly the obligations of Code Monitoring Bodies so as to clarify the interaction between the FASEA's Code of Ethics and other professional codes of ethics. FASEA should also balance the relationships among education requirements, practice experience and ethical reasoning levels so that the adoption of the code is more acceptable to the advisers.

**Key Words:** Financial Adviser Standards and Ethics Authority; FASEA's Code of Ethics; Financial Planners, Financial Advisers; Australia.

## Introduction

The Code of Ethics set by FASEA, aims to establish a robust outline of ethical and professional requirements for financial advisers in Australia. After getting feedback related to key parts of the code of ethics and their practical implications, FASEA released an exposure draft for consultation until 1<sup>st</sup>

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June 2018. FASEA issued a final version of Financial Planners and its code of ethics on 8<sup>th</sup> February 2019, which will be implemented from 1<sup>st</sup> January 2020. It would be mandatory for all the financial advisers to follow the code of ethics from that day onwards (FASEA, 2019). Registering with the FASEA's code of ethics and acceptance of fiduciary responsibilities by the financial advisers represents a significant milestone to enhance the ethical and professional standards of financial advisers. The complex content and intensive directivity reveal the ambition of FASEA to restore the client's confidence in the financial services area. Compliance with FASEA's Code of Ethics will be a requirement for all 'relevant providers'<sup>1</sup> of 'relevant financial products'<sup>2</sup>. The Twelve standards of FASEA's Code of Ethics along with five core values are organized under four main themes, namely standards for ethical conduct, client care, quality practice, and expert commitment.

FASEA presents a summary for the competence requirements in standard 10 of the professional commitment themes for high level knowledge and skills. From 1<sup>st</sup> January 2019, new entrants seeking for financial advice career will have to complete a FASEA approved degree, complete a professional year, and pass the Financial Adviser Exam. Existing financial consultants are required to pass the exam by January 1, 2021 and must attain an education standard equal to a FASEA's approved degree by January 1, 2024.

FASEA's Code of Ethics focus on competency, linked with customer outcomes supported by the clients' grievances concerning financial services to the Financial Ombudsman Service (FOS) Australia and ASIC's (Australian Securities and Investment Commission) Markets Disciplinary Panel (Armour, 2018). "From 1<sup>st</sup> January 2020, all such advisers must be covered by an ASIC-approved compliance scheme under which their compliance with a new single, uniform code of ethics will be enforced. These compliance schemes will be operated by respective monitoring bodies"<sup>3</sup> (CPA, 2019, p. 15).

In principle, many financial planning relevant organizations, such as Australian Financial Markets Association (AFMA), Association of Financial Advisers (AFA), Financial Planning Association of Australia (FPA) and Accounting Professional & Ethical Standards Board Limited (APESB), have expressed their support for the introduction of FASEA's code of Ethics to the financial advisory industry. Roxon (2018) from APESB indicates that this Code is one of the positive steps towards the reformation of the financial planning industry. Diamantes (2018) from FPA has predicted that the introduction of FASEA's Code of Ethics will force financial advisers to be even more cautious in interactions with or on behalf of their clients and increase the standard of continuing professional development. It is claimed that due to the introduction of FASEA's code of ethics, clients' understanding of advice given to them and trust in their advisers will improve, which will result in rise of demand for financial advice.

Notwithstanding the potential positive impact, there are several major concerns about the implementation of FASEA's Code of Ethics on January 1, 2020. First, whether it would be worth spending \$15 million (FOI-2399, 2018) for just a small number of rogue financial advisers who have created a perception issue for the entire industry. The fundamental question is that all professional organizations in the financial advisory industry already operate under their own standardized code of professional ethics and there is a lack of clear explanation of how the FASEA's Code of Ethics is intended to supplement,

<sup>1</sup> A relevant financial service provider is "an individual, who is an Australia Financial Services (AFS) licensee, an authorized representative, employee or director of an AFS licensee, or an employee or director of a related body corporate of an AFS licensee, and authorized to provide personal advice to retail clients, as the AFS licensee or on behalf of the AFS licensee, in relation to relevant financial products" (PSA, 2019).

<sup>2</sup> A relevant financial product is "according to the definition of Tier 1 financial products in Regulatory Guide 146 includes all financial products, except for general insurance products, consumer credit insurance, basic banking deposit products, non-cash payment products, First Home Saver Account (FHSA) deposit accounts, and a combination of any of these products. A personal sickness and accident insurance products are neither relevant financial products nor Tier 1 products" (RG146, 2012).

<sup>3</sup> The monitoring body for a compliance scheme means "the person that monitors and enforces compliance with the Code of Ethics under the scheme" (The Corporations Act 2001 SECT 910A) (RG 269, 2018).

interact or distinguish with other existing ethical principles, professional standards, laws and regulations applicable to financial advisers. Moreover, in practice, ethical behavior cannot be standardized as the level of ethical tolerance will depend upon individuals. Thus, implementation of policy in practice will be even more expensive and time consuming. FASEA's Code of Ethics has increased the access threshold and introduced a new supervision regulatory of 'monitoring body', but there is no clear control mechanism to identify rogue players early in the game. As mentioned in point six of FASEA's Code of Ethics explanatory statement (2019) "*Failure to comply with the Code is not a criminal offence, and section 921E of the Act is not a civil penalty provision*", if morality is not governed by law in the face of interest, it is just a piece of paper.

Another concern is the lack of clarity about the role of FASEA's Code of Ethics monitoring bodies and its authority in relation to code of ethics of various monitoring bodies. As mentioned by Kewin (2018) from AFA, "*To what extent is a Code Monitoring Body expected to monitor the application of these Values? As an example, how far does an adviser need to go to demonstrate Diligence and how would a Code Monitoring Body monitor the demonstration of diligence?*" Moreover, who monitors the Code Monitoring Body? Thus, it is very likely that there will be conflict among different parties and it will be challenged at implementation.

Also, higher educational requirements will force existing relevant financial advisers to leave the industry. This will reduce the number of advisers and therefore reduce access to financial advisers. Lack of professional advisers will create opportunity for rogue advisers to come in. Generally, systems are not designed to catch these rogue investors early. The balance between education levels, practice experience levels and ethical reasoning level need to be very clearly articulated, otherwise the additional requirements may perpetuate the problem that it intended to eliminate. Higher cost of additional requirements will lead to increase in advising fees and thus discourage customers to use the services.

The problem of 'Informed consent'<sup>4</sup> conflict is not solved primarily. Moreover, the proliferation of FASEA's Code of Ethics that applies only to financial advisers is very likely to cause confusion as the boundaries of financial services have blurred.

We feel that the above concerns need to be adequately addressed before implementing the FASEA's Code of Ethics to avoid duplication, and potential violation. Our paper provides certain suggestions to address the above concern.

## **The Status of Financial Planning and Advisory Industry in Australia**

Financial planning and advisory are the main approaches for helping individuals and families to get a reasonable return through appropriate investments. The total number of advisers in August 2009 was 18,000 (ASIC, 2009). Based on the ASIC Financial Advisers Dataset (financial advisers dataset, 2019) there were 25,511 financial advisers registered in Australia as on 3 October 2019, an increase of 41% over the last decade. The expected revenue of the financial planning and advisory industry is around \$7.45 Billion (Productivity commission inquiry report, 2018). The report mentioned that around 2.6 million Australian adults used or had sought financial advisers in 2016. Commonwealth of Australia (2018) indicated that between 20% to 40% of the Australian aged 18 and over have received advice from financial planners or advisers.

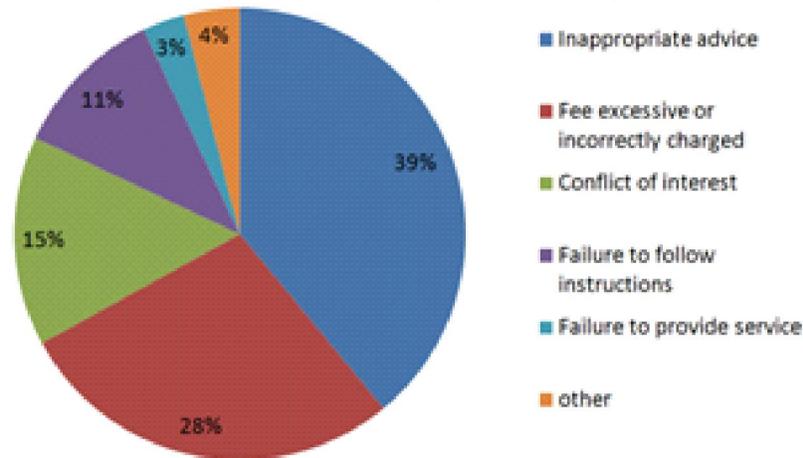
ASIC's research found that mistrust of financial advisers is the main reason as to why many Australians do not access financial advice (Armour, 2018). Around 50% of Australian adults indicated that they have unmet financial advice needs (Productivity commission draft report, 2018). The Financial Services Institute of Australia (FINSIA) commissioned survey<sup>5</sup> shows that only 50% of respondents trust the Australian banking industry; only 40% of respondents trust the CEO and senior executive team of

<sup>4</sup> 'Informed consent' requires advisers to ensure that "all products are presented in terms understood and agreed by the client".

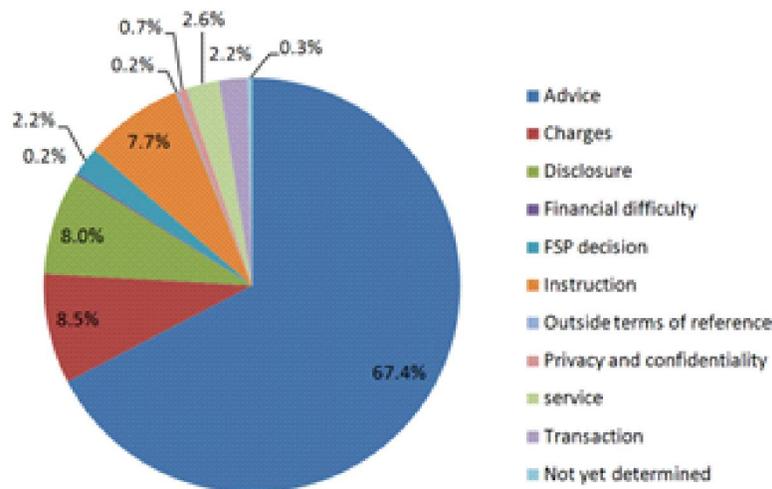
<sup>5</sup> The FINSIA-commissioned survey is focused on consumer attitudes. It reveals that the link between higher professional standards and consumer trust is much more closely aligned, especially in the banking industry.

their banks; over 57% of respondents believe that the Australian banking industry as a whole does not have high ethical standards (Whitehead, 2018).

Research by ASIC shows that the compensation for clients for ‘fees for no services’<sup>6</sup> is above \$220 million (Armour, 2018), around 30% of the expected revenue for the industry. But, ‘fees excessive and incorrect’ was not the highest proportion of complains about financial planners and advisers received by the Credit and Investments Ombudsman (CIO) and the Financial Ombudsman Service (FOS)<sup>7</sup>. CIO received 83 complaints about financial planner and advices in 2016-2017 (CIO annual report, 2017). Among these complaints, the largest proportion of complaint category was inappropriate advice (39%), follow by fee excessive or incorrectly charged (28%). While, FOS received 585 disputes about financial planners and advices in 2017-2018 (FOS annual review, 2018). 394 cases or 67 percent of the disputes to the FOS were related to ‘advice’ activity , followed by ‘charges’ activity<sup>8</sup> (50 cases, 8.5%). Refer to Chart 1 and Chart 2 for distribution of nature of complaints and disputes.



**Chart 1: CIO Complaints about Financial Planners and Advisers, 2016-17**



**Chart 2: FOS Disputes about Financial Planners and Advisers, 2017-18**

<sup>6</sup> ‘fees for services’ is one of main remuneration arrangements for the financial planning and advisory industry.

<sup>7</sup> From 1 November 2018, the Australian Financial Complaints Authority (AFCA) was replace the Financial Ombudsman Service (FOS), the Credit and Investments Ombudsman (CIO) and the Superannuation Complaints Tribunal (SCT).

<sup>8</sup> Charges including: Break costs, Deductible or excess, Incorrect commissions, Incorrect fees/costs, Incorrect interest added, Incorrect premiums, No claim bonus (FOS annual review, 2018)

Inappropriate advice is the highest complaints terms in both CIO and FOS, which has been defined as “*Failure to act in client’s best interest; Failure to prioritize client’s interests; Failure to provide advice; Inappropriate advice*” (FOS annual review, 2018). Thus, the unethical behavior and low level of professionalism seems to have increased from 2016-17 to 2017-18. Although the overall number at 585 complaints for 2.6 million clients is low, it does show that standard of ethics in this industry are not completely effective (Productivity commission inquiry report, 2018).

To control unethical and unprofessional behavior in the profession, FASEA has proposed the adoption of a code of ethics. Few researchers indicated that, in Australia the majority of financial advisers behave ethically but there is a very tiny percentage of rogue advisers that have behaved unethically and have tarnished the image for others. Since the mainstream media focuses on unethical behaviors rather than ethical behaviors, the public perception for financial advisers has been clouded (Cull, & Bowyer, 2017).

During the period of October 2007 to February 2008, Smith (2009, 2010) did a survey on the issue of ethics in the financial planning sector of Australia. She invited 770 financial planners and compliance officers to participate in her survey and received 165 completed questionnaires. Of these, only 41% of respondents completed the Advanced Diploma or Diploma of Financial Planning. Cull, & Melville (2017) investigated the current climate of ethics education across Financial Planning Association accredited degrees in Australia. Results showed that only 51% of financial advisers had an education level at bachelor level or above and 8% of financial advisers did not have a diploma. Survey from Smith found that younger and less experienced financial advisers (and compliance officers) or those who do not hold professional certificate are at higher risk of engaging in unethical conduct based on lower levels of ethical reasoning. In addition, advisers with lower ethical threshold are likely to repeat the same unethical behavior.

Smith (2009, 2010) mentioned that in Australia many of the forms of unethical conduct have not been recognized by the Australian Financial Service (AFS) licensee’s risk management and compliance systems. Also, some financial advisers are not professionally competent to efficiently find answers to the complicated ethical dilemmas often linked with providing advice to customers. For solving these problems, she suggests that “*all financial advisers within the sector should be encouraged to join a professional association and undertake ethics training and education courses as part of an accreditation process*” (Smith, 2010).

The Financial Services Institute of Australia (FINSIA) suggested that it is necessary to restore public trust and to ensure that all consumers are protected from receiving advice that is against their best interests. FINSIA’s survey indicates that 60% of respondents would prefer to trust their bank more if more staff met professional standards; nearly 19% of respondents aged between 25 and 44 expressed an intention of changing to a new bank with staff that was more professionally qualified; more than 70% of respondents agree that high level of professionalism is the standard requirement to restore client confidence and trust in finance services sector (Whitehead, 2018). Also, Armour (2018) indicated that improving professionalism is a good approach to rebuild public trust in the finance services industry. If people believe that they will obtain financial advice from professionals who promote the financial well being of clients first then of course more people will seek financial advice.

But the essential question becomes: What are the relationships between education level, ethical reasoning level, public trust level, practice experience level and financial advices’ performance level? As mentioned by Smith (2010) “*It was anticipated that the more educated an individual was, the higher their level of ethical reasoning would be, but this was not demonstrated in the results*”. “FASEA’s Code of Ethics”, has been introduced to provide solution to this question. However, based on the information we have, the new codes is just a modified version of other existing codes of conducts for financial professional bodies in Australia.

## The Existing Codes of Conducts for Financial Associations in Australia

Almost all of the professional financial bodies, such as the Association of Financial Advisers (AFA), Australian Financial Markets Association (AFMA), Financial Planning Association (FPA), Stockbrokers and Financial Advisers Association (SAFAA) and The Financial Services Institute of Australia (FINSIA), in Australia have codes of ethics or conducts imposed on its members. The members of these professional bodies abide by these codes of ethics underneath the Corporations Act 2001 along with the other rules and guidelines that apply to financial advisor industry. These associations also offer educational courses, such as FPA: CFP1 Topic 2: Professionalism and Ethics; AFA: AFA 4 – Professional Conduct & Governance for Financial Advisers and AFMA: Qualification - Professionalism: Conduct & Ethics, to satisfy the requirement of professionalism and ethics for this industry. Despite the presence of multiple codes of ethics with complete implementation details and controlled by Corporations Act 2001 and all other laws and regulations, the industry still faces the crisis of lack of trust. Does it mean that the existing system need to be reformed or ethics cannot be legislated?

FASEA's Code of Ethics is introduced to address the situation of lack of trustworthiness. FASEA's Code of Ethics presents a summary for the competence requirements in standard 10 of the professional commitment theme "*You must develop, maintain and apply a high level of relevant knowledge and skills.*" From 1 January 2019, a new entrant to the financial advisory industry will be required to complete: A FASEA approved bachelor degree or above; a Professional Year; to pass an exam before commencing Quarter 3 of the Professional Year; to meet 40 hours continuing professional development (CPD) requirements each year; and to comply with FASEA Code of Ethics and be monitored by ASIC's approved compliance schemes. More rigorous procedures and system flow make FASEA Code of Ethics like procedure and systems of existing financial professional bodies but established by the Federal Government.

However, the similarity is not just in the process, it is in the content as well. FASEA's Code of Ethics is very similar to other codes of ethics in professional bodies. For example, "FASEA's Code of Ethics standard 1, *You must act in accordance with all applicable laws, including this Code, and not try to avoid or circumvent their intent.*" is very similar to AFMA code of conducts section one: EP 3, EP12; AFA principle 1; FPA principle 2, 5; SAFAA principle 11, 12. FASEA's Code of Ethics standard 2 "*You must act with integrity and in the best interests of each of your clients.*" is very similar to principle 1, 2 in AFA; principle 1, 2, 4 in FPA; principle 12A, 13 in SAFAA. FASEA's Code of Ethics standard 3 "*You must not advise, refer or act in any other manner where you have a conflict of interest or duty.*" is very similar to principle 3 in AFA; principle 4 FPA; section one – EP1, EP4, EP5, EP10 in AFMA; principle 23, 24 in SAFAA.

If FASEA's Code of Ethics applied the same principles with the existing codes of ethics or conducts in other professional bodies, why we need to spend additional \$ 15 million (FOI-2399, 2018) for essentially a duplicate code? If FASEA's Code of Ethics is intended to be different and above the prevailing codes of ethics or conducts, but looks very similar, then the question is how it would help to identify rogue players early in the game using the same control mechanism? The explanatory statement point 6 of FASEA's Code of Ethics emphasizes that "*Failure to comply with the Code is not a criminal offence, and section 921E of the Act is not a civil penalty provision.*" Additional standards based on general principles with no specific penalty will only be adhered to on paper and not in practice. Unethical behaviors may not be a criminal offence, but what if unethical behaviors that hurt a client's interest are still legal? Recall that up to 2018 the compensation for clients for 'fees for no services'<sup>9</sup> is above \$ 220 million based on ASIC's research (Armour, 2018). Thus, a rogue financial adviser identification and punishment mechanism seems more effective than a new code of principles based ethics.

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<sup>9</sup> 'fees for services' is one of main remuneration arrangements for the financial planning and advisory industry.

## **Lack of Preciseness and Explanation in the FASEA's Code of Ethics**

There is a lack of clear explanation of how it is intended to supplement, interact or distinguish from other existing codes of ethics, ASIC and Corporations Act applicable to financial advisers (Roxon, 2018). Lack of precise implementation guidelines and regulation will remain extremely challenging to enforce for a Code Monitoring Body executors, and clients. Moreover, implementation of policy in practice will be even more expensive and time consuming because multiple advisers and monitoring bodies will interpret the code from their own perspective. The essential question is whether the FASEA's Code of Ethics which is a set of highly generalized rules without detailed implementation steps will need to be constantly updated as reality changes? There are three main consequences for adopting FASEA's code of ethics as currently proposed.

Firstly, as CEO of Association of Financial Advisers (AFA), Kewin (2018) has pointed out that there is a lack of detail and explanation in terms of the application of the five principles and 12 standards of the Code of Ethics. To mitigate challenges, the selection of words in the code should be more precise or at least subject to greater explanation. For example: "FASEA's Code of Ethics standard 2, *You must act with integrity and in the best interests of each of your clients*" The first part 'integrity' is too macro, if there is not a specific explanation. "*The wording should be amended to be an objective standard, or guidance should be provided to ensure providers understand the nature of the requirement, and what might be regarded as a breach.*" (Lyons, 2018).

FASEA's Code of Ethics standard 7 "*The client must give free, prior and informed consent to all benefits you and your principal will receive in connection with acting for the client, including any fees for services that may be charged.*" The words 'free' and 'prior' are ambiguous notions and almost every association has its own interpretation for those words. Thus, these words should be explicitly stipulated 'free from what' and 'prior to what'. To ensure the consistency of the code's interpretation, FASEA should at least provide detailed guidance on the specific interpretation of the Code (Kewin, 2018). Many standards of FASEA's Code of Ethics are referred 'informed consent' from clients and also it is already required in many other professions and industries, such as AFA code of conduct principle 4, SAFAA code of ethics 16, 17 and the Accounting Professional and Ethical Standards Board (APESB) APES 230(2013). It is important to define and clarify the meaning of 'informed consent', since financial advisers may have different circumstances of practice and different interactions with clients it is difficult to prove that informed consent was received (Lyons, 2018).

In reality, 'informed consent' is a problem that has been lurking for years in many industries. 'Informed consent' require advisers to ensure that all products are presented in terms understood and agreed by the client. However, financial products are not easily understood. The term "understood" and "agree" sometimes are contradict with each other. The understandings are based on financial literacy, education level and time period of living in Australia sort of things. "*In many cases client's do not want to be educated, they just need to be told what to do*" (Efrat, 2018). Clients only care about the results, when they do not understand financial products but sign 'informed consent'. Conflicts appear when things are not going well. Financial activities accompany risk, but clients will only blame their advisers even when they have signed consent. "The FASEA's Code of Ethics" does not seem to solve this problem.

Secondly, is the lack of clear stipulation about the role of FASEA's Code of Ethics monitoring bodies and their authority in relation to their own code of ethics. "Towards the end of 2018, the Financial Planning Association of Australia (FPA), the Association of Financial Advisers (AFA), Boutique Financial Planners (BFP), the Financial Services Institute of Australasia (FINSIA), the Self-Managed Super Fund Association (SMSF Association), and the Stockbrokers and Financial Advisers Association (SAFAA), signed a co-operative agreement to develop and submit an ethics code monitoring scheme to ASIC, which will then enable FASEA to monitor and enforce compliance with the scheme" (Adrian, 2019, p. 1). As mentioned by Lyons (2018, p. 2) "the standard of code may be interpreted differently by monitoring

bodies based on the nature of the particular code monitoring body. “A possible consequence is that code monitoring bodies will integrate the FASEA’s Code of Ethics into their own codes of conducts and will monitor based on its own interpretation”.

Although FASEA is one of a Federal Government branch, however FASEA will not receive funding directly from government or support by itself from membership fees or other business activities sources. “According to its business plan for FY18-19, FASEA will receive funding from eight contributors under an agreement among following parties: ANZ, Bendigo Financial Planning, CBA, Macquarie Equities, NAB, Suncorp-Metway, Westpac, and AMP. The funding agreement is based on a formula to calculate quarterly dues owed based on relative number of advisers for each of the eight funding partners”, (Adrian, 2019, p. 1). Adoption and authority of the Code will be challenged by other financial firms.

Thirdly, as the Chairman of Accounting Professional and Ethical Standards Board (APESB), Roxon (2018) has pointed out that there is a lack of explanation of how” the FASEA’s Code of Ethics”, is intended to be complied or at least interact with other existing ethical principles, professional standards, laws and regulations applicable to financial advisers. Many financial advisers are likely to be subject to multiple Codes of Ethics (Green, 2018). For meeting the service needs of the clients, many financial advisers are likely to need comprehensive understanding of finance, economics and accounting including tax. Invariably, these advisers will be legally obliged to comply with the other existing code and ethical obligations. For example, if a stockbroker who belongs to SAFAA and holds an accounting qualification may belongs to APESB as well. All these professional associations have their own code of professional conducts with very similar content as FASEA code of ethics. For example, standard 2 in FASEA, APES 110 and SAFAA 12A are all about integrity. So financial advisers will need to comply with multiple codes as applicable. Thus, there is a need of further explanation as to how the FASEA’s Code of Ethics will supplement or interact with other existing ethical principles, professional standards, laws and regulations applicable to financial advisers.

### **Concern about Additional Education Requirement for Existing and New Advisers**

One of the main concerns of adoption of ‘The FASEA’s Code of Ethics’, is increased educational requirements which will cause many existing advisers to exit from the financial advice industry. As the CEO and Managing Director of the Financial Services Institute of Australasia (FINSIA), Whitehead (2018) indicated that many of existing FINSIA’s financial adviser members will be affected by the proposed qualifications pathway of FASEA. FINSIA survey members as to whether they will still stay in the financial adviser industry when the proposed qualifications pathway come in to force. The survey result reveals that education programs recognition is the highest concern for respondents. The existing advisers, irrespective of years of practice experience, need to meet the following stipulations: First, to meet continuing professional development (CPD) requirements each year from January 1, 2019. Second, to abide with FASEA Code of Ethics from January 1, 2020. Third, to pass the exam by January 1, 2021. Fourth, to complete an approved educational requirement by January 1, 2024 (FASEA, 2019). The respondent advisers worried about whether the education programs they have completed will be recognized as degree qualifications or not and 46.2% of surveyed advisers realized that they need to complete FASEA Code of Ethics course.

Even though the high level of education requirement intends to increase client confidence and trust in financial services sector, the relationship between education levels among advisors and ethical reasoning level is still not clear. Moreover, the proposed education pathways will cause existing relevant financial advisers to leave the industry. The worst case will reduce the number of advisers sharply and therefore reduce access to financial advisers. FINSIA’s survey indicated that around 18.6% of respondents intend to leave the industry and 34.7% of respondents still hesitate. Even though 62.5% of FINSIA’s survey respondents are advisers with more than 21 years practice experience, they show a high intention to

leave the financial advice industry when the education requirement comes into force (Whitehead, 2018). Obviously, FASEA needs to balance the relationship between education levels, practice experience levels and ethical reasoning level.

Moreover, the FASEA reforms for additional educational and compliance requirements would likely to lead to an increase in fees and a higher barrier to entry to advise potential clients. The reasons for increased fees can be linked to, higher educational costs associated with completing the new FASEA ethics regime, ongoing expenses linked to bridging course requirements, continuing professional development (CPD) and intangible costs. Intangible costs will be reflected in the preparation and implementation of FASEA requirement. For example, the preparation of FASEA national exam workshop will cost SAFAA member \$395 and non-member charges will be \$ 495<sup>10</sup>. Additional cost and time will increase the pressure on financial advisers dramatically. The cost of advice ranged from \$200 to \$700 for simple advice up to 2017 (Productivity commission inquiry report, 2018). Clearly the marginal benefit of advisers' income and stress is already very low. In addition, the additional costs will most likely be passed on to clients.

## Summary

Ethics has been explained perspectives of laws, morals, governance, values, and principles. The former US Supreme Court Justice Potter Stewart has defined ethics as knowing “*the difference between what you have a right to do and what is the right thing to do*” (Young, 1993). To clearly define the concept of ethics is difficult because absolute standards as to what constitutes ethical behavior are rare (Caccese, 1997). Ethics are usually codified as a code that employees or members are expected to follow. Not following the code of ethics for a professional organization may have its own set of consequences.

“The Financial Adviser Standards and Ethics Authority, (FASEA)” issued a final version of Financial Planners and Advisers Code of Ethics on 8 February 2019 that will commence on 1<sup>st</sup> January 2020. FASEA Code of Ethics is based on the “Corporations Amendment Act 2017” and the Corporations Act 2001. It aims to establish a robust framework of ethical and professional obligations for financial advisers in Australia. The introduction of FASEA Code of Ethics has received strong support from the whole financial advice industry. The reasons for welcoming FASEA Code of Ethics by financial advice services industry are because the industry wants to rebuild consumer trust and achieve consistent ethical behavior by accepting a code of ethics pertinent to all financial advisers.

Introduction of the FASEA Code of Ethics may result in three major negative consequences for advisers in practice. It will make the cost of giving advice higher; it will force out many existing advisers from the financial advice industry; it is highly likely to cause confusion between codes of ethics from different financial associations and FASEA Code of Ethics.

Suggestions for adopting and implementing FASEA Code of Ethics include – providing a detailed explanation of the application of it; to indicate clearly about the obligations of Code Monitoring Bodies; to clarify the interaction between the FASEA Code of Ethics and other professional codes of ethics; and to clarify what is considered “informed consent”.

## References

- Adrian, F. (2019). *FASEA mostly funded by the major banks. Independent Financial Adviser (IFA)*. Retrieved from <https://www.ifa.com.au/news/26487-fasea-mostly-funded-by-the-major-banks>, Accessed on August 2, 2019.
- APES 230. (2013). APES 230 Financial Planning Services. *Accounting Professional & Ethical Standards Board Limited*. Retrieved from <https://www.apesb.org.au/search.php>, Accessed on August 1, 2019.
- Armour, C. (2018). *Professionalism and other things*. A speech at the Stockbrokers and Financial Advisers Conference

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<sup>10</sup> <https://www.stockbrokers.org.au/education/fasea/fasea-national-exam>

- 2018, Melbourne, Australia. Retrieved from <https://asic.gov.au/about-asic/news-centre/speeches/professionalism-and-other-things/>, Accessed on August 28, 2019.
- ASIC. (2009). *Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into Financial Products and Services in Australia – ASIC submission (August 2009)*. Retrieved from <https://download.asic.gov.au/media/1311547/ASIC-submission-PJC-Financial-Products-and-Services-Inquiry-2009.pdf>, Accessed on August 8, 2019.
- ASIC Financial Advisers Dataset. (2019). *Australian Securities and Investments Commission*. Retrieved from <https://data.gov.au/dataset/ds-dga-f2b7c2c1-f4ef-4ae9-aba5-45c19e4d3038/details>, Accessed on August 1, 2019.
- Caccese, M. S. (1997). Ethics and the financial analyst. *Financial Analysts Journal*, 53(1), 9-14.
- CIO Annual Report. (2017). The credit and investments Ombudsman Annual Report on Operations. Retrieved from <https://www.cio.org.au/publications/annual-reports.html>, Accessed on August 1, 2019.
- Commonwealth of Australia. (2018). *Some features of the Australian Financial Planning Industry Background Paper 6 (Part A)*. Commonwealth of Australia. Retrieved from <https://apo.org.au/node/140511>, Accessed on August 1, 2019.
- Corporations Amendment Act (2017). *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017, No. 7, 2017: Part 1 – Amendments Corporations Act 2001*. Retrieved from <https://www.legislation.gov.au/>, Accessed on August 1, 2019.
- Cull, M., & Bowyer, D. (2017). Ethics in financial planning: Myth, fact or rhetoric paradox? *e-Journal of Social & Behavioural Research in Business*, 8(2), 56-69.
- Cull, M., & Melville, B. (2018). A review of ethics education in financial planning courses in Australia. *Financial Planning Research Journal*, 1, 11-32.
- Diamantes, D. (2018). *Code of Ethics for financial advisers – exposure draft FASEA*. Financial Planning Association of Australia. Retrieved from <https://fpa.com.au/advocacy/fpa-submissions/>, Accessed on August 1, 2019.
- Efrat, Z. (2018). *FASEA draft code of ethics puts informed consent back on the radar*. Retrieved from <https://www.intheblack.com/articles/2018/05/21/fasea-draft-code-of-ethics>, Accessed on August 1, 2019.
- FASEA. (2019). *Code of ethics standard commences 1 January 2020*. The Financial Adviser Standards and Ethics Authority. Retrieved from <https://www.fasea.gov.au/code-of-ethics>, Accessed on July 29, 2019.
- FASEA Explanatory Statement. (2019). *Financial Planners and Advisers Code of Ethics 2019 explanatory statement*. The Financial Adviser Standards and Ethics Authority. Retrieved from <https://www.legislation.gov.au/Details/F2019L00117/Explanatory%20Statement/Text>, Accessed on October 10, 2019.
- FOI-2399. (2018). *Financial Adviser Standards and Ethics Authority (FASEA) Business Plan FY 18-19. Issued Dec 2018*. Australia Government the Treasury. Accessed on December 07, 2018.
- FOS annual review. (2018). the Financial Ombudsman Service annual review. *the Financial Ombudsman Service*. Retrieved from <https://www.fos.org.au/publications/annual-review/>, Accessed on July 29, 2019.
- Green, A. (2018). *FASEA - Code of Ethics for Financial Advisers, 29/05/2018*. Stockbrokers and Financial Advisers Association (SAFAA). Retrieved from <https://www.stockbrokers.org.au/advocacy>, Accessed on August 2, 2019.
- Kewin, P. (2018). *AFA submission: FASEA Code of Ethics for financial advisers*. Association of Financial Advisers Ltd. 19 December 2018 - AFA Submission on Code of Ethics. Retrieved from website <https://www.afa.asn.au/fasea>, Accessed on August 29, 2019.
- Lyons, T. (2018). *Financial adviser standards and ethics authority code of ethics for financial advisers - exposure draft of proposed standard*. The Australian Financial Markets Association (AFMA). Retrieved from [https://afma.com.au/policy/submissions/RI7-18\\_FASEA\\_Code\\_of\\_Ethics.pdf](https://afma.com.au/policy/submissions/RI7-18_FASEA_Code_of_Ethics.pdf), Accessed on August 12, 2019.
- Productivity Commission Draft Report. (2018). *Productivity commission, draft report: Competition in the Australian Financial System*. Issues January 2018. Retrieved from <https://www.pc.gov.au/inquiries/current/financial-system/draft/financial-system-draft.pdf>, Accessed on August 1, 2019.
- Productivity Commission Inquiry Report. (2018). *Competition in the Australian Financial System Productivity commission inquiry report*. Australia government Productivity commission. Retrieved from <https://www.pc.gov.au/inquiries/completed/financial-system/report>, Accessed on August 1, 2019.
- PSA. (2019). *Professional standards for financial advisers – reforms*. ASIC Home, Regulatory resources, Financial services, Professional standards – advisers (PSA). Retrieved from <https://asic.gov.au/regulatory-resources/financial-services>, Accessed on August 1, 2019.

- RG 146. (2012). *Regulatory guide 146 - Licensing: Training of financial product advisers*. Issued July 2012. ASIC Home Regulatory resources, Find a document, Regulatory guides RG 146, Licensing: Training of financial product advisers. Retrieved from <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides>, Accessed on August 1, 2019.
- RG 269. (2018). *Regulatory guide 269 - Approval and oversight of compliance schemes for financial advisers*. Issued 28 September 2018. ASIC Home, Regulatory resources, Find a document, Regulatory guides RG 269, Approval and oversight of compliance schemes for financial advisers. Retrieved from <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides>, Accessed on August 1, 2019.
- Roxon, N. (2018). *APESB's submission on FASEA draft code – 31/05/2018*. Accounting Professional & Ethical Standards Board Limited (APESB). Retrieved from <https://www.apesb.org.au/page.php?id=33>, Accessed on August 1, 2019.
- Smith, J. (2009). *Professionalism and ethics in financial planning*. School of Law, Victoria University. Student No. 3643433. Dissertation for the degree of PhD. Retrieved from <https://www.pdfdrive.com/professionalism-and-ethics-in-financial-planning-victoria-e11970881.html>, Accessed on August 1, 2019.
- Smith, J. (2010). *Ethics and financial advice: The final frontier*. Victoria University, Argyle Lawyers Pty Ltd. Retrieved from <https://www.adviservoice.com.au/2011/01/ethics-and-financial-advice-the-final-frontier/>, Accessed on August 1, 2019.
- Whitehead, C. (2018). *FASEA: Education pathways for financial advisers: 29 June 2018*. The Financial Services Institute of Australia (FINSIA). Retrieved from <https://finsia.com/membership/submissions>, Accessed on August 1, 2019.
- Young, A. T. (1993). A point of view on linking ethics and quality at Martin Marietta. *National Productivity Review*, 12(2), 133-137.