

# FPA Disciplinary Regulation 2019

**Board Endorsed: Effective 1 January 2019**

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# Table of Contents

<b>PART 1</b>	<b>INTRODUCTION .....</b>	<b>1</b>
	SECTION 1.1 NAME OF REGULATION.....	1
	SECTION 1.2 COMMENCEMENT OF REGULATION .....	1
	SECTION 1.3 TRANSITIONAL PROVISIONS.....	1
	SECTION 1.4 INTERPRETATION .....	1
<b>PART 2</b>	<b>COMPLAINTS.....</b>	<b>4</b>
	SECTION 2.1 MAKING AND RECEIVING COMPLAINTS ABOUT FPA MEMBERS .....	4
	SECTION 2.2 RECORDING COMPLAINTS ABOUT FPA MEMBERS .....	5
	SECTION 2.3 WITHDRAWAL BY COMPLAINANT .....	5
<b>PART 3</b>	<b>PRELIMINARY ENQUIRIES AND INVESTIGATION.....</b>	<b>6</b>
	SECTION 3.1 PRELIMINARY .....	6
	SECTION 3.2 NOTIFICATION OF INVESTIGATION TO MEMBER .....	6
	SECTION 3.3 PRELIMINARY ENQUIRIES AND INVESTIGATION.....	7
	SECTION 3.4 SUBMISSION AND PROVISION OF MATERIAL BY MEMBER .....	7
	SECTION 3.5 SUMMARY DISMISSAL BY THE CHAIR OF THE CONDUCT REVIEW COMMISSION .....	8
	SECTION 3.6 MINOR INSTANCES OF UNSATISFACTORY CONDUCT .....	8
<b>PART 4</b>	<b>PRELIMINARY ENQUIRY AND INVESTIGATIVE POWERS .....</b>	<b>10</b>
	SECTION 4.1 PRELIMINARY .....	10
	SECTION 4.2 DUTY OF FPA MEMBERS.....	10
<b>PART 5</b>	<b>REPORT BY INVESTIGATING OFFICER.....</b>	<b>11</b>
<b>PART 6</b>	<b>DETERMINATIONS BY CONDUCT REVIEW COMMISSION CHAIR.....</b>	<b>12</b>
	SECTION 6.1 PRELIMINARY .....	12
	SECTION 6.2 SUMMARY DISMISSAL BY CONDUCT REVIEW COMMISSION .....	12
<b>PART 7</b>	<b>DISCIPLINARY PROCEEDINGS AGAINST MEMBER.....</b>	<b>13</b>
	SECTION 7.1 HOW DISCIPLINARY PROCEEDINGS COMMENCED.....	13
	SECTION 7.2 CONDUCT OF DISCIPLINARY PROCEEDINGS.....	13
	SECTION 7.3 PROVISION FOR SUMMARY DISPOSAL .....	14
	SECTION 7.4 SUMMARY FINDING OF MINOR INSTANCE OF UNSATISFACTORY CONDUCT .....	14

<b>PART 8</b>	<b>DISCIPLINARY PANEL HEARINGS.....</b>	<b>16</b>
<b>PART 9</b>	<b>SPECIAL BREACHES .....</b>	<b>19</b>
<b>PART 10</b>	<b>DETERMINATIONS BY DISCIPLINARY PANELS .....</b>	<b>20</b>
<b>PART 11</b>	<b>SANCTIONS .....</b>	<b>21</b>
<b>PART 12</b>	<b>HOW PRELIMINARY ENQUIRIES AND INVESTIGATION OUTCOMES ARE</b>	
<b>RECORDED .....</b>		<b>22</b>
<b>PART 13</b>	<b>PUBLICATION .....</b>	<b>23</b>
<b>PART 14</b>	<b>APPLICATIONS FOR REVIEW.....</b>	<b>26</b>
<b>PART 15</b>	<b>SERVICE OF NOTICES .....</b>	<b>29</b>
<b>PART 16</b>	<b>SELECTION AND APPOINTMENT OF CONDUCT REVIEW COMMISSION ..</b>	<b>30</b>
<b>PART 17</b>	<b>ACADEMIC MISCONDUCT .....</b>	<b>32</b>
<b>PART 18</b>	<b>ABILITY TO REFER MATTERS TO REGULATORS AND OTHERS.....</b>	<b>34</b>
<b>SCHEDULE A</b>	<b>CONDUCT REVIEW COMMISSION .....</b>	<b>35</b>
<b>SCHEDULE B</b>	<b>SANCTIONS AND COSTS.....</b>	<b>38</b>
	<b>STANDARD DETERMINATIONS.....</b>	<b>40</b>
<b>SCHEDULE C</b>	<b>PROCEDURAL TIME LIMITS .....</b>	<b>41</b>
<b>SCHEDULE D</b>	<b>NOTIFIABLE EVENTS.....</b>	<b>42</b>
<b>SCHEDULE E</b>	<b>ACTION FOR MINOR INSTANCES OF UNSATISFACTORY CONDUCT .....</b>	<b>43</b>
<b>SCHEDULE F</b>	<b>NOTICE OF DISCIPLINARY PROCEEDINGS .....</b>	<b>44</b>
<b>SCHEDULE G</b>	<b>INFRINGEMENT NOTICE .....</b>	<b>46</b>
<b>SCHEDULE H</b>	<b>NOTICE OF APPEARANCE .....</b>	<b>51</b>
<b>SCHEDULE I</b>	<b>FPA POLICIES SUBJECT TO ENFORCEMENT UNDER THIS DISCIPLINARY</b>	
<b>REGULATION.....</b>		<b>52</b>

## **PART 1 INTRODUCTION**

### **SECTION 1.1 NAME OF REGULATION**

#### **Name of Regulation**

1. This Regulation is made by the FPA Board under Part E (Professional Conduct of Members) of the Constitution and shall be known as the FPA Disciplinary Regulation 2019.

### **SECTION 1.2 COMMENCEMENT OF REGULATION**

#### **Commencement Date**

2. Unless a later effective date appears in a particular clause, this Disciplinary Regulation applies to any Complaint made or on hand on or after 1 January 2019, irrespective of the date of the conduct to which it relates occurred, provided that where a Notice of Disciplinary Proceedings was issued prior to 1 January 2019 in respect of a Complaint, the FPA Disciplinary Regulation 2016 applies to that Complaint. This Disciplinary Regulation incorporates minor editorial and other changes made on 6 June 2019, which are declared to have had effect from 1 January 2019.

### **SECTION 1.3 TRANSITIONAL PROVISIONS**

3. The Disciplinary Regulations 1999 apply to any Complaint made to or by the FPA before 17 July 2007.
4. The Disciplinary Regulations 2007 as amended 4 June 2010 apply to any Complaint made to or by the FPA in the period 17 July 2007 to 30 June 2011.
5. The Disciplinary Regulation 2011 applies to any Complaint made or continued in the period 1 July 2011 to 30 June 2016

## **SECTION 1.4 INTERPRETATION**

6. In this Disciplinary Regulation:

- a) capitalised expressions used shall have the same meaning as in the Constitution unless otherwise defined in this Disciplinary Regulation or the context requires otherwise;
- b) references to the singular include the plural and vice versa;
- c) references to one gender include all genders;
- d) reference to a clause or clauses shall be a reference to a clause or clauses of this Disciplinary Regulation unless the context requires otherwise;
- e) reference to a person includes a firm, corporation, corporate body, unincorporated association and a government authority;
- f) reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document;
- g) In this Disciplinary Regulation, a reference to a power of the Chair includes a reference to a Deputy Chair exercising that power pursuant to Part 16 (Appointment of Conduct Review Commission);
- h) In this Disciplinary Regulation, the following words have the following meanings unless the context requires otherwise:

**Appeal Panel** means a panel selected from the Conduct Review Commission to review a decision made by a Disciplinary Panel.

**Approved External Dispute Resolution Scheme** means an external dispute resolution scheme which is approved by the Australian Securities and Investments Commission and the Board from time to time.

**ASIC** means the Australian Securities and Investments Commission.

**Board** means the board of directors of the FPA.

**Breach** means any conduct of a Member, by act or omission, which is in breach of any of the following:

- a) the FPA's 1997 professional standards comprising the Code of Ethics and the Rules of Professional Conduct;
- b) the Code of Professional Practice;
- c) the On-going Fee Arrangement Code;
- d) any clause of the Constitution;
- e) any regulation of the FPA including this Disciplinary Regulation; and
- f) any policy identified in Schedule I.

**Business Day** means a day on which banks generally are open for business in New South Wales, excluding a Saturday, Sunday or public holiday.

**CEO** means the Chief Executive Officer of the FPA as defined in the Constitution.

**Clause** means a clause of this Disciplinary Regulation.

**Commercial Dispute** means a dispute involving a Member or Members where the substantial basis of the dispute relates to their respective business interests and may include monetary claims in the nature of entitlement to remuneration, or sharing of income, fees or commissions.

**Complainant** means a person who makes a Complaint.

**Complaint** means an expression of dissatisfaction or grievance made to the FPA by a Complainant in relation to conduct of a Member that:

- a) complies with clause 8; or
- b) complies with clause 9;

but does not include any Commercial Dispute.

**Conduct Review Commission** means the body established pursuant to Part 16 of this Disciplinary Regulation.

**Constitution** means the constitution of the FPA, as amended from time to time.

**Disciplinary Complaints Register** means the database maintained by the FPA under clause 21 of this Disciplinary Regulation.

**Disciplinary Panel** means a panel selected from the Conduct Review Commission to hear and determine Disciplinary Proceedings.

**Disciplinary Proceeding** means a proceeding commenced by the FPA against a Member under Part 7 (Disciplinary Proceedings against Member).

**Document** means any record of information, and includes:

- a) anything on which there is writing;
- b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- d) a map, plan, drawing or photograph, and a reference in this Disciplinary Regulation to a document (as so defined) includes a reference to any part of the document;
- e) any copy, reproduction or duplicate of the document or of any part of the document; and
- f) any part of such a copy, reproduction or duplicate.

**FPA** means the Financial Planning Association of Australia Limited ACN 054 174 453.

**FPA Confidential (Anonymous Reporting) Service** means the external reporting service provided by the FPA by which a person may anonymously provide information to the FPA.

**FPA Professional Partner** means a Financial Planning Licensee which has been designated by the FPA as an FPA Professional Partner.

**FPA Professional Practice** means a financial planning practice which has been designated by the FPA as an FPA Professional Practice.

**FPA requirements** has the same meaning as appears in the Code of Professional Practice.

**Financial Planning Licensee** means a corporation or entity providing or authorising the provision of financial planning services pursuant to an Australian financial services license under Chapter 7 of the Corporations Act 2001.

**Infringement Notice** means a notice issued by the FPA to a Member in the form of Schedule G.

**Investigating Officer** means a person appointed by the CEO of the FPA to investigate Complaints.

**Investigation** means an investigation undertaken under Part 3.

**Malpractice** has the same meaning as is given in the Constitution.

**Member** has the same meaning as is given in the Constitution.

**Minor Instance of Unsatisfactory Conduct** means a Breach that, in the opinion of the Chair of the Conduct Review Commission, is appropriate to consider minor in nature, having regards to factors such as:

- a) the impact of the Breach;
- b) whether the Breach or its consequences were unintended;
- c) any acknowledgement by the Member of the Breach; or
- d) any remedial action taken by the Member; and
- e) the public interest

**Notice of Disciplinary Proceedings** means a notice issued pursuant to Section 7.1 of this Disciplinary Regulation.

**Notifiable Event** means an event in Schedule D.

**On-going Fee Arrangement Code** means any code concerning on-going fee arrangements that has been made by the FPA and approved by ASIC pursuant to section 1101A of the Corporations Act 2001.

**Panel** means a panel of the Conduct Review Commission.

**Part** means a Part of this Disciplinary Regulation.

**Prescribed Time** means the time limit prescribed for the occurrence of a particular event or activity, as set out in Schedule C.

**Preliminary Enquiries** means the activities of the FPA on receipt of a Complaint which are undertaken for the purposes of ascertaining whether there has been a possible Breach.

**Register** has the same meaning as is given in the Constitution.

**Sanction** means one or more sanctions from the list of sanctions set out in Schedule B.

**Schedule** means a schedule to this Disciplinary Regulation.

**Section** means a Section of this Disciplinary Regulation.

**Special Breach** means any Breach of this Disciplinary Regulation or any act, omission or failure which does not comply with clause 99 of this Regulation.

## **PART 2 COMPLAINTS**

### **SECTION 2.1 MAKING AND RECEIVING COMPLAINTS ABOUT FPA MEMBERS**

#### **Making of complaints**

7. A Complaint about a Member's conduct may be made by:
  - a) a client (including a former client) of the Member;
  - b) the FPA; or
  - c) any other person.
8. A Complaint made by any person including by the FPA must:
  - a) be in writing, or if received orally by the FPA, be reduced to writing;
  - b) identify the Complainant;
  - c) identify the Member about whom the Complaint is made or, if it is not possible to do so, identify the business entity concerned; and
  - d) describe the alleged conduct the subject of the Complaint.
9. A Complaint made or continued by the FPA:
  - a) may be based on material from any source, including the FPA Confidential (Anonymous Reporting) Service or from reactive or proactive monitoring by the FPA or by any other person or body; and
  - b) must be authorised by the Head of Professionalism.

#### **When Complaint made**

10. A Complaint may be addressed to the Investigations Manager, Financial Planning Association of Australia Ltd, GPO Box 4285, Sydney 2001 and is taken to have been made when allocated to an Investigating Officer.

#### **Complaints made over 3 years after conduct concerned**

11. A Complaint may be made about the conduct of a Member irrespective of when the conduct is alleged to have occurred.
12. A Complaint cannot be dealt with (otherwise than to record it and dismiss it) if the Complaint is made more than 3 years after the conduct is alleged to have occurred, unless a determination is made under this clause that:
  - a) it is just and fair to deal with the Complaint having regard to the delay and the reasons for the delay;
  - b) the Complaint involves an allegation of Malpractice; and
  - c) it is in the public interest to deal with the Complaint.
13. A determination under clause 12 is to be made by the Chair of the Conduct Review Commission.
14. A determination made under clause 12 is final and cannot be challenged by the Complainant or the Member.

#### **Notifiable Events**

15. A Member shall notify the FPA within 7 Business Days of the occurrence of any Notifiable Event.
16. The FPA may initiate a Complaint on the basis of a Notifiable Event, or where the Member fails to notify the FPA of a Notifiable Event.
17. Failure by the Member to notify the FPA of a Notifiable Event may constitute a Minor Instance of Unsatisfactory Conduct.

#### **Relationship with an Approved External Dispute Resolution Scheme**

18. Any reference by a Complainant to an Approved External Complaints Resolution Scheme shall not prevent the Complaint being received or dealt with under this Disciplinary Regulation.

### **Co-operation with enforcement or regulatory authorities**

19. The FPA may enter into a memorandum of understanding with ASIC or any other regulatory or enforcement authority in relation to the exchange of information concerning Complaints and Investigations.

## **SECTION 2.2 RECORDING COMPLAINTS ABOUT FPA MEMBERS**

### **Initial allocation and recording of Complaints**

20. Each Complaint received by the FPA must be allocated to an Investigating Officer.
21. The FPA must maintain a Disciplinary Complaints Register of all Complaints.

### **Acknowledgement of receipt**

22. An Investigating Officer must acknowledge receipt of a Complaint by notice in writing to the Complainant within the Prescribed Time

## **SECTION 2.3 WITHDRAWAL BY COMPLAINANT**

23. A person may by notice in writing to the allocated Investigating Officer withdraw as Complainant from a Complaint.
24. Where a person withdraws as Complainant:
  - a) The FPA may continue the Complaint provided clause 9 is met; or
  - b) A person other than the FPA may, by written notice to the allocated Investigating Officer, become the Complainant.



## **PART 3 PRELIMINARY ENQUIRIES AND INVESTIGATION**

### **SECTION 3.1 PRELIMINARY**

#### **Complaints are to be investigated**

25. Each Complaint must be subjected to Preliminary Enquiries.

#### **Purposes of Investigation**

26. The purpose of Preliminary Enquiries is to investigate whether:

- a) A Complaint alleges conduct of a Member; and
- b) any alleged conduct of the Member is capable of amounting to a Breach.

#### **Conduct that may be investigated**

27. Where any alleged conduct is after preliminary enquiries capable of amounting to a Breach, the conduct must be investigated. Investigation may extend beyond allegations of conduct of the Member made in the Complaint whether or not any further alleged conduct:

- a) arises out of the subject-matter of the Complaint; or
- b) involves the Complainant.

#### **Further information and verification**

28. An Investigating Officer may require a Complainant to:

- a) give further information about the Complaint; or
- b) verify the Complaint, or other information.

## **SECTION 3.2 NOTIFICATION OF INVESTIGATION TO MEMBER**

### **Member to be notified of Complaint and Investigation**

29. Once the allocated Investigating Officer is able to ascertain whether the Complaint alleges conduct of a Member capable of amounting to a Breach, the Member concerned is, within 30 days, to be given:

- a) a copy of the Complaint; and
- b) a notice in writing informing the Member:
  - I. the Complaint has been made;
  - II. an Investigation has been initiated;
  - III. whether, so far, the Investigation has identified alleged conduct of the Member capable of constituting a Breach;
  - IV. whether the Investigation has extended beyond allegations of conduct made in the Complaint;
  - V. particulars of any alleged Breach;
  - VI. the manner by which the Investigating Officer intends to undertake the Investigation; and
  - VII. that the Member will have the right to provide information to the Investigation and make submissions in respect of:
    - A. the alleged conduct, and
    - B. any material obtained by the Investigating Officer.

30. If the Head of Professionalism, after consultation with the relevant Investigating Officer, is reasonably of the opinion that giving the Member the information required by clause 29 will or is likely to:
- a. prejudice the Investigation;
  - b. prejudice an investigation by the police or other investigatory or law enforcement body of any matter with which the Investigation is concerned;
  - c. place the Complainant or another person at risk of intimidation or harassment; or
  - d. prejudice pending court proceedings;

Then the Head of Professionalism may direct the Investigating Officer to withhold from the Member information required by clause 29.

31. Where the Head of Professionalism has given a direction pursuant to clause 30, the Head of Professionalism is to direct the Investigating Officer to provide any withheld information once the Head of Professionalism is satisfied the factors in clause 30 (a) to (d) no longer operate.
32. Neither the Head of Professionalism nor the Investigating Officer is required to give written notice under this Section to the Member until the Head of Professionalism or the Investigating Officer has had time to:
- a) consider the Complaint;
  - b) undertake Preliminary Enquiries;
  - c) seek further information about the Complaint from the Complainant;
  - d) seek verification of the Complaint or of information from the Complainant; or
  - e) otherwise undertake such inquiries so as to ascertain whether the Complaint alleges conduct of a Member capable of amounting to a Breach.

33. In the event an Investigation extends to matters beyond those notified to the Member pursuant to clause 29, the Member is to be advised in writing within 30 days:
- a) of the terms of extension; that the Member will be given an opportunity to provide information and make submissions regarding the additional matters; and
  - b) the manner by which the Member should provide further information and make submissions.

### **SECTION 3.3 PRELIMINARY ENQUIRIES AND INVESTIGATION**

34. The Investigating Officer is not bound by rules of evidence and may inform himself or herself on any matter in such manner as he or she thinks fit.
35. Any evidence or information obtained by the Investigating Officer in the course of Preliminary Enquiries or an Investigation may be used by the FPA in or in relation to any later Investigation, or by the Conduct Review Commission in the performance of its functions under this Disciplinary Regulation.

### **SECTION 3.4 SUBMISSION AND PROVISION OF MATERIAL BY MEMBER**

36. The Member who is the subject of Preliminary Enquiries (if necessary), or of the Investigation must be given a reasonable opportunity to provide information and make submissions regarding the Complaint and the alleged conduct being enquired about (if necessary), or investigated.
37. An Investigating Officer may reasonably direct the Member as to the manner by which information is to be provided or submissions made.
38. An Investigating Officer may extend the time within which information may be provided and submissions made. In doing so, they must have regard to existing guidance on reasons for granting extensions. They must also keep detailed file notes of their reasoning and actions taken.

39. The Investigating Officer must consider any information provided and submissions made by the Member before:

- a) taking action pursuant to Section 3.6; or
- b) reporting pursuant to Part 5.

### **SECTION 3.5 SUMMARY DISMISSAL BY THE CHAIR OF THE CONDUCT REVIEW COMMISSION**

40. The Chair of the Conduct Review Commission, on the recommendation of an Investigating Officer may dismiss a Complaint and direct that an Investigation be finalised if:

- a) further information is not given, or the Complaint or further information is not verified, as required by the Investigating Officer, within 90 days or such further period not exceeding 180 days as the Chair may allow;
- b) the Investigating Officer believes the Complaint is vexatious, misconceived, frivolous or lacking in substance;
- c) the conduct complained of is not capable of constituting a Breach;
- d) the Complaint was made more than 3 years after the conduct complained of is alleged to have occurred, unless a determination is made under clause 12 in relation to the Complaint;
- e) the conduct complained about has been the subject of a previous Complaint that has been dismissed;
- f) the conduct complained about is the subject of another Complaint;
- g) it is not in the public interest to deal with the Complaint having regard to the fact that the Member to whom the Complaint relates has already been expelled from membership of the FPA or otherwise had their membership of the FPA terminated;
- h) the substance of the Complaint concerns a commercial dispute;
- i) the Complaint is not one that the Investigating Officer has power to deal with; or

j) a Complainant withdraws and neither the FPA nor any other person becomes the Complainant;

k) it is not otherwise in the public interest for Disciplinary Proceedings to proceed against the Member; or

l) there is otherwise good reason for dismissal.

### **SECTION 3.6 MINOR INSTANCES OF UNSATISFACTORY CONDUCT**

#### **Certain findings by Investigating Officer**

41. If an Investigating Officer considers that an alleged Breach, if proven, would be likely to be found to be a Minor Instance of Unsatisfactory Conduct, the Investigating Officer may recommend to the Chair of the Conduct Review Commission that an Infringement Notice substantially in the terms of Schedule G be issued by the Investigating Officer.

#### **Course of action may be agreed by consent**

42. An Infringement Notice may seek the Member's consent to and compliance with a course of action as provided for in Schedule E in respect of an alleged Breach,

#### **Agreement to finding of Breach**

43. Where the course of action proposed by an Investigating Officer involves acknowledgement of the occurrence of a Breach, by consenting to the acknowledgement a Member agrees to the relevant Breach being proven.

#### **Failure to comply with Infringement Notice**

44. An Infringement Notice:

- a) not consented to within the Prescribed Time; or
- b) consented to but not subsequently complied with;

must be reported by the Investigating Officer pursuant to Part 5.

45. Nothing in the preceding clause shall prevent the Investigating Officer from making a recommendation under Part 5 that the Conduct Review Commission should consider the relevant allegation of Breach a

Minor Instance of Unsatisfactory Conduct.

## **PART 4 PRELIMINARY ENQUIRY AND INVESTIGATIVE POWERS**

### **SECTION 4.1 PRELIMINARY**

#### **Application**

46. The investigative powers in this Part apply to any Preliminary Enquiries or Investigation carried out under this Disciplinary Regulation as well as to investigations carried out pursuant to clause 19 of the Constitution (Compliance Reviews).

### **SECTION 4.2 DUTY OF FPA MEMBERS**

#### **Duty of reasonable assistance**

47. A Member must provide reasonable assistance to the FPA including the Conduct Review Commission or the Chair thereof or an Investigating Officer in connection with any:

- a) FPA requirement;
- b) Complaint;
- c) Preliminary Enquiries or Investigation;
- d) Disciplinary Proceedings;
- e) Compliance Review;
- f) Notifiable Event;
- g) CPD policy; or
- h) Professional On-going Fee Arrangement Code.

#### **Meaning of assistance**

48. Assistance for the purposes of this part includes (but is not limited to):

- a) the production of documents, including electronic records of any kind, including but not limited to emails, text messages or other records of any kind and access to computers, telephones or any other device on which documents or messages are recorded or stored; the provision of information (verified by statutory declaration if required by the FPA);

- b) explanation of the content and circumstance of creation of any document;
- c) access to documents, including access to computers, telephones or any other device on which documents or messages are recorded or stored, including electronic records of any kind, including but not limited to emails, text messages or other records of any kind
- d) access to premises;
- e) the provision of consent or authorisation for anything required to further an Investigation;
- f) the facilitation or procurement by the Member of any of one or more of the things in sub-paragraphs a) to f) above;
- g) the refraining at the request of the FPA from an act during the course of Preliminary Enquiries or an Investigation, including contacting:
  - I. a client or former client;
  - II. a Complainant; or
  - III. another person.

49. A Member who is subject to a requirement under this Part to provide reasonable assistance is not entitled to charge the FPA for giving access to documents or information.

#### **Consequences of non-cooperation**

50. A Member commits a Special Breach by failing or refusing to provide reasonable assistance.

## **PART 5      REPORT BY INVESTIGATING OFFICER**

51. After conducting an Investigation in accordance with Part 3 of this Disciplinary Regulation, to the extent a Complaint or Investigation has not been finalised pursuant to Section 3.5 or 3.6 the Investigating Officer must prepare a report to the Chair of the Conduct Review Commission setting out:

- a) the Complaint;
- b) the alleged conduct investigated;
- c) whether there is a case to answer in respect of the committing of one or more Breaches;
- d) if the Investigating Officer is of the view there is a case to answer, particulars of each possible Breach and the material capable of proving it;
- e) the likelihood of an alleged Breach being suitable for summary disposal pursuant to Section 7.3;
- f) the likelihood of any possible Breach if proven constituting a Minor Instance of Unsatisfactory Conduct and being capable of being dealt with summarily pursuant to Section 7.4;
- g) whether the Investigation was not able to be pursued in some respect, and the reasons for any such inability;
- h) any other matters that the Investigating Officer considers should be brought to the attention of the Conduct Review Commission; and
- i) recommending an appropriate course of action for the further conduct of the matter.

52. At the same time as the Investigating Officer's report is given to Conduct Review Commission, the Investigating Officer is to provide to the Member concerned a copy of the report, together with an invitation to the Member to make a written submission to the Chair of the Conduct Review Commission, within the Prescribed Time, in respect of the report.

## **PART 6 DETERMINATIONS BY CONDUCT REVIEW COMMISSION CHAIR**

### **SECTION 6.1 PRELIMINARY**

53. In response to a report of an Investigating Officer made under Part 5, and any submission made by the Member concerned, the Chair of the Conduct Review Commission may make one or more determinations as to:

- a) summary dismissal pursuant to Section 6.2; or
- b) the commencement of Disciplinary Proceedings pursuant to Part 7.

### **SECTION 6.2 SUMMARY DISMISSAL BY CONDUCT REVIEW COMMISSION**

54. Where, after considering the report of the Investigating Officer prepared in accordance with Section 5.1 and any submission made by the Member in response, the Chair of the Conduct Review Commission is reasonably satisfied:

- a) further information has not been given, or the Complaint or further information as not been verified, as required;
- b) the Complaint is vexatious, misconceived, frivolous or lacking in substance;
- c) the conduct complained of is not capable of constituting a Breach;
- d) the Complaint was made more than 3 years after the conduct complained of is alleged to have occurred and no determination is made under clause 12 in relation to the Complaint;
- e) conduct complained about has been the subject of a previous Complaint that has been dismissed;
- f) conduct complained about is the subject of another Complaint;

- g) it is not in the public interest to deal with the Complaint having regard to the fact that the Member to whom the Complaint relates has already been expelled from membership of the FPA or otherwise had their membership of the FPA terminated;
- h) the substance of the Complaint concerns a commercial dispute;
- i) the Complaint is not one that the Conduct Review Commission has power to deal with.
- j) the Member has no case to answer in respect of a Breach;
- k) the Investigation is incomplete, no Breach can reasonably be suspected and it is unlikely the Investigation can be completed;
- l) it is not otherwise in the public interest for Disciplinary Proceedings to proceed against the Member; or
- m) there is otherwise good reason for dismissal, the Conduct Review Commission may dismiss a part or all of a Complaint or direct the ending of some or all of an Investigation against a Member.

55. The Conduct Review Commission may furnish summary reasons for dismissing any part or all of a Complaint or directing the end of some or all of an Investigation.

#### **Recording of summary dismissal of Complaint or Investigation and notification to Complainant and Member**

56. Where a Complaint or Investigation is dismissed under this Section the Investigating Officer shall record the outcome in the Disciplinary Complaints Register in accordance with Part 12 (How Investigation Outcomes are Recorded), and notify in writing the Complainant and Member.

## **PART 7 DISCIPLINARY PROCEEDINGS AGAINST MEMBER**

### **SECTION 7.1 HOW DISCIPLINARY PROCEEDINGS COMMENCED**

57. To the extent a Complaint or Investigation concerning the Member is not dismissed or disposed of under Section 6.2 (Summary Dismissal by the Conduct Review Commission), the Conduct Review Commission shall by its Chair direct the FPA to commence Disciplinary Proceedings under this Part by issuing a Notice of Disciplinary Proceedings against the Member on the basis that the Member has a case to answer in respect of one or more allegations of Breach.
58. The direction by the Chair under this Section must particularise those allegations of Breach for which the Member has a case to answer.
59. The Chair may reformulate an allegation of Breach if the Chair is of the view the Breach particularised by the Investigating Officer does not conform to the alleged conduct reported by the Investigating Officer.
60. Disciplinary Proceedings against a Member are commenced upon the issue by the FPA of the Notice of Disciplinary Proceedings to the Member.
61. The Member the recipient of the Notice of Disciplinary Proceedings and the FPA are parties to the Disciplinary Proceedings.
62. The Notice of Disciplinary Proceedings must substantially comply with Schedule F.
63. The Notice of Disciplinary Proceedings shall be served upon the Member and the Conduct Review Commission within the Prescribed Time.
64. Service of Notices under this Part shall be effected in accordance with Part 15 (Service of Notices).

#### **Failure to follow procedural steps**

65. Where a procedural defect occurs due to the FPA, this will not render the Disciplinary Proceedings invalid.

#### **No requirement to give reasons**

66. Nothing in this Section shall be deemed to require the Conduct Review Commission to furnish reasons for its determination requiring the FPA to commence Disciplinary Proceedings against the Member.

### **SECTION 7.2 CONDUCT OF DISCIPLINARY PROCEEDINGS**

67. Once the Member concerned has been notified of the commencement of Disciplinary Proceedings, arrangements are to be made for the setting down of the proceedings for hearing and if necessary or desirable for one or more directions hearings to be held by the Conduct Review Commission.
68. The purpose of directions hearings is to consider whether directions by which the Disciplinary Proceedings are to proceed should be made or varied, but the holding of a Directions Hearing is not a necessary step to setting the proceedings down for hearing.
69. The Chair or a Deputy Chair of the Conduct Review Commission shall preside at directions hearings, where held.
70. A directions hearing may be conducted by telephone or any other means by which the attendance of the FPA and the Member may be facilitated.



71. For the purposes of making directions or at a directions hearing, if held, the Chair of the Conduct Review Commission may enquire or cause enquiries to be made of the persons representing the FPA and the Member their views as to how the matter should proceed. In particular, the Chair may enquire whether:

- a) a party considers the whole or part of the proceedings should:
  - I. be dismissed for any of the reasons appearing in Section 6.2;
  - II. be dealt with by way of summary disposal pursuant to Section 7.3;
  - III. be dealt with summarily pursuant to Section 7.4;
  - IV. be heard before a Disciplinary Panel pursuant to Part 8; or
  - V. be remitted for further investigation; or
- b) a party wishes the Chair to make particular directions in respect of the proceedings.

72. The directions that the Chair may make include directions with respect to:

- a) filing with the Conduct Review Commission and provision to the other party of evidence, submissions or other material;
- b) the setting, variation or vacation of dates for:
  - I. directions hearings;
  - II. the parties to come before the Conduct Review Commission in respect of any application for some or all of the proceedings to be dealt with pursuant to Section 7.3 or Section 7.4;
  - III. hearing pursuant to Part 8;
  - IV. filing and provision of evidence, submissions or other material;
- c) the manner by which any hearing is to proceed;
- d) remittal of any matter for investigation; or
- e) staying of all or part of the proceedings.

## **SECTION 7.3 PROVISION FOR SUMMARY DISPOSAL**

73. The Investigating Officer may, with the consent of the Chair of the Conduct Review Commission, at any time following the issuing of a Notice of Disciplinary Proceedings invite a Member to enter into discussions for the summary disposal in whole or in part of the Disciplinary Proceedings against the Member.

74. Such discussions may be conducted without prejudice to the Disciplinary Proceedings before the Conduct Review Commission.

75. Pursuant to such discussions, the Investigating Officer may with the consent of the Member seek the Conduct Review Commission Chair's approval for the summary disposal in whole or in part of the Disciplinary Proceedings on the basis of any one or more of the following:

- a) substantiation of an alleged Breach;
- b) dismissal of any one or more alleged Breaches;
- c) imposition of one or more agreed Sanctions (including fines); or
- d) imposition of agreed cost consequences.

76. Nothing in this Section shall prevent the FPA from publishing the outcome of the Disciplinary Proceedings against the Member in accordance with Part 13 (Publication) of this Disciplinary Regulation.

## **SECTION 7.4 SUMMARY FINDING OF MINOR INSTANCE OF UNSATISFACTORY CONDUCT**

77. At any time after the commencement of Disciplinary Proceedings and prior to the hearing the parties may together apply to the Conduct Review Commission for all or part of the proceedings to be disposed of summarily on the basis that the parties are agreed:

- a) an allegation of Breach is proven;
- b) that Breach constitutes a Minor Instance of Unsatisfactory Conduct; and
- c) a course of action of a type in Schedule E is proposed.

78. In response to an application pursuant to the preceding clause the Chair may make a determination that:

- a) a Breach the subject of the application is proven;
- b) such a proven Breach constitutes a Minor Instance of Unsatisfactory Conduct;
- c) the Member is directed to take action of a type listed in Schedule E; or
- d) the proceedings be referred to the Disciplinary Panel for decision as to sanction otherwise in accordance with these regulations

## **PART 8 DISCIPLINARY PANEL HEARINGS**

### **Appearance**

79. A Member may at the time and place appointed for the hearing:
- a) appear in person; or
  - b) make oral or written submissions to the Disciplinary Panel.
80. Unless the hearing is to be conducted on the papers, the Member and any representative shall be physically present for the duration of the hearing.
81. A Member must seek leave from the Disciplinary Panel to do any of the following:
- a) appear through a representative;
  - b) ask questions of any witness;
  - c) call witnesses; or
  - d) produce material not provided previously in the course of the Investigation or Disciplinary Proceedings.
82. Once a Disciplinary Panel has been constituted to hear Disciplinary Proceedings, the presiding member may issue a Notice of Appearance in terms of Schedule H.
83. The presiding member may make pre-hearing directions in respect of the matters in Schedule H.

### **No legal representation in proceedings**

84. Unless determined otherwise by the Conduct Review Commission Chair or the presiding member of the Disciplinary Panel, a party to Disciplinary Panel proceedings is not to be legally represented in the proceedings.
85. The presiding member of the Disciplinary Panel may revoke or vary a determination or direction made concerning legal representation or other leave granted.

### **Interlocutory Matters**

86. The presiding member of the Disciplinary Panel may make determinations and directions on interlocutory matters at any time.
87. The presiding member of a Disciplinary Panel may vacate a Disciplinary Panel hearing date, or adjourn a hearing, with or without conditions.

### **Disciplinary Panel Hearings generally**

88. The hearing of Disciplinary Proceedings against a Member shall be conducted as far as possible as an inquiry into the Member's conduct consistent with the FPA's objects and for the purposes of determining:
- a) whether or not the Member's conduct the subject of Disciplinary Proceedings amounts to one or more Breaches as alleged; and,
  - b) where the Disciplinary Panel finds a Breach proven, and having regard to the interests of the financial planning profession, whether the interests of the public, and the community lie with:
    - I. assisting the Member to understand, correct and rehabilitate any conduct found to be in Breach;
    - II. sanctioning the Member for that conduct for the protection of the community or the profession; or
    - III. both i and ii.

### **Procedure before the Disciplinary Panel**

89. Once a Disciplinary Panel has been constituted the presiding member shall give and seek from each Panel member a declaration as to the absence of conflicts of interest conforming to Part 16.
90. The Chair of the Conduct Review Commission may in consultation with any other Presiding Members make procedural rules for the conduct of disciplinary proceedings that are not inconsistent with these regulations and provided that the following procedure shall apply before the Disciplinary Panel:

- a) the FPA's case may proceed on the papers including:
  - I. the Notice of Disciplinary Proceedings;
  - II. the Investigating Officer's report and any statement of material facts prepared by the Investigating Officer;
  - III. any documents relied upon by the FPA in support of its case;
  - IV. any witness statements relied upon by the FPA in support of its case;
  - V. any legal or other expert report relied upon by the FPA in support of its case; provided that the Member and the Disciplinary Panel is supplied with a copy of the material that the FPA relies upon in its case prior to the date appointed for the hearing;
- b) Otherwise the FPA representative shall present the case to the Disciplinary Panel orally, identifying any material facts both favourable and unfavourable to the Member;
- c) The FPA representative may with the Disciplinary Panel's consent, call witnesses or ask questions of witnesses before the Disciplinary Panel;
- d) Subject to any leave given, the Member's case shall proceed on the papers including:
  - I. any evidence, submission or other material provided by the Member or made on the member's behalf in response to the Complaint, Investigation, or Investigating Officer's report; and any material in response by the Member to the Notice of Disciplinary Proceedings;
- e) At its absolute discretion the Disciplinary Panel may give the Member a further opportunity to call witnesses or produce other evidence;
- f) The Disciplinary Panel may question witnesses, the Member, the Complainant or any other person relevant to the Complaint;

- g) The FPA representative and the Member or the Member's representative may provide written submissions summarising their factual and legal arguments to assist the Disciplinary Panel;
- h) After both sides have presented their case to the satisfaction of the Disciplinary Panel, the Disciplinary Panel may adjourn the matter to determine whether any one or more Breach has been proven.

### **Ex Parte Hearings**

- 91. In the event of no appearance by or on behalf of a party at a hearing, the Disciplinary Panel may proceed ex parte.

### **Ability to refer a matter for further Investigation**

- 92. At any time prior to making a determination, the Disciplinary Panel may refer a matter for Investigation if it reasonably considers that:
  - a) the material before the Panel discloses a case to answer in respect of a Breach not the subject of the Disciplinary Proceedings before the Disciplinary Panel; or
  - b) an alleged Breach before the Panel requires further Investigation before the Panel should make a finding in respect of it.

### **Member's conduct before the Disciplinary Panel**

- 93. The Member and any representative shall conduct himself or herself with due professionalism before the Disciplinary Panel and shall afford members of the Panel, witnesses and FPA staff every courtesy. The failure to comply with any reasonable direction of the Disciplinary Panel during a Disciplinary Hearing may constitute a Special Breach.

### **Recording of proceedings**

- 94. The proceedings of the Disciplinary Panel must be recorded in writing or electronically.

### **Standard of proof**

- 95. The Disciplinary Panel must make its determination on the basis of material before it to its reasonable satisfaction.
- 96. Decisions of the Disciplinary Panel shall be by simple majority. In the absence of a majority the view of the presiding member shall prevail.

### **Rules of evidence and proceedings generally**

97. In carrying out its functions under this Disciplinary Regulation, the Disciplinary Panel will:
- a) conduct proceedings expeditiously and with as little formality as possible;
  - b) follow the principles of procedural fairness; and
  - c) not be bound by the rules of evidence, but inform itself on any matter as it sees fit, by any manner it sees fit.

### **Privacy**

98. Proceedings before the Disciplinary Panel shall be closed to the public, though if either the FPA or the Member requests any individual or individuals to be present the presiding member of the Disciplinary Panel may consent to their presence.

## **PART 9 SPECIAL BREACHES**

### **How a Special Breach is committed**

99. A Member who, by any act or omission, breaches any procedural or other requirement of this Disciplinary Regulation, or fails to comply with a direction given under this Disciplinary Regulation, commits a Special Breach.
100. A Member who commits a Special Breach without reasonable excuse is liable to be fined by the Conduct Review Commission.

### **How fine is imposed for Special Breach**

101. At any stage of an Investigation, or Disciplinary Proceeding, the Chair, or the presiding member of the Panel before whom Disciplinary Proceedings are brought, if satisfied that a Member has committed a Special Breach, without reasonable excuse, may direct the Member to pay a fine not exceeding \$1000 for each such Special Breach if more than one, and may make other directions to the Member to rectify each Special Breach.
102. In determining whether a Member has committed a Special Breach, the Chair, or the presiding member of the Panel as the case may be, is to give the Member an opportunity to give an explanation for his or her conduct.
103. Nothing in this Section shall compel the Conduct Review Commission to give reasons for its determination that a Member has committed a Special Breach or to fine a Member in respect of the Special Breach.

## **PART 10 DETERMINATIONS BY DISCIPLINARY PANELS**

### **Form of Determination**

104. The Disciplinary Panel shall make a determination in respect of each Breach allegation before it that it is:

- a) proven; or
- b) dismissed.

### **Breach determination to have immediate effect**

105. A determination by the Disciplinary Panel that a Member has committed a Breach has immediate effect.

### **Costs and out of pocket expenses**

106. When it makes a determination as to Breach or Sanction, the Disciplinary Panel may also determine that the Member pay the FPA's costs and expenses incurred in the Investigation and Disciplinary Proceedings.

### **Statement of reasons**

107. The Disciplinary Panel must prepare a statement of reasons for a determination as to Breach.

### **Notification of Disciplinary Panel determination**

108. The FPA shall notify the Member of a determination by the Disciplinary Panel prior to publishing the determination in accordance with Part 13 (Publication).

109. The FPA may effect notification of a determination to the Member as follows:

- a) where the Member is present when the Disciplinary Panel delivers its determination, by the Disciplinary Panel, orally, in person;
- b) otherwise, by serving notice of the determination in accordance with Part 15 (Service of Notices etc).

110. Notice of the determination to the Member shall include a statement that the Member has a right to request a review of the Disciplinary Panel's determination pursuant to Part 14 (Applications for Review), and advise the Member of the Prescribed Time for lodging a review request.

## **PART 11            SANCTIONS**

### **Sanctions Generally**

111. The Disciplinary Panel may impose any Sanction set out in Schedule B for each Breach proven against the Member, as it considers appropriate.
112. A Disciplinary Panel may make a separate determination as to Sanction after the Disciplinary Panel has made a determination as to Breach.
113. Where a Disciplinary Panel makes a determination as to Breach without that determination going on to consider Sanction, the Disciplinary Panel is to give the parties an opportunity to make submissions as to imposition of any Sanction prior to the Disciplinary Panel making a determination as to Sanctions.

### **Notification of Sanction**

114. The FPA shall notify the Member of the imposition of a Sanction by the Disciplinary Panel prior to publishing details of the Sanction imposed on the Member.
115. The FPA may effect notification of the imposition of the Sanction to the Member as follows:
- a) where the Member is present when the Disciplinary Panel delivers its determination, by the Disciplinary Panel, orally, in person;
  - b) otherwise, by serving notice of the determination in accordance with Part 15 (Service of Notices)
116. Notice of the Sanction to the Member shall include a statement that the Member has a right to request a review of the Sanction imposed by the Disciplinary Panel pursuant to Part 14, and advise the member of the Prescribed Time limit for lodging a request for review.

### **Timing of Sanctions**

117. Unless otherwise specified in the Sanction, a decision by the Disciplinary Panel to impose a Sanction for a Breach takes effect:
- a) If no application for review is made, at the expiry of the Prescribed Time for making the application for review; or
  - b) if an application for review is made, upon finalisation of the review proceedings or such date as determined by the Appeal Panel.



## **PART 12 HOW PRELIMINARY ENQUIRIES AND INVESTIGATION OUTCOMES ARE RECORDED**

### **Outcomes to be recorded in Disciplinary Complaints Register**

118. The outcome of all Complaints, including:

- a) Preliminary Enquiries where a matter is referred for investigation;
- b) Investigations including the name of the member who is the subject thereof must be recorded in the Disciplinary Complaints Register.
- c) The outcome of Complaints dismissed summarily by the Chair of the Conduct Review Commission on the recommendation of the Investigating Officer pursuant to Section 3.5 (Summary Dismissal of Certain Complaints) shall be recorded and identify the applicable subclause under which the matter is dismissed.
- d) The outcome of Complaints and Investigations constituting a Minor Instance of Unsatisfactory Conduct pursuant to Section 3.6 (Minor Instances of Unsatisfactory Conduct) shall be recorded and state the Sanction imposed.
- e) The outcome of Complaints and Investigations dismissed summarily by the Conduct Review Commission pursuant to Section 6.2 (Summary Dismissal by Conduct Review Commission) shall be recorded and identify the applicable subclause under which the matter is dismissed.
- f) The outcome of each Breach found proven and constituting a Minor Instance of Unsatisfactory Conduct by the Conduct Review Commission under Section 7.4 (Summary Finding of Minor Instance of Unsatisfactory Conduct by Conduct Review Commission) shall be recorded and identify the Sanction imposed for each Breach.

g) The outcome of Disciplinary Proceedings, (including any proceedings summarily disposed of by the Conduct Review Commission pursuant to Section 7.3 shall be recorded and identify:

- I. each Breach found proven or dismissed;
- II. each Sanction imposed; and
- III. any cost consequences.

119. The outcome of Disciplinary Proceedings includes:

- a) the Determinations pursuant to a Disciplinary Panel hearing; or
- b) where a Disciplinary Panel determination proceeds to a review hearing before an Appeal Panel, the review determination(s).

## **PART 13 PUBLICATION**

### **Publication Generally**

120. The FPA shall publish the outcome of Complaints, Investigations, Disciplinary Proceedings, and reviews.

### **Where published**

121. Anything that is required to be published by the FPA under this Part shall be published:

- a) in a financial planning magazine or other suitable publication of the FPA; and
- b) on the FPA's website; provided that nothing in this clause shall limit the discretion of the FPA to publish anything that is required to be published by the FPA under this Part via any other media.

### **Naming of Complainant**

122. The Complainant's name, if not the FPA, must be withheld from publication.

123. Nothing requires the identity of the FPA as the Complainant to be withheld from publication.

### **Publication following summary dismissal of Complaints in certain circumstances**

124. Where the Conduct Review Commission dismisses a Complaint or Investigation due to non-co-operation with the Investigation by any one or more of the Member, the Member's employer, employing, or authorising Australian Financial Services Licensee, the FPA shall publish details of this outcome including:

- a) the name of the Member;
- b) the name of the Member's employer, and employing or authorising Australian Financial Services Licensee at the time of the conduct the subject of the Investigation;
- c) information identifying whether any corporation or other entity or person required to be identified in b) is an FPA Professional Practice or FPA Professional Partner and the status of that relationship including whether it is:
  - I. current;
  - II. suspended; or

III. terminated;

d) That an Investigation by the FPA concerning the Member is dismissed for non-cooperation by:

I. the Member;

II. an FPA Professional Practice;

III. an FPA Professional Partner;

IV. an Australian Financial Services Licensee; or

V. another party; and

e) where the FPA is contractually permitted to do so, the name of that FPA Professional Practice, FPA Professional Partner, Australian Financial Services Licensee, or other party who has not cooperated with the FPA's investigation; provided that the Conduct Review Commission may direct the FPA to de-identify from such publication the name of the Member's employer, or the employing or authorising Australian Financial Services Licensee, as the case may be, where it has or they have sufficiently co-operated with the investigation.

### **Publication following Disciplinary Panel determination**

125. Once the Disciplinary Panel has reached a determination as to whether the Member has committed a Breach and the FPA has effected notification of the determination to the Member, the FPA shall publish details of that determination (whether the Disciplinary Panel has yet considered or determined any Sanction for the Breach, or not). The publication is not to occur until the period for the Member to seek a review of the determination has expired. Publication can only take place once a review, if sought, has been determined. .

126. In publishing details of the Disciplinary Panel's determination, the FPA shall include (but is not limited to):

a) the name of the Member;

b) the Member's employer at the time of Breach;

c) where it is the case, that the Member's employer at the time of the Breach was an FPA Professional Practice, or a FPA Professional Partner;

- d) the Member's Australian Financial Services Licensee at the time of the Breach;
- e) where it is the case, that the Member's Australian Financial Services Licensee at the time of the Breach was an FPA Professional Practice, or a FPA Professional Partner;
- f) each Breach proven against the Member;
- g) where appropriate, the fact that the Disciplinary Panel is to consider imposing Sanctions for the Breach;
- h) where appropriate, that the Disciplinary Panel is to prepare a statement of reasons for its decision; and
- i) that the Member has a right to seek a review of the Disciplinary Panel determination.

#### **Publication following Sanction**

127. Once the Disciplinary Panel has determined whether any Sanction should be imposed and the FPA has effected notification to the Member, the FPA shall publish details of the Disciplinary Panel's determination and any Sanction imposed including:

- a) the name of the member;
- b) the Member's employer at the time of the Breach;
- c) where it is the case, that the Member's employer at the time of the Breach was an FPA Professional Practice, or a FPA Professional Partner;
- d) the Member's Australian Financial Services Licensee at the time of the Breach;
- e) where it is the case, that the Member's Australian Financial Services Licensee at the time of the Breach was an FPA Professional Practice, or a FPA Professional Partner;
- f) each Breach proven against the Member;
- g) the Sanction imposed for each Breach;
- h) where appropriate, that the Disciplinary Panel is to prepare a statement of reasons for its decision; and

- i) that the Member has a right to seek review of the Disciplinary Panel determination
- j) The publication is not to occur until the period for the Member to seek a review of the determination has expired. Publication can only take place once a review, if sought, has been determined.

#### **Publication of Appeal Panel determination**

128. Once the Appeal Panel has made a review determination, the FPA shall publish details of that determination including:

- a) whether the review has been upheld or dismissed;
- b) details of any variation to any Breach determination or Sanction imposed by the Disciplinary Panel;
- c) details of any orders as to the FPA's costs or expenses;
- d) and where appropriate, that the Appeal Panel is to prepare a statement of reasons for its decision.

#### **Publication of statistical information about Complaints**

129. Details of all Complaints lodged in terms of their number and general nature shall be published:

- a) on the FPA's website;
- b) in the FPA's annual report; and
- c) in such other publications as the FPA's Board of Directors may authorise.

## Details in statistical reports

130. The information published in the statistical reports referred to in the preceding clause shall include:

- a) total number of Complaints in a period and source (e.g. consumers, other members, etc.);
- b) general description of the type of Complaints;
- c) classification into Complaints, Preliminary Enquiries, Investigations and Minor Instances of Unsatisfactory Conduct;
- d) outcome of cases dealt with by:
  - I. summary disposal by the Conduct Review Commission Chair;
  - II. Determination of the Disciplinary Panel and the Appeal Panel, namely:
    - a. whether Breaches were proven or upheld; and
    - b. Sanctions imposed;
- e) a general description of Sanctions imposed; the number of Members automatically expelled pursuant to the Constitution;
- f) commentary as to systemic issues (if any) which have been identified from an analysis of the Complaints made over the specified period and details of work the FPA has undertaken to address these systemic issues;
- g) Australian Financial Services Licensees with multiple Complaints;
- h) FPA Professional Partners with multiple Complaints;
- i) Where h) or i) applies, and data is provided by the Australian Financial Services Licensee or by the FPA Professional Partner, the ratio of Complaints per financial planner for that Licensee or Partner;
- j) any other information the Board or the Head of Professionalism considers relevant.

## Information available to Complainant

131. A Complainant shall be entitled to receive information regarding the status of his or her Complaint and the conduct of any Preliminary Enquiries, Investigations or Disciplinary Proceedings arising from the Complaint. The Complainant must keep any information supplied about the proceedings and status of the Complaint confidential, unless advised otherwise by the Investigating Officer.

132. If a Breach is proven against a Member, then the Complainant shall be notified as soon as practicable after the expiry of the Prescribed Period for the Member to make application for review under Part 14 (Applications for Review) if there is no review, or after any review has been determined. The notification to the Complainant shall be limited to the specific findings (that a particular Breach has or has not been committed) and any Sanction imposed.

## **PART 14 APPLICATIONS FOR REVIEW**

### **Request for review**

133. A Member may request a review of any determination or Sanction of the Disciplinary Panel by written request lodged with the Investigating Officer within the Prescribed Time.
134. The review may seek:
- a) rehearing by the Appeal Panel of the Disciplinary Proceedings, on the basis of the material that was before the Disciplinary Panel; or
  - b) where the Appeal Panel has before it not only the material that was before the Disciplinary Panel, but also further material, hearing de novo by the Appeal Panel of the Disciplinary Proceedings.
135. At the time of lodging the request for review, the Member must pay to the FPA a refundable review fee.
136. The amount of the fee shall be:
- a) \$5,000; or, if the sum determined as follows is less than \$5,000, but greater than \$0.00;
  - b) 50% of the total dollar sum of the:
    - I. FPA's costs, if any, as determined by the Disciplinary Panel; and
    - II. the total fines, if any, determined by the Disciplinary Panel.
137. Should the Member fail to prosecute the application for review, the amount of the fee collected shall be applied firstly in discharge of the FPA's costs as determined by the Disciplinary Panel and any costs incurred in relation to the application for review, as determined by the Appeal Panel, and thereafter towards the discharge of any fine payable by the member.
138. Where a review is not prosecuted, the Appeal Panel may direct the FPA to refund to the Member any portion of the review fee paid by the Member which remains after discharge of the FPA's costs, and any fine payable by the Member.

### **Content of request for review**

139. A request by a Member for a review of a decision of the Disciplinary Panel must set out the grounds for review and state the relief sought.
140. Other than with the leave of the Appeal Panel, no ground for review of a decision of the Disciplinary Panel may be requested and no relief may be applied for at the hearing which has not been included in the request for review.

### **Appearance**

141. A Member may at the time and place appointed for the hearing of the review:
- a) appear in person; and
  - b) make oral or present written submissions to the Appeal Panel
142. The Member must seek leave, by Notice in terms of Schedule H, to:
- a) appear through a representative; or
  - b) in the event a Member seeks review in the nature of a hearing de novo, give or produce evidence including any document or information not provided previously in the course of the Investigation or Disciplinary Proceedings.

### **No legal representation in review proceedings**

143. Unless determined otherwise by the Appeal Panel prior to the hearing, a party to Appeal Panel proceedings is not to be legally represented in the proceedings.
144. The FPA is taken to be a party to the proceedings.
145. The Appeal Panel may revoke or vary a determination made in respect of legal representation.

### **Interlocutory Matters**

146. The Appeal Panel may make such directions as it sees fit in respect of interlocutory matters.
147. The Appeal Panel may adjourn a hearing date, with or without conditions, on its own initiative or the application of a party.

## **Materials**

148. When an Investigating Officer receives a request that a decision of the Disciplinary Panel be reviewed, the Investigating Officer shall arrange for all materials before the Disciplinary Panel to be delivered to the Appeal Panel. In addition, the Investigating Officer shall supply to the Appeal Panel a transcript of the proceedings of the Disciplinary Panel, such transcript to be prepared at the cost of the Member.

## **Consideration of material**

149. The Appeal Panel must consider:

- a) the material considered by the Disciplinary Panel;
- b) the transcript of the proceedings before the Disciplinary Panel;
- c) the statement of the reasons of the Disciplinary Panel;
- d) the grounds of review; and
- e) any submissions made to the Appeal Panel.

150. In the event the Appeal Panel undertakes a hearing de novo, the Appeal Panel must also consider that material that is before it that was not before the Disciplinary Panel.

## **Rules of evidence and proceedings generally**

151. In carrying out its functions under this Disciplinary Regulation, the Appeals Panel will:

- a) conduct proceedings expeditiously and with as little formality as possible;
- b) follow the principles of procedural fairness; and
- c) not be bound by the rules of evidence, but inform itself on any matter as it sees fit.

## **Recording of proceedings**

152. The proceedings of the Appeal Panel must be recorded in writing or electronically.

## **Privacy**

153. Proceedings of the Appeal Panel are to be closed to the public.

## **Member's conduct before the Appeal Panel**

154. The Member and any representative shall conduct himself or herself with due professionalism before the Appeal Panel and shall afford members of the Panel, witnesses and FPA staff every courtesy. The failure to comply with any direction of the Panel chair during a review hearing may constitute a Special Breach.

## **Review determinations**

155. After considering the material before it the Appeal Panel material must determine, by simple majority, whether the Member's grounds for review are made out or dismissed, and what variation (if any) should be made to any findings of Breach or Sanction imposed by the Disciplinary Panel

156. In making a determination under the preceding clause, the Appeal Panel must also determine in respect of each finding of Breach before it for review whether it is:

- a) confirmed; or
- b) dismissed.

157. In varying a Sanction against the Member the Appeal Panel may impose any Sanction that was available to the Disciplinary Panel at first instance.

## **Breach determination to have immediate effect**

158. A determination by the Appeal Panel confirming a Breach has immediate effect.

## **Costs, out of pocket expenses and refunds**

159. The Appeal Panel may make a determination confirming that the Member pay the FPA's costs and expenses incurred in Preliminary Enquiries, Investigation and the Disciplinary Proceedings, or vary or set aside any such determination made by the Disciplinary Panel. The Appeal Panel may direct that the Member pay the FPA's costs and expenses of the review, or direct refund to the Member, on terms, of an amount of the refundable review fee.

## **Statement of reasons**

160. The Appeal Panel must prepare a statements of reasons for its determinations.

### **Notification of Appeal Panel determinations**

161. The FPA shall notify the Member of a determination by the Appeal Panel prior to publishing the determination in accordance with Part 13 (Publication).

162. The FPA may effect notification of a determination to the Member as follows:

- a) where the Member is present when the Appeal Panel delivers its determination, by the Appeal Panel orally, in person; or
- b) otherwise, by serving notice of the determination in accordance with Part 15 (Service of Notices etc.).

### **Appeal Panel determinations final**

163. A determination of the Appeal Panel is final and no further right of review or appeal is available to the Member under this Disciplinary Regulation.

## **PART 15 SERVICE OF NOTICES**

### **Service of Notices**

164. Any notice required to be given under this Disciplinary Regulation to a Member may be given:

- a) personally;
- b) by sending it by post or delivering it to the address for the Member in the Register or the alternative address (if any) as nominated by the Member;
- c) by sending it to the fax or email address (if any) nominated by the Member; or
- d) by any other means consented to by the Member.

165. Where a notice is served by post, service of the notice is deemed:

- a) effected by properly addressing, prepaying and posting a letter containing the notice; and
- b) received three days after the date of its posting.

166. A notice sent by fax is taken to be given on the day on which the sender obtains acknowledgement of successful transmission.

167. A notice sent by email is taken to be given when the email is sent, unless the sender has been notified, by a system or person involved in the delivery of the email to the addressee, that the email has not been successfully delivered.



## **PART 16 SELECTION AND APPOINTMENT OF CONDUCT REVIEW COMMISSION**

### **Establishment of the Conduct Review Commission**

168. Pursuant to the Constitution, the Board may appoint up to fifteen members including a Chair and one or more Deputy Chairs to the Conduct Review Commission.

### **Selection of Conduct Review Commission members**

169. Members of the Conduct Review Commission are selected subject to the criteria set out in Schedule A of this Disciplinary Regulation.

### **Appointment of Conduct Review Commission members**

170. Each member of the Conduct Review Commission, except the Chair and any Deputy Chair, will be appointed by the Board upon recommendation from the Head of Professionalism who will review applications made by interested parties in the manner set out in Schedule A of this Disciplinary Regulation.

### **Term of appointment to the Conduct Review Commission**

171. Members of the Conduct Review Commission are appointed for a period of three years or as stated in their letter of appointment unless:

- a) members are removed by the Board in accordance with this Part; or
- b) the member resigns by notice in writing to the Board.

### **Appointment of the Conduct Review Commission Chair and Deputy Chair(s)**

172. The Board will appoint a Chair and any Deputy Chair of the Conduct Review Commission on the recommendation of the committee as described in Schedule A of this Disciplinary Regulation. The Chair and any Deputy Chair will be independent of the FPA membership and shall be a financial specialist, legal practitioner or person of note. The role of the Chair and any Deputy Chair will be as described in Schedule A of this Disciplinary Regulation.

### **Power of Deputy Chair(s)**

173. A Deputy Chair may exercise all the powers given to the Chair under this Disciplinary Regulation.

### **Selection and appointment of Conduct review Commission Panel members**

174. Members of the various Panels of the Conduct Review Commission will be selected from the members of the Conduct Review Commission. Following consultation between the Chair and the Head of Professionalism, the Head of Professionalism will appoint members of the Conduct Review Commission to one or more of the following Panels as required:

- a) Disciplinary Panel; or
- b) Appeal Panel.

175. Panels will be convened from time to time as required by this Disciplinary Regulation.

176. No eligibility restriction applies to any member of the Conduct Review Commission from becoming a member of any of the Panels referred to except where:

- a) the member has previously participated in a Panel which has heard the matter to be determined; or
- b) where circumstances, relationships or other facts have been identified which mean that the Panel member is not able to be impartial in carrying out his or her role in Disciplinary Proceedings against a Member, provided that the restriction in sub-clause a) does not apply to the Chair.

### **Conduct Review Commission Remuneration**

177. Conduct Review Commission members may be remunerated for their services as determined by the Board from time to time.

### **Removal of Conduct Review Commission Members**

178. A member of the Conduct Review Commission may be removed or stood down temporarily by the Board from the Conduct Review Commission prior to the expiration of his or her term of appointment, for the reasons in clause 8 of Schedule A.

### **Conflicts of Interest**

179. Where a member of a Panel of the Conduct Review Commission has any material, pecuniary or other interest in a matter being considered by the Conduct Review Commission that could be seen as conflicting, or having the potential to conflict, with the proper performance of the member's functions in relation to the matter, the member must:

- a) disclose the nature of the member's interest to the Chair of the Conduct Review Commission; and
- b) not participate in Disciplinary Proceedings unless the Chair, in consultation with the Head of Professionalism, is satisfied in the circumstances that it is appropriate for the member to continue as a member of the relevant Panel of the Conduct Review Commission.

## PART 17 ACADEMIC MISCONDUCT

180. The FPA may investigate Academic Misconduct under this Part.

181. For the purposes of this Part and any resultant Disciplinary Proceedings against a Member the following definitions apply:

a) **Cheating** includes attempting to cheat and means:

I. impersonating or allowing impersonation by, any other person in, or for the purpose of, any examination, essay, assignment, course requirement or any other work relevant student assessment;

II. in relation to an exam: breaching the exam rules for the conduct of the exam;

III. providing false information or fraudulent documentations including academic transcripts or medical certificates.

b) **Collusion** includes:

I. presenting an assessment item as independent work when it has been produced in whole or part in collusion with other people

II. obtaining the agreement of another person for a fraudulent purpose with the intent of obtaining an advantage in submitting an assignment or other work.

c) **Plagiarism** includes:

I. failure to cite a source used;

II. disguising or attempting to disguise the work of another as one's own work;

III. the direct duplication of the thoughts or work of another, including by copying work, or knowingly permitting it to be copied;

IV. copying materials, ideas or concepts from a book, article, report or other written document

(whether published or unpublished), composition, artwork, design, drawing, circuitry, computer program or software, website, internet, other electronic resource, or another person's assignment, or the student's own assignment from a previous course, without appropriate acknowledgement;

V. quotation without the use of quotation marks;

VI. paraphrasing another person's work with very minor change keeping the meaning, form and/or progression of ideas of the original;

VII. Citing sources which have not been read, without acknowledging the 'secondary' source from which knowledge of them has been obtained;

VIII. Piecing together sections of the work of others into a new whole.

### Procedures in relation to the investigation of Academic Misconduct

182. The investigation process is initiated when a complaint is:

a) made in writing;

b) brought to the attention of the FPA; or

c) detected through the use of an external plagiarism and collusion detection service.

183. The complaint is referred to the Investigating Officer. The Investigating Officer will assess the complaint and determine whether there are grounds for establishing a prima facie case. This assessment will not take longer than 21 days.

184. If it is established that there are grounds for an enquiry, the Investigation Officer will proceed with the investigation. If there are no grounds for an enquiry, the results will be released by the FPA.

185. The Investigating Officer of the FPA may receive and prepare reports concerning allegations of Academic Misconduct.

186. The Investigating Officer will ascertain, from the nature and other details of the complaint, whether there are enough grounds for establishing a prima facie case.

187. The investigation process, which should not take longer than 30 days, includes the following elements:

- a) investigation of circumstantial evidence;
- b) investigation of other relevant details;
- c) opportunity for the respondent to review findings to be provided to the Professional Designations Committee;
- d) written responses from the respondent; and
- e) interview with the respondent.

188. After completing the investigation, the Investigating Officer presents his or her findings to the Professional Designations Committee, for appropriate action.

189. The Committee, after consideration of the case, will either:

- a) dismiss the case on the basis of insufficient grounds; or
- b) impose one or a combination of penalties detailed below.

190. The report of the Investigating Officer shall include a recommendation as to whether in his or her opinion the student has a case to answer in respect of an allegation of Academic Misconduct.

191. The student shall be afforded natural justice in relation to any allegation of Academic Misconduct including:

- a) the provision of adequate notice of the alleged misconduct to the student;
- b) an opportunity to review any documents or information relied upon by the FPA in relation to the allegation; and
- c) the opportunity to for the student to present his or her case.

192. Allegations of Academic Misconduct shall be heard and determined by the FPA Professional Designations Committee.

193. The committee shall make its determination on the papers, including any reports, written submissions by the parties, and a student shall only be entitled to appear in person, or to call witnesses to give oral evidence before the FPA Professional Designations Committee by leave of the Committee.

194. Neither the student nor the FPA shall be legally represented before the Committee.

195. The Committee shall make its determination by any means it deems appropriate and shall not be bound by the rules of evidence.

#### **Academic Sanctions**

196. Depending upon the circumstances and details of the academic misconduct, the Professional Designations Committee can impose the following range of sanctions:

- a) reprimand the Student;
- b) record a failure for all, or any part of the assessment;
- c) require the Student to repeat the all or any part of the unit;
- d) suspend the Student from enrolling for a certain period;
- e) suspend the Student from enrolling in a certain unit for a certain period; or
- f) impose a combination of the above penalties.

## **PART 18 ABILITY TO REFER MATTERS TO REGULATORS AND OTHERS**

197. If, at any stage of any Preliminary Enquiries, Investigation or Disciplinary Proceedings, the Investigating Officer, Conduct Review Commission Chair, Disciplinary Panel or Appeals Panel considers that there is a likelihood that a breach of the financial services or other applicable law may have been committed, then they may refer the matter to ASIC, the Tax Practitioners Board, AUSTRAC, OAIC, ATO OR APRA, the police or other appropriate regulatory or enforcement authority.
198. If, at any stage of any Investigation or Disciplinary Proceedings, the Investigating Officer, Conduct Review Commission Chair, Disciplinary Panel or Appeals Panel considers it is in the public interest to do so, then they may refer a matter to the Member's:
- a) current Australian Financial Services Licensee;
  - b) former Australian Financial Services Licensee (where the conduct the subject of the Complaint, Investigation, or Disciplinary Proceedings occurred during the period of the Member's authorisation with that Licensee);
  - c) current FPA Professional Practice; and/or
  - d) former FPA Professional Practice (where the conduct the subject of the Complaint, Investigation, or Disciplinary Proceedings occurred during the period of the Member's employment or engagement with that Practice).

# **SCHEDULE A CONDUCT REVIEW COMMISSION**

## **1. Purpose**

The objective of the Conduct Review Commission is for experienced members in the financial planning profession, relevant experts and members of the public to regulate the conduct of Members of the FPA and uphold the highest ethical standards within the financial planning profession by;

- a) considering Complaints against Members;
- b) determining whether Disciplinary Proceedings should commence against Members;
- c) hearing and determining Disciplinary Proceedings against Members in respect of Breaches;
- d) hearing and determining appeals against findings of a Disciplinary Panel.

## **2. Composition**

The Conduct Review Commission shall consist of up to 15 members, including a Chair (appointed in accordance with Part 16 of the Disciplinary Regulation) and may include:

- a) a CFP® practitioner with at least 10 years experience in financial planning;
- b) other suitably qualified persons with legal, professional, or consumer expertise; and
- c) a consumer or member of the public who utilises financial planning services, but is not a member of the financial planning profession.

## **3. Selection and Appointment of the Conduct Review Commission members and Chair**

- a) The FPA will seek expressions of interest from persons wishing to be members of the Conduct Review Commission and will advertise within the membership via Board-approved publications. The FPA may accept word of mouth recommendations or advertise in external publications for suitable persons to fill the public representative position/s available on the Conduct Review Commission. As a minimum for all positions, the FPA must receive expressions of interest in writing accompanied by a Career and Professional Development Resume.
- b) Expressions of interest for appointment as Chair or Deputy Chair(s) of the Conduct Review Commission shall be considered by a committee instituted for that purpose. The committee shall be chaired by a person of standing and independent of industry. The committee shall also comprise the Board Chair or another director nominated by the Board, and a consumer representative. It will recommend to the Board a candidate for appointment as Chair and any candidates for appointment as a Deputy Chair.

## **4. Conduct Review Commission membership applicant screening**

The FPA will only accept applications for appointment to the Conduct Review Commission from individuals who can demonstrate professional conduct and ethical standards that are consistent with those of the FPA and the FPA's objectives. All applicants will be subjected to background screening, conducted by the FPA or its agent, and will include, where appropriate;

- a) criminal history and bankruptcy checks;
- b) identity and employment checks;
- c) media checks
- d) qualification validation;
- e) FPA Complaint Register checks;
- f) ASIC, APRA and TPB checks; and
- g) checks of any other relevant information source approved by the Board from time to time.

## **5. Role of Conduct Review Commission members**

- a) As a Panel member, consult with and advise the Chair as appropriate, on matters relevant to the proceedings being considered by the Panel.
- b) In the absence of the Chair, write determinations at the conclusion of the hearings of Panels of which he or she is a member, and where appropriate, supply reasons for those determinations.
- c) At all times act in accordance with the Constitution of the FPA, the Disciplinary Regulation of the FPA and any other current standards or policies of the FPA relevant to the Conduct Review Commission.

## **6. Role of Conduct Review Commission Chair**

Act as Independent Code Administrator and perform all functions necessary or convenient for the administration of the FPA Professional Ongoing Fees Code, including:

- a) Review annually and if satisfied approve any plan for promoting compliance with the FPA Professional Ongoing Fees Code ("FPA Professional Ongoing Fees Code Annual Compliance Plan");
- b) Oversee reporting to ASIC by the FPA of Terminations of Registration on the FPA Professional Ongoing Fees Code participating member Register;
- c) Oversee data collection, monitoring and public reporting concerning FPA Professional Ongoing Fees Code compliance;
- d) Report to ASIC those breaches of the FPA Professional Ongoing Fees Code the Chair considers systemic or serious;
- e) Recommend to the FPA amendments to the FPA Professional Ongoing Fees Code to enhance its utility or effectiveness;
- f) Recommend to the FPA Board or Head of Professionalism, as appropriate, measures for the promotion of the FPA Professional Ongoing Fees Code;
  - I. Chair the proceedings of the Conduct Review Commission and in the process deal with any conflicts that may arise, address differences of opinion and ensure members' concerns are recorded and dealt with;
  - II. Consult with the FPA as to the appointment of members of the Conduct Review Committee Panels;
  - III. Provide guidance where required in relation to the procedure and making of determinations by the Conduct Review Commission Disciplinary or Appeal Panels;
  - IV. Chair Panels of which he or she is a member;
  - V. Write determinations at the conclusion of the hearings of Panels of which he or she is a member, and where appropriate, supply reasons for those determinations.
  - VI. Consult with and advise the Head of Professionalism, his or her delegate, or the Investigating Officer, as appropriate, on matters relevant to Disciplinary Proceedings being conducted by the FPA;
  - VII. As and when appropriate, report to the Board.
  - VIII. At all times act in accordance with the Constitution of the FPA, this Disciplinary Regulation and any other current standards or policies of the FPA relevant to the Conduct Review Commission.

## **7. Role of Deputy Chair(s)**

A Deputy Chair may exercise any of the roles attributed to the Chair in this Schedule.

## **8. Removal of Conduct Review Commission members**

A member of the Conduct Review Commission may be removed, or stood down temporarily, from the Conduct Review Commission prior to the expiration of his or her term of appointment if he or she:

- a) breaches confidentiality (save that nothing in this sub-clause shall be taken to prevent the Conduct Review Commission Chair notifying ASIC if he or she is of the view that the Board has not taken or does not propose to take appropriate action to deal with a matter reported by the Conduct Review Commission Chair to the Board in the Chair's capacity as Independent Code Administrator;
- b) does not do everything reasonably possible to avoid a conflict of interest in carrying out his or her duties on the Conduct Review Committee;
- c) commits a Breach; or
- d) is involved in any other circumstances which in the reasonable opinion of the Board may bring FPA into disrepute or affect the integrity of its Complaints and disciplinary scheme.



## **SCHEDULE B      SANCTIONS AND COSTS**

### **List of Sanctions**

#### **1. Reprimand**

That the Member receives a written warning or reprimand.

#### **2. Apology**

That the Member provides a written apology to the Complainant, or another person, with a copy to the FPA.

#### **3. Providing the Services Again**

That the Member provides the services again at no cost or at reduced cost.

#### **4. Suspension from rights and privileges**

That the Member's rights and privileges of membership be suspended. On conclusion of the suspension, the Member's rights and privileges will be reinstated. Suspensions may be for a minimum of 3 months and maximum two years.

#### **5. Remedial Education or Counselling**

That the Member satisfactorily completes a professional development course or other remedial training or counselling. Proof of satisfactory completion of the counselling or professional development course must be provided to the FPA within 1 month of completion of the course. The Member must bear all the costs of the course.

#### **6. Fines**

That the Member pay a fine in respect of the Breach. The maximum fines which may be imposed are:

- a) Minor Instance of Unsatisfactory Conduct - \$5,000 per Breach
- b) any other Breach - \$20,000 per Breach.

#### **7. Undertaking**

That the Member provides an undertaking. The undertaking may provide for:

- a) corrective action or rectification of a matter or circumstance relating to the Breach, including complying with the Directions of the Conduct Review Commission within a reasonable period;
- b) a warranty as to future conduct.

#### **8. Independent Compliance Audit**

That the Member submit to, cooperate with, and pay the costs of an independent audit of the Members conduct.

**9. Expelled from membership**

That the Member be expelled from the membership of the FPA.

**10. Supervised practice**

That the Member be required to satisfactorily complete a period of supervised practice at the cost of the Member. Proof of satisfactory completion of the period of supervised practice must be provided to the FPA within 1 month of completion of the supervised practice.

**11. Other Discipline**

That the Member be disciplined in some other way, having regard to the nature of the Breach.

# STANDARD DETERMINATIONS

## FPA's Costs and Expenses

1. That the Member pay to the FPA within 21 days of this determination the reasonable costs and expenses of the FPA incidental to the Investigation and Disciplinary Proceedings, including:
  - a) the FPA's Investigation expenses;
  - b) Legal costs;
  - c) transcription service expenses incurred in relation to the hearing;
  - d) Panel member sitting and preparation fees;
  - e) Panel member travel expenses;
  - f) witness expenses incurred by the FPA or by the FPA on behalf of a witness or Complainant in attending or participating in the hearing; and
  - g) expert report fees incurred by the FPA;
2. That the Member pay to the FPA within 21 days of this determination the reasonable costs and expenses of the FPA incidental to the review proceedings including:
  - a) the FPA's investigation expenses on the review;
  - b) legal costs
  - c) transcription service expenses incurred in relation to the review hearing;
  - d) Appeal Panel member sitting and preparation fees;
  - e) Appeal Panel member travel expenses;
  - f) witness expenses incurred by the FPA or by the FPA on behalf of a witness or Complainant in attending or participating in the review hearing; and
  - g) expert report fees incurred by the FPA in the review proceedings;
3. That the FPA may apply the amount of the review fee collected firstly in discharge of the FPA's costs of the Panel hearing and any costs incurred in relation to the application for review, and thereafter towards the discharge of any fine payable by the member.

## SCHEDULE C PROCEDURAL TIME LIMITS

Action	Prescribed Time
1 The time between the making of a Complaint and acknowledging receipt to the Complainant: Part 2 (Complaints)	14 days
2 Time for Member to give consent to an Infringement Notice	21 days from the date of receipt of an Infringement Notice
3 Time for Member to make submissions to Conduct Review Commission Chair in response to Investigating Officer's report pursuant to Part 5	21 days from receipt of report
4 Time for Conduct Review Commission Chair to consider report by Investigating Officer and make determination under Part 6 or direction under Part 7	21 days from expiry of time for Member to make submissions responding to Investigating Officer's report
5 Time allowed for Investigating Officer to issue Notice of Disciplinary Proceedings to the Member	14 days after direction by the Conduct Review Commission Chair
6 Time for FPA to notify the Member of a Breach determination under Part 10 or the imposition of a Sanction under Part 11 including advice as to the Member's right to request a review (if applicable).	Unless provided in person by the Disciplinary Panel, 14 days from the date of Disciplinary Panel Breach determination or imposition of Sanction.
7 The time limit to lodge a request for a review of a decision of the Disciplinary Panel with the Investigating Officer under Part 14 (Applications for Review)	21 days from the date notice received of any Breach determination, or Sanction imposed by Disciplinary Panel.
8 The time for payment of fines	Unless otherwise specified by the Conduct Review Commission in the Sanction, 21 days from the date of issue of the fine

## **SCHEDULE D NOTIFIABLE EVENTS**

For the purposes of this Disciplinary Regulation, Notifiable Events shall include the following:

1. The Member is refused membership or expelled from membership of a statutory, professional or other body in respect of the Member's professional capacity;
2. The Member becomes the subject of disciplinary proceedings within any other professional body or the FPA;
3. The Member becomes the subject of a hearing to determine whether a disciplinary order to ban the Member from practising should be made under the Corporations Act or pursuant to any other State or Commonwealth legislation;
4. The Member is the subject of a successful claim in relation to professional indemnity insurance;
5. The Member is refused professional indemnity insurance cover;
6. The Member is dismissed by the member's Australian Financial Services Licensee or Corporately registered Tax Agent or tax (Financial) Adviser entity because of misconduct;
7. The Member is dismissed by the member's Australian Financial Services Licensee or Corporately registered Tax Agent or tax (Financial) Adviser entity because of breach of the law;
8. The Member's ability to act as an authorised representative of an Australian Financial Services Licensee has been withdrawn and the Member has not been granted authority to act as an authorised representative of another Australian Financial Services Licensee within 6 months;
9. The Member has a business-related licence, registration or membership revoked, varied, restricted, denied or suspended;
10. The member is in receipt of a Notice from ASIC pursuant to sections 19, 30 or 33 of the Australian Securities and Investments Commission Act and the Notice relates to an investigation into the Member's conduct.
11. The Member gives a written undertaking to the Australian Securities and Investments Commission pursuant to section 93AA of the Australian Securities and Investments Commission Act;
12. The Member breaches an undertaking referred to in the preceding paragraph;
13. The Member commits an act of bankruptcy;
14. The Member is a director of a body corporate, that becomes an Externally Administered Body Corporate;
15. The Member is found guilty of any breach of the law punishable by imprisonment;
16. The Member becomes a defendant or respondent in any criminal, civil or regulatory proceeding or investigation

## **SCHEDULE E ACTION FOR MINOR INSTANCES OF UNSATISFACTORY CONDUCT**

Summary of conduct

**The Conduct of the Member** [insert name] **was that on** [date] **contrary to** [insert conduct or other rule breached] **the Member** [describe conduct]

### **Acknowledgement**

That the Member acknowledges that the above Breach has occurred.

### **Reprimand**

That the Member receives a written reprimand.

### **Apology**

That the Member provides a written apology to the Complainant or another person, with a copy to the FPA.

### **Suspension from rights and privileges**

That the Member's rights and privileges of membership be suspended. On conclusion of the suspension, the Member's rights and privileges will be reinstated. Suspension may be for a minimum of 3 months and maximum of two years.

### **Remedial Education**

That the Member satisfactorily completes a professional development course or other remedial training. Proof of satisfactory completion of the course must be provided to the FPA within 1 month of completion of the course. The Member must bear all the costs of the course.

### **Fines**

That the Member pays a fine in respect of the Breach. The maximum fine that may be imposed is \$1,000 per Breach.

### **Undertaking**

That the Member provides an undertaking. The undertaking may provide for:

- a) rectification of a matter or circumstance relating to the Breach;
- b) a warranty as to future conduct.

(Insert Name of Conduct Review Commission Chair)

# SCHEDULE F NOTICE OF DISCIPLINARY PROCEEDINGS

## NOTICE OF DISCIPLINARY PROCEEDINGS

[date]

Private & Confidential [name]

[address on register] Also by email to: Dear [name]

**Member: [name] (Member ID [number]) Complainant: [ ]**

This Notice is issued pursuant to Section 7.1 of the FPA Disciplinary Regulation 2019.

On [date] the Conduct Review Commission directed the FPA to commence Disciplinary Proceedings against you on the basis that you have a case to answer in respect of the following allegations of Breach:

a) No.	b) Alleged Breach	(c) Conduct constituting alleged Breach
(d) 1	The Member breached [provision of Code, Constitution, Regulation, etc], namely [terms of provision].	[particulars]
(f) 2	The Member breached [provision of Code, Constitution, Regulation, etc], namely [terms of provision].	[particulars]

The Disciplinary Proceedings will be heard before the Conduct Review Commission.

You will shortly be contacted so that a time and date can be arranged for you and the FPA to appear before the Conduct Review Commission for a hearing. A Directions hearing may be held for this purpose if necessary. Directions hearings are a procedural step at which arrangements can be made for the ongoing conduct of the Disciplinary Proceedings, if required.

The Chair, or a Deputy Chair, of the Conduct Review Commission can set a date or dates for a Hearing of the Conduct Review Commission and will preside at any directions hearing, if held.

For the purposes of setting a hearing date or at a directions hearing the Conduct Review Commission will ask questions of you and the FPA as to the directions that should be made. You should be ready to answer questions such as:

1. whether you will submit further material to the Conduct Review Commission. additional to material you have already submitted;
  - a) whether the whole or part of the Disciplinary Proceedings should be dismissed for some reason;
  - b) whether some or all of the Disciplinary Proceedings are suitable for being dealt with summarily under procedures available in the Disciplinary Regulation in Sections 7.3 or 7.4;
  - c) whether any factual matters are not in dispute between you and the FPA;
  - d) whether there are any particular directions you want the Conduct Review Commission to make.

To assist you, I refer you to:

- a) The FPA Constitution [add link]
- b) The FPA Disciplinary Regulation 2019 [add link]
- c) The FPA Code of Professional Practice [add link]

[and any other document that grounds an alleged Breach].

The date and time for the Conduct Review Commission directions hearing (if held)/hearing is [amend and insert, as appropriate].. You must notify the Investigating Officer within 21 days of the date of this notice if you wish to seek a variation of the date proposed for the hearing, but you must propose another date or dates and give reasons. Such other dates must be within 42 days from the date of this notice, or such later date or dates as may be established.

If there is no response or appearance from or by you, or by a representative at the directions hearing, the Conduct Review Commission may make directions in your absence. If you wish to seek a directions hearing you must notify the Investigating Officer promptly and within 14 days.

Should you wish to discuss this matter further, please contact [name] on [telephone number].

Yours sincerely,



## **SCHEDULE G      INFRINGEMENT NOTICE**

[insert date]

[insert name and contact details of Member]

Dear [insert name of Member]

### **Notice of infringement – Minor Instance(s) of Unsatisfactory Conduct**

I refer to the {Complaint made by [name] on [date] and the consequent} Investigation into allegations that you have engaged in conduct in breach of [particularise Breach(es) by relevant provision and conduct alleged].

As a result of the Investigation undertaken, I am of the opinion that the following allegation[s] of Breach, if proven, would likely be found to be minor in nature:

[particularise the Breach(es)].

I am authorised by the Disciplinary Regulation 2016 and by the Chair of the FPA Conduct Review Commission to propose a course of action by which the Complaint and Investigation concerning the minor allegations may be concluded.

I propose the following course of action:

[particulars of course of action, by reference to the matters in Schedule E]

You may give your consent to this course by advising your consent in writing within 21 days of receipt of this Infringement Notice.

Should you have any questions concerning this matter or seek further time to comply with this Infringement Notice, please contact the Investigating Officer on [insert contact telephone number].

Yours faithfully

[insert name of Investigating Officer]  
**Investigating Officer**  
Financial Planning Association of Australia

I, [INSERT NAME OF MEMBER] HEREBY AGREE THAT THE BREACH DESCRIBED IN THE INFRINGEMENT NOTICE IS PROVEN AND I CONSENT TO THE COURSE OF ACTION PROPOSED IN THE INFRINGEMENT NOTICE

[INSERT SIGNATURES AND DETAILS]

## SCHEDULE H NOTICE OF APPEARANCE

Date: \_

Name of Member: \_\_\_\_

Member Firm: \_\_\_\_\_

Matter: \_\_\_\_\_

Hearing Date: .

In addition to the directions already made or leave already granted by the Conduct Review Commission, I seek leave for the following::

1. Appear through a representative: Yes/No If **yes**, please provide the name and contact details of your intended representative.
2. Be legally represented before the Disciplinary Panel/Appeal Panel: Yes/No If **yes**, please provide the name and contact details of your intended legal representative.
3. Give oral evidence or call oral evidence from other witnesses: Yes/No

If **yes**, please give a general description of the nature of the oral evidence that you wish to provide.

1. Produce further material, not provided previously: Yes/No

If **yes**, please give a general description of the nature and form of the further material, and attach or forward copies of those documents.

Signature: .....

Please return this Notice to the Panel Chair, as directed.

## SCHEDULE I

### FPA POLICIES SUBJECT TO ENFORCEMENT UNDER THIS DISCIPLINARY REGULATION

Capitalised terms used in this Schedule I that are not defined in this Disciplinary Regulation have the same meaning as in the Constitution.

A Member commits a Breach under this Disciplinary Regulation where the Member by his or her act or omission fails to comply with the following FPA Policies as approved by the FPA Board from time to time:

FPA	Effective
FPA's Continuing Professional Development	4 August

Amended by the Board on 11 October 2018