

31 July 2009

The Committee Secretary,
Parliamentary Joint Committee on
Corporations Law and Financial Services
Department of the Senate
PO Box 6100
PARLIAMENT HOUSE
CANBERRA ACT 2600

corporations.joint@aph.gov.au

Dear Ms Batge,

INQUIRY INTO FINANCIAL PRODUCTS AND SERVICES IN AUSTRALIA

Our Ref: JMS:JPCINQ:250709

The writers of this submission welcome the opportunity to respond to the Committee's inquiry into financial products and services in Australia.

Argyle Lawyers Pty Limited is a boutique law firm which has been working in and with the financial planning industry for more than 26 years. It is recognised for its specific expertise in ethics and professional standards in the financial services industry. The firm is regularly briefed by professional associations to draft and advise on professional standards and ethics related matters. The firm also provides significant private client services to the financial planning industry including advice in relation to compliance and licensing matters, alternative dispute resolution and litigation, self managed superannuation funds, tax, estate planning, wealth protection, superannuation funds management and dealer/representative issues.

The Faculty of Business and Law at Victoria University is one of the largest business schools in Australia, with over 10,000 students. It specialises in business education, research and consultancy. The faculty prides itself on its career-driven postgraduate and undergraduate courses and executive training tailored to the needs of the surrounding business community. The faculty is regularly engaged by government and private sector organisations to research and advise in relation to matters concerning governance, industry standards and business ethics.

Our joint submission addresses the Committee's terms of reference of 25 February 2009 and issues associated with recent financial product company collapses. In particular, this submission focuses on the:

- role of financial advisers;
- state of the general regulatory environment for financial products and services;
- role played by commissions and current remuneration structures related to financial products sale and advice;
- adequacy of licensing arrangements for those who sold the financial products and services;
- appropriateness of information and advice provided to consumers and how the interests of consumers can be best served; and

These issues are addressed in separate sections of the submission. Our proposals for legislative or regulatory change are also addressed in each section.

The evidence presented in support of this submission has been derived from a number of sources. The primary source of empirical evidence comes from a significant PhD study undertaken by June Smith, under the supervision of Professor Anona Armstrong and Professor Ronald Francis of the Faculty of Business and Law, Victoria University, Melbourne. The PhD study, which has recently been completed, is entitled "Professionalism and Ethics in Financial Planning". The study explored the factors that influenced the ethical decision-making of financial advisers and compliance officers of Australian Financial Services Licensees (AFS Licensees), in the provision of financial advice to Australian consumers.

The anecdotal evidence and commentary provided in this submission is derived from our combined experience, practises and current advisory roles within the financial advisory sector. A short profile on each writer is appended to the submission as Appendix 1.

This submission discusses the key results of the PhD study and our advisory experiences as they relate to your inquiry and our view of the policy and regulatory implications for the financial services advisory sector that arise as a result of the recent financial product company collapses.

We are happy to address the Committee in public hearing on any of the issues raised in our submission or provide further evidence related to the PhD study should you require. Our contact details as are follows:

June Smith
Principal
Argyle Lawyers Pty Limited
Level 8, 350 Collins Street
MELBOURNE VIC 3000
Ph 8601 1121
Mobile 0418346382
Email jsmith@argylelawyers.com.au

Yours faithfully

June Smith

.....
June Smith
Principal, Argyle Lawyers Pty Ltd

Peter Bobbin

.....
Peter Bobbin
Principal, Argyle Lawyers Pty Ltd

A Armstrong

.....
Professor Anona Armstrong
Faculty of Business and Law
University of Victoria,

R Francis

.....
Professor Ronald Francis
Faculty of Business and Law
Victoria University,

Patrick Foley

.....
Patrick Foley
Senior Lecturer,
Faculty of Business and Law
Victoria University

**PARLIAMENTARY JOINT COMMITTEE
ON CORPORATIONS
AND FINANCIAL SERVICES**

**SUBMISSION TO THE INQUIRY INTO
FINANCIAL PRODUCTS
AND SERVICES IN AUSTRALIA**

Contact Details

June Smith
Principal
Argyle Lawyers Pty Limited
Level 8, 350 Collins Street
MELBOURNE VIC 3000
Ph 8601 1121
Email jsmith@argylelawyers.com.au

TABLE OF CONTENTS

RECOMMENDATIONS.....	1
Introduction.....	4
1. The Role of Financial Advisers.....	5
2. The General Regulatory Environment for Financial Products and Services.....	7
3. The Role played by Commission Arrangements and current remuneration structures related to Product Sales and Advice.....	9
4. The Adequacy of Licensing Arrangements to those who sell Financial Products and Services	10
5. The Appropriateness of Information and Advice provided to consumers and how the interests of consumers can be best served.....	12
6. Conclusion	13
APPENDIX 1.....	15
APPENDIX 2.....	23
APPENDIX 3.....	24
APPENDIX 4.....	25
APPENDIX 5.....	26
APPENDIX 6.....	27
APPENDIX 7.....	28

RECOMMENDATIONS

Our submission argues that recent financial product and service provider collapses within the financial services sector may have been contributed to by a number of gaps within existing regulatory and advisory frameworks. Our recommendations to the Committee to address these gaps are outlined in this executive summary as follows:

1. We believe there is a current gap in the regulation and accountability of individual financial advisers for their conduct under the Corporations Act (2001) (the Act). Our research indicates that a renewed emphasis on individual accountability for the provision of financial advice is required. In our opinion there is also current confusion and additional risks to consumers as a result of the ability of representatives who are authorised, sometimes to only give financial product advice for one product issuer, to hold themselves out as a “financial adviser” or a ‘financial planner’, but whom do not meet the relevant competency, conduct and ethical standards that consumers would expect of persons in those positions.
2. We do not believe it is practical to return to the licensing and registration of individual financial advisers, nor do we believe that it is practical to restrict the term “financial adviser”, given the many different occupations within the marketplace which use that term in the provision of financial product advice under the Act.
3. However, in an attempt to reduce some of the current risk to consumers, we recommend that the Committee give consideration to prescribing the term “financial planner” as a restricted term under section 923B(4) of the Act.
4. We recommend that this restricted term be linked to certain eligibility and competency requirements, which we propose include:
 - the achievement of an undergraduate degree or other recognised training or qualification in a related field of endeavour;
 - the holding of a professional designation and membership of a recognised professional association with a Code of Conduct accredited under ASIC Regulatory Guide 183. Our research indicates that the holding of a professional designation is significantly related to higher ethical reasoning ability compared to other financial advisers;
 - the requirement to complete annual continuing professional development;
 - recognition of a prescribed period of supervised practice, prior to being eligible to use the term;
 - the recognition of a fiduciary relationship between the person holding the restricted term and the client; and
 - provision of financial advice to clients on a fee for service basis.
5. We further propose that the coordination and monitoring of the use of the restricted term be undertaken in a co-regulatory approach with professional associations within the sector, as an alternative to a return to the individual licensing of advisers.
6. Our research indicates that the competency standards for financial advisers per se within ASIC Regulatory Guide 146, is inadequate to equip them with the significant skills they require to provide advice in the complex financial services environment. Our research has also revealed that younger financial advisers (less than 40 years of age) have lower cognitive ethical reasoning levels and are therefore at increased risk of making unethical decisions.

7. We recommend therefore that at a minimum, the Committee consider the inclusion of specific training for financial advisers in professional ethics and decision making in ASIC Regulatory Guide 146. In our opinion this would ensure that young entrants to the financial advisory sector in particular have had some exposure to ethics training prior to being authorised to give advice to consumers on behalf of Australian Financial Services Licensees (AFS Licensees). This is particularly relevant given the complexity of issues that must be dealt with in the provision of financial product advice under the Act.
8. We also recommend the lifting of organisational competency standards for responsible managers within ASIC Regulatory Guide 105: Licensing: Organisational Competence, so as to ensure that responsible managers have training and experience in governance and business ethics, prior to appointment. This takes on additional importance in light of the complex ethical issues that responsible managers and compliance officers currently deal with in their roles.
9. Evidence associated with the recent financial product and service provider collapses indicates that the written forms of disclosure adopted by those companies did not meet the purpose of ensuring that clients were placed in a position where they can make informed decisions. Accordingly, we recommend that the Committee modify the requirements in relation to statements of advice and the disclosure of fees, commissions and related benefits to simplify the provision of information to consumers.
10. We believe that another lesson from the recent financial product and service provider collapses is that the focus they placed on disclosure as the primary mechanism for managing conflicts of interest pursuant to section 912(A)(1)(aa) of the Act was inadequate and failed to protect consumers from unethical conduct. We recommend that a greater emphasis be placed on establishing mechanisms for the control and/or avoidance of commercial conflicts of interest within financial advisory structures as a result.
11. Another pattern that we have discerned from these recent collapses has been the utilisation by those companies of a financial advisory model which emphasised the facilitation of numerous clients into similar investment strategies. Our research indicates that this “advice” was usually and inappropriately associated with a general advice warning under section 949A of the Act, which allowed the adviser to disregard the circumstance, needs and objectives of the individual client, or the capacity to repay debt or suffer capital loss. Alternatively, the ‘advice’ was associated with the provision of template statements of advice and other disclosure documents not tailored to the client’s specific circumstances. This “one size fits all” approach to the sale of financial products or strategies across client databases and inappropriate attempts to convert personal advice to general advice so as to limit liability and process is, in our view, inconsistent with the current legal requirement to give personal advice which is suitable and tailored to each client and leads to greater risk for consumers.
12. Accordingly, we recommend that there be a renewed focus by ASIC on the distinction between personal and general advice and the circumstances in which it is appropriate for an adviser to rely on the general advice provisions when providing financial advice to consumers.
13. We recommend that additional regulation may also be required in relation to margin lending, to ensure that gearing strategies are only utilised in circumstances where the strategy suits the client’s circumstances, needs and objectives and to ensure that loan to value ratios stay within normal industry parameters.
14. Our research indicates that contextual factors within AFS Licensees, such as the organisation’s ethical climate and culture, significantly influence the ethical behaviour of

advisers. However, we found that AFS Licensees may not be implementing formal and informal systems and procedures within their organisations that promote ethical culture and integrate governance, risk management, compliance and ethics frameworks. Evidence associated with the recent financial product and service provider collapses also suggests that current legal compliance frameworks alone may not be sufficient to reduce or prevent systemic unethical conduct within financial advisory firms.

15. We recommend therefore that the Committee consider including specific reference to compliance with Australian Corporate Governance Principles within AFS Licensing requirements and ASIC Regulatory Guide 104: Licensing: Meeting the General Obligations. We do not believe this will add unduly to the compliance burden faced by AFS Licensees. In our opinion, this initiative may be the key to a new and invigorated approach to ethical decision-making and governance frameworks in financial services.
16. In addition, we recommend that AFS Licensee induction programs be enhanced to include instruction in the governance and ethical culture systems of the organisation, so as to reduce the risk that decision-making will be unaligned to the values of the organisation. We also suggest that such training be linked to the reporting, disciplinary and performance management systems within the organisation, so as to ensure that important messages about acceptable and unacceptable behaviour are reinforced.
17. We recommend that AFS Licensees also be encouraged to establish mentoring programs for financial advisers and the identification of ethical role models and leaders within the organisation. We believe that gaps in ethical leadership may have contributed to the systemic unethical conduct and consumer losses associated with the recent financial product and service provider collapses. Our research suggests that there is a significant statistical relationship between the presence of ethical leadership within an organisation, organisational commitment and ethical conduct.

Introduction

This joint submission by Argyle Lawyers Pty Ltd and the Faculty of Business and Law at Victoria University addresses the Committee's terms of reference of 25 February 2009. In particular, it provides comment on the issues associated with recent financial product company collapses and the:

- role of financial advisers;
- state of the general regulatory environment for financial products and services;
- role played by commissions and current remuneration structures related to financial products sale and advice;
- adequacy of licensing arrangements for those who sold the financial products and services; and the
- appropriateness of information and advice provided to consumers and how the interests of consumers can be best served.

These issues are addressed in turn in this submission. The need for any legislative or regulatory change is addressed under each heading.

The empirical evidence presented in this submission is derived from a significant PhD study recently completed by June Smith entitled "Professionalism and Ethics in Financial Planning", under the supervision of Professor Anona Armstrong and Professor Ronald Francis of the Faculty of Business and Law, Victoria University, Melbourne.

The PhD study measured:

- the primary types of unethical conduct by financial advisers in the provision of financial advice to consumers in 2006/07 and the areas of advice where this conduct most frequently occurred;
- the perceptions and attitudes of financial advisers and compliance officers (financial advisory participants) of the current ethical issues they face in their respective roles within financial services organisations;
- the perceptions of financial advisory participants of the ethical climate within AFS Licensees;
- the systems and procedures in place within AFS Licensees to assist in implementing an effective ethical culture; and
- the level of cognitive ethical reasoning of financial advisory participants.

This submission discusses the key results of the PhD study as they relate to the terms of reference of your inquiry and our view of the policy and regulatory implications for the financial services advisory sector that arise as a result. The submission also reflects our experience arising from the provision of legal and policy advice to stakeholders in the financial advisory services sector over many years.

1. The Role of Financial Advisers

Our experience is that there are many financial advisory firms and professionals who provide quality financial advice and services to their clients. In addition, there have been many positive steps taken in recent years to increase the conduct standards and compliance frameworks that apply to financial advisory firms.

However, our PhD research has revealed some patterns in unlawful and unethical conduct by financial advisers, which we believe may have been repeated by the financial advisers and AFS Licensees' associated with the recent financial product and service provider collapses. In our opinion, these patterns may have been associated with the dual role often played by the financial advisers within these collapsed companies.

To determine the primary types of unethical conduct exhibited by financial advisers and the areas of advice where this conduct regularly occurred, the PhD study reviewed:

- common law judgments by Australian courts against financial advisers or AFS Licensees in the year 2006/2007;
- 86 banning orders against authorised representatives by the Australian Securities and Investment Commission (ASIC) during the period 2006/2007;
- 17 enforceable undertakings given to ASIC during the period 2006/2007; and
- 25 decisions of the Financial Ombudsman Service Panel (FOS Panel) made in 2006/2007 in relation to allegations of unethical conduct against financial advisers and AFS Licensees, in the provision of financial advice to invest in the Westpoint Group of Companies (Westpoint) and associated promissory notes.

The number of decisions we reviewed is small compared to the number of financial advisory services provided by financial advisers during this period and as a result our findings may not be indicative of conduct across the broader financial advisory sector. However, we believe the patterns that we have identified may reflect the systemic issues and conduct associated with the recent collapses, which are the subject of your inquiry.

Our review of decisions made by Australian courts and ASIC between 2004 and 2007 suggests that financial advisers were most at risk of engaging in unethical conduct when providing advice to invest in managed investment schemes. Appendix 2 of this submission provides a summary of the relevant analysis for your consideration. This included advice to invest in Westpoint promissory notes and other managed investment schemes, such as agricultural product schemes. Our analysis has revealed that this area of financial product advice constituted the main risk area to both consumers and AFS Licensees.

Appendix 3 of this submission identifies the ten most common forms of unethical conduct by financial advisers, arising from our review of the decisions made Australian Courts, ASIC and FOS in 2006/2007. The table in Appendix 3 demonstrates that integrity issues dominate the analysis. This includes conduct such as:

- using client funds for own purposes;
- misleading and deceptive statements as to the performance and features of the financial product recommended; and
- misleading and deceptive statements as to the security of the investment or the business reputations of those associated with the financial product or scheme.

The misleading and deceptive conduct identified by our research took many forms, from misrepresenting the risk of loss of capital and associated guarantees, to actively promoting that a financial product had features it did not have. Such conduct also seemed to be associated with other forms of unethical conduct, such as not acting in the interests of clients and failing to provide clients with all information necessary to make informed decisions as to investment choices. The analysis further suggested that the misleading conduct was at times linked to an inadequate understanding or ignorance of the salient features of the financial product or scheme recommended.

We found instances in our research where these conduct issues were in part associated with the dual role the financial adviser played as an agent selling financial products and investments promoted by an AFS Licensee on the one hand and as the provider of financial advice to clients on the other. In our opinion, this situation was compounded by a licensing system that also allowed product issuers to authorise representatives to sell only their financial products, under the banner of “financial advice”, as it is defined in the Corporations Act 2001 (Cth)(the Act).

Advice given by these types of financial advisers was usually associated with a general advice warning under section 949A of the Act. However, we do not believe that such warnings place the consumer on notice that they are dealing with an agent whose primary loyalty is to their principal and not the consumer.

One of the clearest examples of the conflicts associated with the dual role played by financial advisers occurred in relation to Westpoint. Appendix 4 illustrates the ten most common forms of unethical conduct by financial advisers identified from the analysis of Westpoint decisions determined by all three external decision makers in 2006/2007. This table demonstrates that the primary form of unethical conduct from the Westpoint decisions was misleading statements made to clients about the performance, features and security of the promissory notes, and the business reputations of both the Westpoint Group and its longevity.

The misleading and deceptive statements primarily took two forms: misstatements arising ostensibly from a lack of understanding of the investment and its features (see *Delmenico v Brannelly and Others (2007) QDC 165*) and misleading statements meant to induce clients to invest (see ASIC Media Release 07 - 287). This unethical conduct was usually associated with advice to a group of clients, not just one, (see *Evans v Brannelly and Others (2006) QDC 348* concerning six clients and the ASIC banning orders in the matters of Fung; Humphrey; Wade; Lowth and Armstrong).

The Westpoint decisions also indicate a demonstrated and systemic failure in the advisory processes followed by some advisers, when recommending investment in the Westpoint promissory notes. For example, most of the decisions reviewed demonstrate a failure to comply with other existing legal obligations such as the obligation to understand the client’s objectives, needs and circumstances; to assess the client’s tolerance to risk; and to provide a reasonable basis for advice. These failures were coupled with a failure to adequately explain the risks associated with the investment and compounded by the failure to tailor advice to the individual client as required by the law.

In addition, the advice to invest in these products was simply not suitable to the particular client (see FOS decisions numbered 17001, 16818, 16685 and 17937). Our analysis identified that of the 25 FOS decisions made in relation to Westpoint in 2006/2007, nine related to advice to self managed superannuation funds, at least five clients were elderly and retired and three clients, on low incomes, invested in Westpoint using a gearing strategy. In our opinion, the speculative nature and risks associated with the promissory notes made them an unsuitable investment for these types of client.

We expect that some of these adviser conduct patterns have been repeated in recent financial product and service provider collapses.

2. The General Regulatory Environment for Financial Products and Services

2.1 Restricting use of the term “Financial Planner”

Our research revealed many instances where consumers who invested in financial products and managed investment schemes did so on the advice of a person who was either not licensed under the Act (such as Keibel Bank - ASIC Media Release 07-239) or was authorised to give advice on behalf of a product issuer which held an AFS License.

We believe the latter situation in particular presents significant risks to consumers who are left to identify those advisers who will provide advice in their interests from those agents whose role it is to sell financial product on behalf of their principal. Currently the messages consumers receive in the media and promotional material is to seek advice from person or entity “licensed under the Act”, not who is “licensed to give advice on a range of financial products”.

We believe the consumer’s task is made more difficult because there is no restriction on use of terms such as ‘financial adviser’ and ‘financial planner’. Our research identified that some media commentators and the regulator from time to time, refer to even unlicensed persons as “financial advisers.” For example, we found numerous references to undischarged bankrupts and other unauthorised persons as “financial advisers” in ASIC media releases and banning order registers (ASIC Media Releases 04-229, 04-294, 06-224, 04-229 as an example).

Given the financial services industry has a diverse range of occupations providing a wide range of financial services, including general and transactional advice to consumers, we do not believe it would be possible to define ‘financial adviser’ as a restricted term under the Act. However, in our opinion there is good argument for restricting the term “financial planner”, as this occupation is usually associated with the provision of holistic financial advice to clients.

We believe that this term could be restricted such that only persons who met certain eligibility and competency requirements set by legislation could hold themselves out as providing financial planning advice. These competency and eligibility criteria could include, among other things:

- the achievement of an undergraduate degree or other recognised qualification or training in a related field of endeavour;
- the holding of a professional designation and membership of a recognised professional association with a Code of Ethics and Conduct accredited under the Act. Our research indicates that the holding of a professional designation is significantly related to higher ethical reasoning ability compared to other financial advisers;
- the requirement to complete annual continuing professional development;
- recognition of a prescribed period of supervised practice prior to being eligible to use the term; and
- the recognition of a fiduciary relationship between the person holding the restricted term and the client;
- provision of financial advice to clients on a fee for service basis.

We argue that the restricted use of this term is one action that could alleviate the confusion that currently exists for consumers who seek professional financial advice, as to who is licensed to give advice in their interests and who meets relevant competency and ethical conduct standards that consumers would expect in a financial planner.

We accept that the individual licensing of each and every financial adviser in Australia is impractical. However, we believe that individual accountability for conduct and advice is as important as the licensing obligations of financial services organisations and has been overlooked in part in the wake of the Financial Services Reform regulatory environment. We therefore propose that a co-regulatory approach be used as a mechanism for co-ordinating and monitoring use of the restricted term by individual financial planning practitioners. We believe this step may ensure a renewed focus on individual accountability for the provision of financial advice, in addition to providing additional protection to consumers.

In support of our recommendations in this area, we refer to current initiatives within the financial planning sector to raise professional standards and delineate financial planning advice from other financial advisory services. In this regard, we refer to the Accounting Professional and Ethical Standards Board Discussion Paper on the review of Miscellaneous Standard APS 12 and the new Code of Ethics and Single Code of Professional Practice of the Financial Planning Association of Australia Limited with its professional obligation to “place the client first”. We believe that such initiatives leave these organisations well placed to assist in the regulation of the restricted term.

In addition, our research indicates that the holding of a professional designation is significantly related to higher ethical reasoning ability. Thus membership of professional associations which bestow such designations is therefore to be encouraged.

We also recommend that any restricted term should carry with it additional or higher conduct obligations than those set by the law for other advisers. In our opinion, there is already significant evidence, both nationally and internationally, to suggest that a fiduciary relationship has been recognised in Australia at common law and by the accounting professions as being appropriate for financial planning relationships that are continuous and long term in nature. We understand that ASIC has a taskforce to review whether and in what circumstances a fiduciary relationship exists between a financial adviser and a client. However, we propose that the Committee consider clarifying the legal position in part by recognising the fiduciary nature of the relationship between a financial planner and their client as part of the criteria to be set for use of the restricted term.

A fiduciary relationship gives rise to a higher standard of care and duty than one based simply in statute or contract. If financial planners are in a fiduciary relationship, they cannot misuse their position, knowledge or opportunities resulting from it, to their own or a third party's possible advantage (*Chan v Zacharia* (1984) CLR 178). They also must, avoid any conflict of interest that poses or may pose a significant threat to the planner's conduct and performance in providing financial advice, or that may create or creates a negative perception of their ability to provide financial advice on that basis, unless the client, fully informed, consents, or it is authorised by the law. In addition, they must also demonstrate trust, loyalty and discretion to their client. In our opinion, these higher standards of conduct reflect the current standard of care most stakeholders would expect of a financial planner.

2.2 General competency standards

In terms of the general competency standards for financial advisers per se, our research suggests that the current minimum competency standards that apply in ASIC Regulatory Guide 146 are inadequate to provide financial advisers with the skill sets required to give

competent and appropriate advice under the Act in the complex financial services environment.

Our research findings also indicate that the levels of ethical reasoning of young and inexperienced financial advisers and compliance officers in particular are lower than for their older and more experienced colleagues. Accordingly, they are more at risk of making unethical decisions. The findings of our study indicate that older age (over 40 years) is linked to higher ethical reasoning scores.

We therefore recommend that at the very least, minimum competency standards in ASIC Regulatory Guide 146 be lifted to include specific training in professional and business ethics. In our opinion this would ensure that young entrants to the financial advisory sector have had some exposure to ethics training prior to being authorised to give advice to consumers on behalf of an AFS Licensee. This is particularly relevant given they presently do not have to have undertaken either an undergraduate course or other significant training to hold themselves out to be a financial adviser.

We further recommend that AFS Licensees be encouraged to enhance adviser induction programs to include instruction in the systems and procedures related to ethical decision-making within the organisation, so as to reduce the risk that adviser decision-making will be unaligned to the values of the organisation. We also suggest that such training be linked to the reporting, disciplinary and performance management systems within the organisation, so as to ensure that important messages about acceptable and unacceptable behaviour are reinforced. A mentoring program or close supervision by an ethical role model or leader within the organisation also appears warranted.

In addition, we also recommend the lifting of organisational competency standards for responsible managers within ASIC Regulatory Guide 105: Licensing: Organisational Competence, so as to ensure that responsible managers have training and experience in governance and business ethics, prior to appointment. This takes on additional importance in light of the complex ethical issues that responsible managers and compliance officers currently deal with in their roles

3. The Role played by Commission Arrangements and current remuneration structures related to Product Sales and Advice.

Our research did not identify one finding by an external decision maker that a financial adviser had recommended certain investments due to the pecuniary benefits that flowed to them as a result.

In addition, we found no significant relationship between the receipt of commission payments and ethical reasoning ability or the size of the organisation and levels of ethical reasoning.

However, our research did demonstrate that contextual factors, such as remuneration structures and the ethical climate and ethical culture of the organisation, play significant roles in determining the ethical or unethical conduct of advisers and compliance officers. This conduct includes failures to adequately disclose fees, upfront and trail commissions and conflicts of interest associated with the provision of financial advice, which were all forms of unethical conduct identified by our review of the decisions of Australian courts, ASIC and FOS.

For example, our data suggested a repeated failure to disclose all fees and commissions payable as a result of investments made in the Westpoint promissory notes. Our research also

identified instances where commissions and alternative remuneration benefits received by financial advisers for their recommendations were well in excess of normal industry practice.

We expect these patterns were repeated within the financial service companies which are the subject of this inquiry and that again these patterns were linked to the ethical climate within those organisations.

Our experience suggests, and evidence associated with the recent financial product and service provider collapses confirms, that the written forms of disclosure currently adopted in the industry do not meet the purpose of ensuring that clients are placed in a position where they can make informed decisions. Accordingly, we recommend that the Committee modify the requirements in relation to statements of advice and the disclosure of fees, commissions and related benefits to simplify the provision of information to consumers.

We believe that another lesson from the recent financial product and service provider collapses is that the focus they placed on disclosure as the primary mechanism for managing conflicts of interest pursuant to section 912(A)(1)(aa) of the Act was inadequate and failed to protect consumers from unethical conduct. We recommend that a greater emphasis be placed on establishing mechanisms for the control and/or avoidance of commercial conflicts of interest within financial advisory structures as a result.

Our research supports these recommendations. Our study included the convening of a focus group of financial advisory participants to discuss the ethical issues they believed were influencing ethical decision-making of financial advisers and compliance officers within the financial advisory industry. Appendix 5 contains a list of emerging ethical themes for the focus group participants in their professional practice and Appendix 6 provides material related to the organisational issues that the focus group participants believed were affecting ethical decision-making within AFS Licensees. These issues included the balancing of the commercial imperatives of a financial advisory business with the interests of the client; the remuneration structures within the industry and how to manage the commensurate conflicts of interest; and associated stakeholder perceptions of the financial advisory sector and the reputation risk for financial advisers and AFS Licensees if these matters were handled ineffectively.

We support initiatives such as those of the accounting profession and the Financial Planning Association of Australia to transition its membership to a fee for service remuneration structure. We believe this is indicative of an international recognition that some remuneration practices may lead to unresolved conflict of interest and inappropriate or unethical advice. Indeed, we have recommended that if restricted, the term “financial planner” be linked to a fee for service remuneration structure.

However, we believe that the current commercial conflicts of interest that exist within the financial advisory industry are complex and significant. In our opinion, a purely regulatory response to ban the payment of commissions to advisers may not be sufficient to resolve these issues on its own. We believe that the governance and cultures of financial services organisations also has a significant role to play.

4. The Adequacy of Licensing Arrangements to those who sell Financial Products and Services

As we have previously indicated in this submission, the effectiveness of the current licensing arrangements has been tested by the recent collapses which are the subject of this inquiry. We have already expressed the view that individual accountability for incompetent and inappropriate advice and for mismanagement and inappropriate governance practices at AFS

Licensee level, which have both contributed in part to these collapses, should be addressed by increasing applicable competency standards, amongst other things.

Our research has also identified a number of additional gaps within existing frameworks, which we believe may have contributed to these collapses and resultant client losses.

For example, our research has identified that there may be a significant gap in the formal and informal ethical culture systems and procedures that are currently in place within AFS Licensees. This includes gaps in the ability to communicate and articulate boundaries around both decision-making and behaviour and the ethical values the organisation espouses.

Australian standards on governance such as the ASX Principles of Good Corporate Governance; the Australian Standard on Good Governance Principles (Standards Australia AS 8000); Fraud and Corruption Control (Standards Australia AS 8001), Organisational Codes of Conduct (Standards Australia AS 8002), and Corporate Social Responsibility (Standards Australia AS 8003) all outline the types of systems and procedures expected to be implemented within Australian organisations to ensure links occur between compliance, risk management and governance systems and to encourage ethical decision-making.

Our research in this area, derived from the Australian Standards on Corporate Governance Principles (Australian Standard on Fraud and Corruption AS8001-2003 in particular), indicated that AFS Licensees appeared to have traditional and overt formal ethical culture mechanisms in place, such as internal codes of ethics or conduct (78.8%); published sets of organisational values (78.2%) and adviser training in ethics (73.9%).

However, the survey results, summarised at Appendix 7, also suggested that regular reporting on ethical matters within financial services organisations was very low (47.9%). Further, nearly half of the respondents to the study were unclear as to whether their AFS licensee had enforcement mechanisms such as a staff/disciplinary policy in place (48% no or don't know). Our results highlight that other conventional mechanisms, which may assist management and compliance officers to instil and enforce strong organisational culture may be lacking. This includes systems and procedures linking ethical behaviour with performance and rewards systems. For example, less than 50% of participants believed their AFS Licensee referred to the ethical standards expected of staff in performance systems (47.9%) and have implemented formal rewards systems for ethical conduct (21.2%). Further, formal systems for rewarding people who achieve higher levels of ethical conduct appeared lacking, with 71.5% participants answering either no or don't know to this question.

We note that it is not currently mandatory for AFS Licensees to comply with any of the Australian governance standards listed above and that their application is subject to size and turn over requirements, amongst other things. Accordingly, our finding that AFS Licensees had such low rates of compliance with these standards whilst surprising, was perhaps not unexpected, given the focus for AFS Licensees has been on establishing and maintaining the compliance systems and procedures specifically outlined in ASIC Regulatory Guide 104.

The evidence associated with the recent financial product and service provider collapses also suggests that current legal compliance frameworks alone may not be sufficient to reduce or prevent systemic unethical conduct within financial advisory firms.

We recommend therefore that the Committee consider including specific reference within the AFS Licensing requirements and ASIC Regulatory Guide 104: Licensing: Meeting the General Obligations, to the requirement to comply with Corporate Governance Principles linked to existing Australian standards. We do not believe this will add unduly to the compliance burden

faced by AFS Licensees. In our opinion, this initiative may be the key to a new and invigorated approach to decision-making and governance frameworks in financial services.

In addition, we recommend that AFS Licensee induction programs be enhanced to include instruction in the governance and ethical culture systems of the organisation, so as to reduce the risk that decision-making will be unaligned to the values of the organisation. We also suggest that such training be linked to the reporting, disciplinary and performance management systems within the organisation, so as to ensure that important messages about acceptable and unacceptable behaviour are reinforced.

We also recommend that AFS Licensees also be encouraged to establish mentoring programs for financial advisers and the identification of ethical role models and leaders within the organisation. We believe that gaps in ethical leadership may have contributed to the systemic ethical conduct and consumer losses associated with the recent financial product and service provider collapses. Our research suggests there is a significant statistical relationship between the presence of ethical leadership within an organisation, organisational commitment and ethical conduct.

5. The Appropriateness of Information and Advice provided to consumers and how the interests of consumers can be best served

Evidence associated with the recent financial product and service provider collapses indicates that the written forms of disclosure used by those companies did not meet the purpose of ensuring that clients were placed in a position where they can make informed decisions. Accordingly, we recommend that the Committee modify the requirements in relation to statements of advice and the disclosure of fees, commissions and related benefits to simplify the provision of information to consumers so as to meet this purpose.

An additional pattern that we have discerned across these recent collapses was the utilisation by those companies of a financial advisory model which emphasised the facilitation of numerous clients into similar investment strategies. Our research indicates that this “advice” was usually and inappropriately associated with a general advice warning under section 949A of the Act, which allowed the adviser to disregard the circumstance, needs and objectives of the individual client, or the capacity to repay debt or suffer capital loss. Alternatively, the “advice” was associated with the provision of template statements of advice and other disclosure documents not tailored to the client’s specific circumstances. This “one size fits all” approach to the sale of financial products or strategies across client databases and inappropriate attempts to convert personal advice to general advice so as to limit liability and process is, in our view, inconsistent with the current legal requirement to give personal advice which is suitable and tailored to each client and leads to greater risk for consumers.

Accordingly, we recommend that there be a renewed focus by ASIC on the distinction between personal and general advice and the circumstances in which it is appropriate for an adviser to rely on the general advice provisions when providing financial advice to consumers.

We further recommend that additional regulation may also be required in relation to margin lending, to ensure that gearing strategies are only utilised in circumstances where the strategy suits the client’s circumstances, needs and objectives and to ensure that loan to value ratios stay within normal industry parameters.

6. Conclusion

The evidence presented in support of this submission has been derived from a number of sources. The primary source of empirical evidence comes from our recently completed PhD study. The anecdotal evidence and commentary provided in this submission is derived from our combined experience, practises and current advisory roles within the financial advisory sector.

Our view of the policy and regulatory implications for the financial services advisory sector that arise as a result of the recent collapses and our proposals for legislative or regulatory change have been addressed within each section of this submission. Our recommendations for the Committee's consideration have been outlined at the commencement of this submission, but are repeated for convenience.

1. We recommend that the Committee give consideration to prescribing the term "financial planner" as a restricted term under section 923B(4) of the Act.
2. We recommend that this restricted term be linked to certain eligibility and competency requirements, which we propose include:
 - the achievement of an undergraduate degree or other recognised training or qualification in a related field of endeavour;
 - the holding of a professional designation and membership of a recognised professional association with a Code of Conduct accredited under ASIC Regulatory Guide 183. Our research indicates that the holding of a professional designation is significantly related to higher ethical reasoning ability compared to other financial advisers;
 - the requirement to complete annual continuing professional development;
 - recognition of a prescribed period of supervised practice, prior to being eligible to use the term;
 - the recognition of a fiduciary relationship between the person holding the restricted term and the client; and
 - provision of financial advice to clients on a fee for service basis.
3. We further propose that the coordination and monitoring of the use of the restricted term be undertaken in a co-regulatory approach with professional associations within the sector, as an alternative to a return to the individual licensing of advisers.
4. We recommend that at a minimum, the Committee consider the inclusion of specific training for financial advisers in professional ethics and decision making in ASIC Regulatory Guide 146. In our opinion this would ensure that young entrants to the financial advisory sector in particular have had some exposure to ethics training prior to being authorised to give advice to consumers on behalf of Australian Financial Services Licensees (AFS Licensees). This is particularly relevant given the complexity of issues that must be dealt with in the provision of financial product advice under the Act.
5. We also recommend the lifting of organisational competency standards for responsible managers within ASIC Regulatory Guide 105: Licensing: Organisational Competence, so as to ensure that responsible managers have training and experience in governance and business ethics, prior to appointment. This takes on additional

importance in light of the complex ethical issues that responsible managers and compliance officers currently deal with in their roles.

6. We recommend that the Committee modify the requirements in relation to statements of advice and the disclosure of fees, commissions and related benefits to simplify the provision of information to consumers.
7. We recommend that a greater emphasis be placed on establishing mechanisms for the control and/or avoidance of commercial conflicts of interest within financial advisory structures.
8. We recommend that there be a renewed focus by ASIC on the distinction between personal and general advice and the circumstances in which it is appropriate for an adviser to rely on the general advice provisions when providing financial advice to consumers.
9. We recommend that additional regulation may also be required in relation to margin lending, to ensure that gearing strategies are only utilised in circumstances where the strategy suits the client's circumstances, needs and objectives and to ensure that loan to value ratios stay within normal industry parameters.
10. We recommend that the Committee consider including specific reference to compliance with Australian Corporate Governance Principles within AFS Licensing requirements and ASIC Regulatory Guide 104: Licensing: Meeting the General Obligations. We do not believe this will add unduly to the compliance burden faced by AFS Licensees. In our opinion, this initiative may be the key to a new and invigorated approach to ethical decision-making and governance frameworks in financial services.
11. We recommend that AFS Licensee induction programs be enhanced to include instruction in the governance and ethical culture systems of the organisation, so as to reduce the risk that decision-making will be unaligned to the values of the organisation. We also suggest that such training be linked to the reporting, disciplinary and performance management systems within the organisation, so as to ensure that important messages about acceptable and unacceptable behaviour are reinforced.
12. We recommend that AFS Licensees also be encouraged to establish mentoring programs for financial advisers and the identification of ethical role models and leaders within the organisation. We believe that gaps in ethical leadership may have contributed to the systemic unethical conduct and consumer losses associated with the recent financial product and service provider collapses. Our research suggests that there is a significant statistical relationship between the presence of ethical leadership within an organisation, organisational commitment and ethical conduct.

We are happy to address the Committee in public hearing on any of the issues raised in our submission, or provide further evidence related to the PhD study should you so require.

.....
31 July 2009

APPENDIX 1 Writer Profiles

JUNE SMITH PRINCIPAL



Telephone: + 61 3 8601 1121
 Mobile: 0418 346 382
 Fax: + 61 3 8601 1180
 Email: jsmith@argylelawyers.com.au
1987 LLB University of Melbourne
 BA (Hons) University of Melbourne
2002 Undertaking PhD in professional ethics in financial services industry at Victoria University

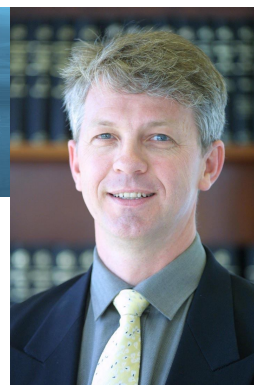
COMPETENCIES

- Significant experience in the financial services industry particularly financial planning;
- Significant litigation and alternative dispute resolution experience;
- Significant experience in the development of Codes of Conduct across a range of industries;
- Unique expertise in professional ethics in the financial services industry at PhD level;
- Expertise in risk management, compliance and Australian Financial Services licensing matters;
- 10 years experience as in house General Counsel, in corporate governance and company secretariat matters.
- Significant expertise in financial services law

EXPERIENCE/CAREER HIGHLIGHTS

- Consultant to numerous professional bodies and AFS Licensees in relation to their professional standards for financial advisers.
- Chair, Conduct Review Commission Appeals Committee, Financial Planning Association of Australia
- Member of the FPA Conduct Review Commission and Professional Conduct Committee
- Member of the Lexis Nexis Editorial Committee for the FSR Newsletter
- Former Acting CEO and General Manager Policy and Regulation Financial Planning Association of Australia which included responsibility for International Certification, promotion and accreditation of the Certified Financial Planner mark, FPA Professional Standards, FPA Disciplinary Scheme, FPA public policy unit and the National Quality Assessment program.
- Former General Counsel and Company Secretary of the FPA with responsibility for the management of the corporate governance functions of the FPA and the Company Secretariat.
- Joint Author of the FPA CFP® 1 subject on ethics and professionalism in financial planning and the FPA/IFSA Joint Industry Codes of Practice on Alternative Remuneration Practices and Rebates and Related Practices
- Former Acting Chief Executive Officer of the Equal Opportunity Commission of Victoria and Manager Legal, Policy and Complaint Services
- Drafted Codes of Conduct in relation to Racial Vilification and discrimination Law for Football Federation of Australia and Cricket Australia
- Led a project reviewing the Victorian legislative Book, culminating in the provision of a report to the Victorian State Government on same sex couples and the Law

PETER BOBBIN PRINCIPAL



Telephone: + 61 2 8263 6622
 Mobile: 0408 111 831
 Fax: + 61 2 8263 6633
 Email: pbobbin@argylelawyers.com.au

1983 Bachelor of Commerce (Accounting & Finance Systems)
 Bachelor of Laws University of New South Wales
1998 Master of Taxation (distinction) University Western Sydney
 Fellow of the Taxation Institute of Australia

COMPETENCIES

- 20 years experience in advising the financial services industry on structuring, regulatory compliance and general commercial issues.
- Frequent author and contributor to Money Management, Independent Financial Adviser, Australian Financial Review, BRW, Asset, The Australian, SMH, The Age and Paul Clitheroe Money publications;.
- Experienced in managing ASIC enforceable undertaking matters, providing technical direction for AFSL holders and managing negotiations with financial services regulators.
- Experienced in understanding and identifying financial services business risks.
- Lobbied federal government in Alienation of Personal Services Income, adequate compensation arrangements and taxation of trusts.
- Communicates clearly in a succinct "plain English" style.
- Provides practical advice, is directly accessible to clients and responds in a timely fashion.

EXPERIENCE/CAREER HIGHLIGHTS

- Involved in developing Australia's first Master Financial Planning for University of Western Sydney (UWS).
- Co-author of the Financial Services Reform Implementation Kit, Privacy Implementation Kit, Supervision and Monitoring Kit with the Financial Planning of Australia Limited.
- Invitation to participate as the only individual (non-association) representative on the Federal Treasury initiative arising from the Ralph Report to tax trusts as companies.
- Instructions to act on a project basis from each of Australia's major financial institutions.

CAREER HISTORY

1987 to present Principal, Argyle Lawyers Pty Ltd
 1988 to 2000 Lecturer to Graduate Diploma and then Master of Laws UWS
 1983 to 1987 Accounting (audit and taxation) with (now called) KPMG and PWC

Professor Anona Armstrong AM

Phone: 9919 1315

Email: anona.armstrong@vu.edu.au

Office: 1022, 10th Floor City Flinders

Qualifications

PhD (Melb)

BA (Melb)

Grad.Dip.Pub. Pol. (Melb)

Company Directors Diploma (UNE)

FAPS; FAES; FAICD

PUBLICATIONS (SELECTED) BOOKS

Francis, R. and Armstrong, A. 2006 Governance in Small Business. Sydney, Standards Australia International.

Armstrong, A. and Francis, R. 2004. (Eds) **An**. Introduction to Corporate Governance Sydney, Standards Australia International.

Armstrong, A. and Francis, R. 2004. (Eds) Applications of Corporate Governance. Sydney, Standards Australia International.

Book Chapters

Armstrong, A. 2004 Commentary on Codes of Corporate Governance. In . Armstrong, A. and Francis, R. (Eds) Introduction to Corporate Governance Sydney, Standards Australia International.

Armstrong, A. 2004 Evaluating Corporate Governance Effectiveness. In A. Armstrong and R. Francis (Eds) Applications of Corporate Governance: A Companion Guide to the Australia Standards International Code. Sydney, Standards Australia International.

Professional Experience

Journal Editor

Chair Editorial Board, Journal of Business Systems, governance and Ethics

Member Editorial Board Corporate Governance

Theses examinations for

South Australian University; Edith Cowen University; Melbourne University; Curtin University; RMIT University, Flinders University; LaTrobe University.

Leadership in professional association

Life Member and Fellow: The Australasian Evaluation Society; Past President Australasian Evaluation Society

Fellow: The Australian Psychological Society: Past Member of Council

Fellow: The Australian Institute of Company Directors

Fellow: Institute of Public Administration of Australia Victoria; Past Member of Council

Member: Australian and New Zealand Academy of Management

Member: ISBEE

Life Fellow: Clare Hall, University of Cambridge

Leadership roles at VU include

University Academic Board Member 2003-4

University Research Committee Member 2002-4
 Chair, Faculty of Business and Law, Research Committee 2001-3
 Director, Centre for International Corporate Governance Research 2003-2008
 Faculty of Business and Law Board of Studies Member 2001-4
 Faculty of Business and Law Postgraduate Studies Committee
 School of Management Advisory Committee
 Post Graduate Management Courses Advisory Committee
 Director, Business Ethics Research Unit
 Faculty of Business and Law Ethics Committee
 Member of Selection Committees eg. Promotions to Associate Professor and Professor

Professional Experience:

Victorian Regulation and Qualifications Authority: Panel Chair Higher Education Accreditation and Assessment
 APS Policy Committee (response to COAG); National Regulatory Developments Working party
 Canada Social Sciences Council Grant Applications Review
 2007-8 Deakin University Committee Review of Management Programs
 2009 RMIT University Program Advisory Committee

Major Grants won

- 2009 [National Institute of Accountants](#)
 Anona Armstrong, Professor Colin Clark Dr Wei Dai, Professor Ronald Francis, Ms Kumi Heenetigala, Associate Professor Arthur Tatnall. The Use of Internet Reporting for Small Business
- 2008 [ARC Linkage Grant: Department of the Australian Treasury 2008](#)
 Clarke, A. Armstrong, A. 3 year ARC Grant. Developing a responsible regulatory system for Australia's small corporations
- 2008 [Department of the Victorian Treasury](#)
 Armstrong, A. Evaluation of compliance with good practice corporate governance.
- 2007 [Department of Industry and Regional Development 2007](#)
 Armstrong, A. and Fitzpatrick, M. Review of the governance of Victorian Industry Advisory Bodies
- 2006 [University of Dubai 2006](#)
 Professor Anona Armstrong Professor Brian King, A. Professor Ian Michael. Tourism from Dubai to Victoria.
- 2004 [ARC Linkage Grant 2004: Department of Justice](#)
 Professor Anona Armstrong and Professor Ronald Francis.. 3 year Arc Linkage Grant 2004: Evaluation of the Community Governance of Crime Prevention and Community Safety.

Professional Membership

Life Member and Fellow: The Australasian Evaluation Society; Past President Australasian Evaluation Society
 Fellow: The Australian Psychological Society: Past Member of Council
 Fellow: The Australian Institute of Company Directors
 Fellow: Institute of Public Administration of Australia Victoria; Past Member of Council
 Member: Australian and New Zealand Academy of Management
 Member: International Society of Business Ethics and Entrepreneurship
 Life Fellow: Clare Hall, University of Cambridge

Special Recognition

Member of the Order of Australia 2008
 International Faculty Advisor Award: from the US Institute of Project Management Education Foundation.
 Vice Chancellor's Award for Research (on three occasions)
 Life Fellow Australasian Evaluation Society
 Life Fellow: Clare Hall, University of Cambridge

Professor Ronald Francis

Ronald David FRANCIS

Professorial Fellow

Phone: 9919 1212

Email: ronald.francis@vu.edu.au Office: Room 1088 City Flinders Campus

QUALIFICATIONS

MA (NZ)

Ph.D. (Melbourne)

Dip.Crim. (Cambridge)

Publications

Recent books

Francis R D (2000). *Ethics and Corporate Governance: An Australian Handbook*. Sydney: University of NSW Press

Kasprczyk R T & Francis R D (2001). *Private practice psychology: a handbook*. Oxford: BPS Blackwell

Kasprczyk R T & Francis R D (2002). (2nd edition). *Private practice psychology: the new Australian manual*. Frenchs Forest: Pearson Education

Francis R D (2003). *l'Etica per gli psicologi*. Torino, Italy: Centro Scientifico Editore

Francis R D (2004). *Becoming a psychologist*. Basingstoke, Hants: Palgrave Macmillan

Armstrong A F & Francis R D (Eds.) (2004). *Introduction to corporate governance*. Sydney: Standards Australia

Armstrong A F & Francis R D (Eds.) (2004). *Applications of corporate governance*. Sydney: Standards Australia

Francis R D & Armstrong A F (2006). *Corporate governance for small business*. Sydney: Standards Australia

Moss S & Francis R D (2007). *The science of management: fighting fads and fallacies with evidence-based practice*. Brisbane: Australian Academic Press

Francis R D (2008). *The time woven rainbow: an inquiry into psychological principles and practice*. Heidelberg, Vic: Heidelberg Press

Francis R D & Mishra M (2009). *Business ethics: an Indian perspective*. Delhi: McGraw Hill

Francis R D (in press). (2nd edition). *Ethics for psychologists*. Oxford: Blackwell-Wiley

Recent papers

Francis R D & Armstrong A F (2009). Meetings, morals, and manners. *Australian journal of corporate law*. 23 (1) 94-113

Francis R D (in press). *Tourism and crime: a typological analysis*. *Tourism, culture and communication*.

Francis R D & Armstrong A F (2007). *Values, governance and policing*. Australian New Zealand Association of Management. Sydney. December

- Francis R D & Armstrong A F (2007). Quantifying ethics. Australian journal of professional and applied ethics. 9 (1) 74-85
- Smith J, Armstrong, A & Francis R D (2007). Professionalism and ethics in financial planning. Journal of business systems, ethics, and governance. 2 (1) 1-10
- Francis R D & Armstrong A F (2007). Issues and guidance in research ethics. Journal of business systems, ethics and corporate governance. 2 (1) 33-39
- Francis R D & Armstrong A F (2006). Time as an aspect of morals. Berlin: International Federation of Scholarly Academies of Management.
- Francis R D, Armstrong A F & Totikidis V (2006). Ethnicity and crime: a statewide analysis. Asian and Pacific migration journal. 15 2 201-217
- Armstrong A F, Totikidis V & Francis R D (2005). Towards a sustainable partnership in crime prevention and community safety. The Australasian journal of university community engagement. Vol 1. Spring.
- Francis R D (2004). Why the Australian Association of Professional and Applied Ethics should have its own code of ethics. Australian journal of professional and applied ethics. Special issue. No.2 Vol 5 83-90
- Francis R D, Gius E and Coin R (2004). Ethical gradualism: a practical approach. Australian journal of professional and applied ethics. 5 (1) 25-34
- Armstrong A F & Francis R D (2003). Social indicators – promises and problems: a critical review. Evaluation journal of Australasia. 3 (1) 17-26
- Francis R D & Armstrong A F (2003). Ethics as a risk management strategy: the Australian experience. Journal of Business Ethics. 45 375-385
- Francis R D & Armstrong A F (2002). Promises, politics and perversity. Journal of Professional and Applied Ethics. 3 1 17-27
- Francis R D (2001). Evidence for the value of ethics. Journal of financial crime. 9 1 26-9
- Francis R D & Armstrong A F (2000). Can ethics be gauged from Annual Reports. Journal of the Association of Applied and Professional Ethics.
- Francis R D (1999). Self empowerment in ethics: a step by step approach. Monash Mount Eliza Business Review

Professional Experience

Positions held previously

- Associate Dean (Research), Faculty of Professional Studies, Monash University
- Chairman. Graduate Studies Committee. Faculty of Professional Studies. Monash University
- Member of the Standing Committee on Research on Humans, Monash University
- Member of the Victorian Psychologists Registration Board
- State Chairman of the Vic Branch of the Australian Psychological Society
- Chairman of the Australian Psychological Society Committee on Ethical and Professional Standards
- Council Member of the International Board for the Study of Victimology
- Member of the Executive of the Australian Association of Professional and Applied Ethics
- Member of the Victorian Department of Justice Research Ethics Committee (1998-2007).

RESEARCH

Experience on research committees, PhD Committees, Postgraduate Studies Committees.

Sometime reviewer of research grants applications for the Australian Criminology Research Council

Recipient of research grants from NSW Law Foundation, Victoria Law Foundation, various university grants, and Australian Criminology Research Council, Australian Research Council

Co-recipient of Australian Research Council Link Grant (3 year) on crime and community governance

Currently managing a project funded by the Victorian Department of Justice on 'Sentencing in magistrates' courts'

Recipient of several research grants, including co-recipient of a three year ARC grant.

EXTERNAL PROFESSIONAL

- Frequent presenter and adviser at professional seminars, including at Standards Australia, VicRoads, Victorian Automobile Chamber of Commerce, and Office of Public Employment (Victoria).
- Judge in the Managing Diversity Awards for the Victorian Public Service. 2002 to 2005
- Member of the national committee that developed the Australian National Standards for Corporate Governance (with Standards Australia).

Professional Membership

Fellow of the British Psychological Society

Fellow of the International Institute of Public & Professional Ethics

Life member of Clare College, Cambridge

Former Visiting Scholar. Criminology. Hebrew University of Jerusalem

Former Visiting Fellow, Clare Hall, Cambridge University

Former Visiting Fellow. Centre for International Studies, Cambridge University

Visiting Fellow, Cambridge University, April-Sept.2009

Teaching and Learning Engagement Activities

BOOK MANUSCRIPT REVIEWING

- Cambridge University Press
- Wiley

GUEST EDITOR

Special Edition of the Australian Journal of Professional & Applied Ethics. 2003

EDITORIAL BOARD

Member of the Editorial Board of the Journal of business systems, governance and ethics

REVIEWING

Frequent reviewer of journal articles with respect to publication.

SUPERVISION AND EXAMINING

Supervisor and examiner of doctoral theses

Patrick Foley B.S.W. (Melb), M.A. (VUT Research)

Patrick Foley has consulted to many of Australia's leading organisations. He was the principal consultant for the Australian Human Resource Benchmarking Program and his work has been cited and used in a number of leading HR texts and courses.

He has constructed benchmarking systems, in both the HR function and non-HR areas; such as customer service, employee engagement, organisational learning processes, competitive benchmarking and has also led International benchmarking projects. He has conducted, both within Australia and overseas, numerous executive team development workshops, senior management strategy reviews and helped organisations construct strategy maps and performance measurement systems.

His current research focuses on strategic entrepreneurship and firm performance. Recent large scale empirical work examined the relationship between a firm's strategic leadership capability, corporate entrepreneurship and its financial performance. His publications are wide ranging, include the "Foundations for a learning organisation" and "E-business strategy, practices and impact". He is has been on the editorial review board of the Journal of Managerial Psychology. He is currently researching how employee engagement with organisational brand values shapes employee behaviours and is a Senior Lecturer at Victoria University.

APPENDIX 2
Advisory Services the Subject of Determination by Australian Courts and ASIC Against Financial Advisers or AFS Licensees between 2004 and 2007

Primary type of advice given	Australian Courts	ASIC	Total
Other Managed Investment Schemes	45	9	54
Equities/Shares	4	21	25
Margin Loans/Gearing	20	1	21
Westpoint	7	12	19
General Investment Advice	7	8	15
Superannuation/SMSF	3	10	13
Insurance/Broking	0	12	12
Property	2	0	2
Advising/Dealing in own Shares	2	6	8

Source: Smith, J. 2009 ‘Professionalism and Ethics in Financial Planning’, a PhD dissertation (unpublished), Victoria University, Melbourne.

APPENDIX 3
The Ten Most Common Forms of Unethical Conduct Identified from Decisions made in Financial Advisory Matters by Australian Courts and ASIC in 2006/07

No.	Theme	Summary of Unethical Conduct	Primary Ethical Principles	No. of breaches
1	Integrity Issues	Misleading statements as to performance, product features or security, business reputations	Integrity, Professionalism	35
2	Integrity Issues	Using client funds for own purpose	Integrity, Professionalism	29
3	Appropriateness of Advice	Advice did not meet client objectives or circumstances and had no reasonable basis	Competence/ Objectivity	28
4	Research into product/strategy	Lack of financial product research/ inadequate understanding of financial product recommended	Competence/ Diligence	23
5	Disclosure obligations	Failure to disclose remuneration benefits and conflicts of interest	Objectivity/ Integrity/ Fairness	23
6	Disclosure obligations	Failure to disclose information relevant to client decision	Objectivity/ Diligence/ Fairness	22
7	Recommendations/ Advice	Inadequate written advice of failure to tailor advice to client	Diligence/ Fairness	21
8	Appropriateness of Advice	Inadequate explanation and examination of risks associated with investment	Competence/ Diligence/ Fairness	19
9	Integrity Issues	Misleading statements as to risks associated with financial product	Integrity, Professionalism	16
10	Compliance	Deliberately ignoring internal procedures and policies of the AFS Licensee	Integrity/ Diligence	13

Source: Smith, J. 2009 ‘Professionalism and Ethics in Financial Planning’, a PhD dissertation (unpublished), Victoria University, Melbourne.

APPENDIX 4
The Ten Most Common Forms of Unethical Conduct Identified from the Analysis of Westpoint Complaints Determined by all Three External Decision Makers in 2006/07

No.	Theme	Summary of unethical conduct	Primary Ethical Principles	No. Breaches Identified
1	Integrity Issues	Misleading statements as to performance, product features or security, business reputations	Integrity/ Professionalism	47
2	Research	Inappropriate financial product recommended	Competence	33
3	Appropriateness of advice	No reasonable basis for advice	Competence/ Fairness	31
4	Suitability of Advice	Advice did not meet client objectives or circumstances	Competence/ Objectivity	26
5	Research/Due Diligence	Failure to conduct due diligence of Company behind product/scheme/strategy	Diligence	26
6	Appropriateness of advice	Inadequate explanation and examination of risks associated with investment	Competence/ Diligence/ Fairness	25
7	Research into product/strategy	Lack of financial product research/ No independent research conducted	Competence/ Diligence	25
8	Suitability of advice	Inadequate assessment of risk tolerance	Competence	21
9	Recommendations/Advice	Inappropriate reliance by adviser on general advice warnings	Objectivity/ Fairness	19
10	Disclosure Obligations	Failure to disclose remuneration/benefits	Objectivity/ Integrity	16
10	Recommendations/Advice	Failure to tailor advice to client/use of template documents	Competence/ Diligence	16

Source: Smith, J. 2009 “Professionalism and Ethics in Financial Planning”, a PhD dissertation (unpublished), Victoria University, Melbourne.

APPENDIX 5
Emerging Themes For Focus Group Participants' in relation to professional issues and the advice process.

No.	Theme	Includes
1	Honesty	Deceptive and misleading conduct; lying to employees and clients; integrity of the financial advisory process and conduct of advisers.
2	Client interests	Appropriateness of advice; risk tolerance assessment; reasonableness of advice; investment selection; asset allocation; acting in the best interests of clients.
3	Conflict of Interest	Balancing the interests of the client and adviser; bias created by remuneration structures and ownership; conflicts created by relationships with product manufacturers; the impact of conflict on the ability to service clients; restricted product offerings; the tensions between meeting compliance objectives and meeting sales targets; management and profit imperatives.
4	Disclosure	Ensuring adequate disclosure in documents; the way in which fees and commissions are disclosed; ensuring compliant documents; disclosing commercial relationships between advisory firms and product manufacturers.
5	Competency	Managing the competency of advisers; keeping up to date with expanding legislative framework; knowledge and training of all staff; professional development; lack of adviser diligence in meeting compliance objectives in this area.
6	Stakeholder Perceptions	External perceptions of the quality of advice; internal perceptions of the compliance function; the impact of Westpoint and other market failures; communication with internal stakeholders.
7	The subjective nature of ethical decision making	The subjectivity of individual judgment, inconsistencies in interpretation and definitions to be applied in the advice process.

Source: Smith, J. 2009 "Professionalism and Ethics in Financial Planning", a PhD dissertation (unpublished), Victoria University, Melbourne.

APPENDIX 6
Emerging Themes for Focus Group Participants' in relation to Contextual and Business Issues

No.	Theme	Includes
1	Links to Distribution networks	Ownership of financial services organisations; financial product sales and distribution; sales practices; links between product manufacturers and advisory groups; approved product lists and financial product variety and number.
2	Business Imperatives	Business sustainability; profit pressures and trade offs; meeting budgets versus ensuring best practice; competing against business goals; misuse of the time critical advice provisions in the Act; commercial settlements of client complaints at FICS; management values and objectives; resources; time pressures; the multinational nature of financial advisory firms; the appropriateness of and the scale of compliance systems.
3	Remuneration Structures	Volume and incentive payments; soft dollar payments; setting of fee and commission charges and rates; gifts; links to conflict of interest and overcharging.
4	Churning/ Switching of financial product	How to undertake effective gap analysis; setting of quotas versus quality as objectives; how to ensure client interests are met; inappropriateness of advice and meeting requirements of approved product lists when clients transfer between advisers.
5	Research and Ratings	Its impact on advice quality; managing risk associated with approved product lists; validity and veracity of the research; links to distribution networks.
6	Risk management trade offs	Managing risk versus adviser independence; enforcement tradeoffs including disciplining advisers and professional indemnity insurance claims management.
7	Independence	Of the compliance function; it's opinions; the enforcement of rules and procedures across the organisation; independence of review of compliance functions.

Source: Smith, J. 2009 "Professionalism and Ethics in Financial Planning", a PhD dissertation (unpublished), Victoria University, Melbourne.

APPENDIX 7
Response Rates to Questions on Ethical Culture Systems and Procedures within Australian
Financial Services Organisations.

Quest. No.	Systems & Procedures	% Yes Responses	% No/ Don't Know Responses
1.	Internal Code of Ethics/Conduct	81.8%	11.5%
2.	Published set of organisational values	78.2%	15.2%
3.	Whistleblower policy	77.0%	12.7%
4.	Training for advisers in ethics/Decision making	73.9%	18.7%
5.	Regular communication on ethical standards	61.8%	27.3%
6.	Enforcement mechanisms/Disciplinary policy	51.5%	39.4%
7.	Reference to ethical standards in performance systems	47.9%	41.8%
8.	Regular organisational reporting on ethical matters	46.7%	44.9%
9.	Formal reward systems for ethical conduct	21.2%	71.5%

Source: Smith, J. 2009 "Professionalism and Ethics in Financial Planning", a PhD dissertation (unpublished), Victoria University, Melbourne.