

Is the FASEA code in no man's land?

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<https://www.moneymanagement.com.au/news/financial-planning/fasea-code-no-man%E2%80%99s-land>

Specialist financial services law firm, The Fold has suggested that the Financial Adviser Standards and Ethics Authority (FASEA) code of ethics is in a virtual no man's land.

Lawyer Simon Carrodus has noted even though the Code came into effect on 1 January, the consultation process around that code is not yet complete and that, at the same time, the Australian Securities and Investments Commission (ASIC) has made it clear it is not the regulator's role to enforce the code.

“Even though the Code came into effect on 1 January, the consultation process is not yet complete. In late 2019, FASEA conducted consultation sessions and accepted submissions from licensees, educational and industry bodies, advisers and consumer groups,” Carrodus wrote. “Many hoped this process would result in a re-drafted Code that would clarify the major points of confusion. Second on the wish list was a re-drafted guidance document. No such luck.”

“Instead, we have a ‘preliminary response to the submissions’ (i.e. more guidance) and the promise of a ‘further detailed response’ later in 2020.

“We are in a phase of ‘facilitative compliance’. This means that no regulatory action will be taken provided licensees take reasonable steps to ensure their advisers comply with the Code. This means licensees should:

- Review their policies;
- Update systems;
- Provide training and guidance about the Code; and
- Monitor their adviser's compliance with the Code.”

Carrodus said he believed this was in recognition of, as ASIC put it, “...the timing of the guidance provided by FASEA... and the evolving industry understanding about the meaning and implications of the Code.

“In other words, the Code is technically in effect but it's in such a state of flux that it would be unfair to punish an adviser for not complying with it,” he said.