

1 June 2018

Financial Adviser Standards and Ethics Authority

Via email – consultation@fasea.gov.au

Dear Board Members

Code of Ethics for Financial Advisers – Exposure Draft of Proposed Standard

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide a submission on the Exposure Draft Code of Ethics for Financial Advisers released for consultation by the Financial Adviser Standards and Ethics Authority (FASEA) on 20 March 2018.

We note that FASEA is required by section 921U(2)(b) of the Corporations Amendment (*Professional Standards of Financial Advisers*) Act 2017 (the Act) to develop a Code of Ethics to ensure compliance under section 921E by ‘relevant providers’ as defined in the Act.

Chartered Accountants ANZ has long advocated for more effective and sustainable frameworks for financial advice, including appropriate industry reform to ensure that more consumers are able to obtain ethical and professional financial advice. We believe it is vital to improve access to affordable, good quality financial advice for all consumers.

We contributed to development of the Government’s standards legislation, and support its overall objective to professionalise the financial advice industry and increase consumer trust, confidence and engagement in the sector.

In preparing our submission, we have consulted with FASEA, our members, education providers, as well as other professional associations and industry stakeholders.

Our submission makes the following key points:

- Chartered Accountants ANZ supports the principles-based approach proposed by FASEA. This approach will help encourage and facilitate individual responsibility and accountability, alignment with existing legal and regulatory obligations, as well as adoption by advisers who will also continue to operate under other professional Codes of Ethics and standards. However, we are concerned that FASEA’s draft Code of Ethics will be difficult to interpret, monitor and enforce in its current form.
- We believe that FASEA should continue to consult with stakeholders to develop supporting commentary and guidance on the scope and application of the Code to both individual advisers and firms, definitions of key terms, as well as guiding principles and case study examples to assist advisers to consistently interpret and apply the Code. This will also assist consistent interpretation, monitoring and enforcement of the Code by ASIC approved Code monitoring bodies.
- We encourage FASEA to broaden the Code to include additional commentary and guidance, in consultation with key stakeholders, as early as possible prior to finalising the legislative instrument.

- In developing additional commentary and guidance for relevant providers, reference should be made to the lessons learned from the Royal Commission to enquire into and report on Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission). In particular, the need to raise financial adviser standards, improve professionalism, and increasing consumer trust, confidence and engagement in the sector.
- Chartered Accountants operate within a highly qualified and professional framework. As a professional body, our members are held accountable to the principles set out in professional codes of conduct and professional standards, including codes of ethics established by globally recognised standard setting bodies in Australia and New Zealand. We have the authority to investigate and discipline members who breach our Code of Ethics and other standards.
- For members who may be subject to the requirements of FASEA's Code of Ethics as well as our existing Code of Ethics and standards, we would discourage the introduction of any additional, new standards that would duplicate or conflict with our existing requirements.
- We encourage FASEA to streamline and harmonise the requirements of the new Code with existing laws, regulatory obligations and standards. This is fundamental to reducing unnecessary complexity and compliance costs for advisers, particularly for smaller firms and businesses, as well as increasing the availability of affordable financial advice to consumers. Failure to do so increases the risk that many well-qualified and experienced advisers will leave the industry.
- We recommend that FASEA further develop the draft Code of Ethics, in consultation with industry stakeholders, with reference to existing legislated Codes of Ethics and Professional Conduct applicable to relevant providers, such as the Code of Professional Conduct for tax (financial) advisers regulated by the Tax Practitioners Board (TPB) under the *Tax Agent Services Act 2009*.
- The information sheets developed by the TPB to assist advisers to comply with certain aspects of its Code, may also be a useful reference point for developing further commentary and guiding principles to assist relevant providers to interpret and comply with FASEA's Code of Ethics.

Appendix A provides our detailed comments in response to the consultation questions.

Should you have any questions or require clarification on any of the points made in this submission, please contact Sarah Davidson (Leader, Government Affairs and Financial Advisory Services) at sarah.davidson@charteredaccountantsanz.com or on +61 2 9290 5639.

Yours faithfully



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1. Information about us

Chartered Accountants ANZ is a professional body comprised of over 117,000 diverse members. This includes over 15,000 members in public practice in Australia who either provide or assist in providing financial advice. Around half of these members hold or operate under an Australian Financial Services Licence. The majority of accountants who provide financial advice are registered tax agents and increasingly tax (financial) advisers. FASEA's proposed reforms will impact on all of these members.

Our members work in a wide range of roles in the financial services industry, as individual advisers as well as in small businesses, small and medium-sized accounting practices, the corporate sector, major financial institutions and financial product manufacturers.

As an independent professional body, we advocate in areas of relevance to our members and in the public interest. Our financial advisory advocacy priorities focus on reducing complexity and supporting more effective and sustainable frameworks for financial advice:

1. Appropriate industry reform to ensure that more consumers are able to obtain good quality, ethical and professional financial advice; and
2. Reducing complexity and regulatory burden in the financial advice industry through greater digitalisation, improving data usage and streamlining the regulatory approach.

Further information about Chartered Accountants Australia and New Zealand and our financial advisory advocacy priorities is in **Appendix B**.

2. Consultation interests of FASEA

Chartered Accountants ANZ developed and issued an online survey to members in public practice in Australia on 29 May 2018, to seek feedback on FASEA's proposed education standards and draft Code of Ethics.

As at 31 May 2018, 263 members responded. We have provided a summary of member views on the draft Code of Ethics where appropriate in our responses to the consultation questions below. We will provide our full member survey results to FASEA once the consultation period closes on 29 June 2018.

1. **How the Code addresses the consumer detriments that have arisen in financial advice, particularly Standard 2, which is intended to ensure that the advice (or referral or other service) that a consumer gets from an Adviser does not produce inappropriate personal advantage to the Adviser.**

Standard 2: [Relevant providers] Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider.

FASEA's draft Code of Ethics does not specifically define the term 'inappropriate personal advantage'. However, the mapping table in FASEA's consultation paper suggests that inappropriate advantage might include conflicts of interest (such as conflicted remuneration, conflicts of duty and priority) or behaviours that do not demonstrate acting with personal integrity and independence.

ASIC Report 562: *Financial advice: Vertically integrated institutions and conflicts of interest* (January 2018) reported on the increased risks in the five largest banking and financial institutions due to the conflicts of interest that exist when engaged in both providing personal financial advice to clients and manufacturing financial products. The study found that, in 75% of the advice files reviewed, the advisers did not demonstrate compliance with the duty to act in the best interests of their clients.

APRA's final report of the Prudential Inquiry into the Commonwealth Bank of Australia (May 2018) to examine the frameworks and practices in relation to the governance, culture and accountability within the CBA group, provides lessons for all Boards and executives. Key themes identified were the dangers of a culture of complacency and a lack of robust accountability, as well as the importance of managing non-financial risks (operational, compliance and conduct) and maintaining constructive relationships with non-shareholding stakeholders such as the regulator, government and the community.

The Royal Commission hearings have identified significant instances of misconduct in certain segments of the financial services sector, as well as governance and regulatory failures, resulting in serious consumer detriment. Key causes of the misconduct and conflicts identified appear to be poor institutional culture and misaligned incentives. It is timely for all industry stakeholders to reflect on the lessons of the Royal Commission and CBA APRA Report, and take a leadership role in raising professionalism in the advice industry and restoring trust in the finance sector.

In 2017 Chartered Accountants ANZ jointly developed [Managing Culture: A good practice guide](#) with the Australian Securities and Investments Commission, The Institute of Internal Auditors Australia, The Ethics Centre and Governance Institute of Australia. This guide assists leaders by explaining the important link between improving corporate culture and conduct outcomes for consumers and investors. It covers the regulatory context, defining culture, developing and embedding culture, as well as gaining assurance over risk culture.

Other issues to consider in relation to this Standard are:

a) What types of personal advantage are appropriate vs inappropriate?

Members who responded to our survey provided a range of views in response to this question. An agreed fee for service was considered a primary example of an appropriate personal advantage. Charging advice fees where no advice was provided, was identified as clearly inappropriate. Some members held the view that any advantage obtained that was not in the best interest of the client would be inappropriate.

b) What might be the unintended consequences of the current draft?

As the terms 'appropriate' and 'inappropriate' personal advantage are not defined in the draft Code, they are open to interpretation and potentially open to legal challenge. As a result, this standard will be difficult to enforce in its current form and will unlikely improve outcomes for consumers.

c) How might the Standard be expressed to avoid unintended consequences?

Clear definitions of key terms as well as guiding principles, practical examples and case studies on the standards would assist advisers to interpret and apply the Code. Clarification on how the Code's standards map to existing legal and regulatory obligations would also be helpful.

If an adviser can demonstrate consideration and application of the guiding principles in good faith in providing advice to the client, then this should constitute reasonable grounds for compliance with FASEA's Code of Ethics.

2. How do the other Standards respond to this type of consideration?

Chartered Accountants ANZ's Code of Ethics

As members of a professional body, Chartered Accountants work within a highly qualified, professional and ethical framework. Members are required to comply with our Act, Regulations and Code of Ethics as well as relevant Professional Standards. Both our Australian and New Zealand Code of Ethics are modelled on the globally recognised International Federation of Accountants (IFAC) Code.

A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest, reflected in Paragraph 100.1 of [Accounting Professional & Ethical Standards \(APES\) 110 Code of Ethics for Professional Accountants](#) (our Code).

Our Code provides a conceptual framework that requires members to exercise their professional judgment to identify threats to compliance with the fundamental principles of professional ethics, evaluate the significance of the threats identified, and apply safeguards when necessary, in order to eliminate the threats or reduce them to an acceptable level.

Members must comply with the fundamental principles of **Integrity, Objectivity, Professional Competence and Due Care, Confidentiality and Professional Behaviour** (Paragraph 100.5).

The fundamental principle of **Objectivity** in paragraph 100.5(b) in our Code requires that members not allow bias, conflict or undue influence of others to override professional or business judgements. The principle of objectivity addresses occasions where conduct is not directly a conflict of interest, but something that involves bias or a relationship or interest that undermines objectivity.

Our Code provides definitions of key terms and numerous examples of the circumstances and relationships that create, or may create, threats to compliance with the fundamental principles, as well as guidance on how to apply the conceptual framework. For example, relevant obligations before accepting a new client relationship or specific client engagement, or continuing with a recurring client engagement,

These fundamental principles are also reflected in [APES 230 Financial Planning Services](#), which sets out the mandatory requirements for members in Australia who provide financial planning advice to clients.

Tax Practitioners Board's Code of Professional Conduct

The TPB's Code of Professional Conduct, legislated under the *Tax Agent Services Act 2009* (TASA), sets out the professional and ethical standards that registered tax practitioners are required to comply with in delivering their services to the public. Section 30-10 of the TASA outlines the duties owed to clients, the TPB and other registered tax practitioners. Sanctions for failure to comply with the Code of Professional Conduct are set out in Section 30-15.

The Code sets out 14 core principles grouped into five areas - **Honesty and integrity, Independence, Confidentiality, Competence, and other responsibilities**.

The **Independence** principle requires that you must act lawfully in the best interests of your client, and you must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent or BAS agent or tax (financial) adviser.

The TPB's [Explanatory Paper TPB\(EP\) 01/2010](#) Code of Professional Conduct provides a comprehensive explanation of the TPB's interpretation of the Code, translating the provisions into practical principles that can be applied by registered tax practitioners.

The TPB has developed information sheets to assist registered tax practitioners to comply with certain aspects of the Code. For example, on acting lawfully in the best interest of the client, taking reasonable care to ascertain a client's state of affairs, having adequate arrangements for managing conflicts of interest, as well as guidance on confidentiality of client information.

The TPB also provides further guidance on when a conflict of interest arises, how you can manage conflicts of interest, examples involving conflicts of interest, consequences of failure to have adequate arrangements, and how these obligations relate to requirements under the Corporations Act. [Managing conflicts of interest for tax \(financial\) advisers](#) is a useful reference point.

3. The practical application of the proposed Code in terms of:

- a) Adviser practice
- b) Licensee practice
- c) Education and support
- d) Compliance requirements
- e) Consumer experience

FASEA's Code of Ethics should support and enable the practical application and effectiveness of the principles for the range of retail clients who seek financial advice, for those that provide advice (entities and individuals), for regulators (such as the TPB and ASIC) and ASIC approved Code monitoring bodies.

Chartered Accountants ANZ supports the principles-based approach proposed by FASEA. This approach will help encourage and enable individual responsibility and accountability, alignment with existing legal and regulatory obligations, as well as adoption by advisers who will also continue operate under other professional Codes of Ethics and professional standards. However, we are concerned that FASEA's draft Code of Ethics will be difficult to interpret, monitor and enforce in its current form.

We believe that FASEA should continue to consult with stakeholders to develop supporting commentary and guidance on the scope and application of the Code to both individual advisers and firms, definitions of key terms, as well as guiding principles and case study examples to assist advisers to consistently interpret and apply the Code. This will also assist consistent interpretation, monitoring and enforcement of the Code by those who are approved by ASIC as Code monitoring bodies.

We encourage FASEA to broaden the Code to include additional commentary and guidance, in consultation with key stakeholders, as early as possible prior to finalising the legislative instrument.

Obligations need to be codified and clearly defined. It is unrealistic to expect people to comply with the 'spirit of the law' without providing appropriate guidance.

As at 31 May 2018, 92% of our members surveyed support FASEA's 12 proposed Standards in the areas of Ethical behavior, Client care, Quality process and Professional commitment, as well as FASEA's 5 proposed Values of Trust, Competence, Honesty, Fairness and Diligence.

The vast majority of our members surveyed (97%) believe that FASEA's Code of Ethics should be streamlined and harmonised with existing professional Codes of ethics and professional standards, in order to reduce complexity and regulatory costs. To this end, the majority of our members surveyed are also members of other professional associations such as the Tax Practitioners Board (62%), Financial Planning Association of Australia (15%) and the SMSF Association (12%).

The principles and values set out in FASEA’s draft Code of Ethics are well aligned with Chartered Accountants ANZ’s Code of Ethics, as illustrated in **Appendix C**.

For members who are relevant providers and will be subject to the requirements of FASEA’s Code of Ethics as well as our existing Code and standards, we would discourage the introduction of any additional, new standards that would duplicate or conflict with our existing requirements.

We encourage the Code Working Group to streamline and harmonise the requirements of the new Code with existing laws, regulatory obligations and standards, including those applicable to our members.

FASEA must ensure the right balance between compliance obligations and consumer protection. Undue compliance burdens such as additional disclosure obligations and other administrative matters will reduce productivity, competition, independence and the delivery of quality, affordable financial advice to consumers.

Whilst acknowledging the need to raise the standards of the financial advice industry, we also encourage FASEA to consider the need to reduce complexity and compliance burdens in terms of the time and costs associated with undertaking additional education requirements.

Unnecessary compliance costs increase the risk that well-qualified and experienced advisers will leave the industry. It is particularly a risk for independent advisers, small and medium-sized practices, those in rural and regional areas, advisers with young families and those who may be close to retirement age. This would work against the objective of the legislation to increase the availability of good quality, professional financial advice to consumers.

The practical application of the new Code of Ethics would also be assisted by providing guidance on mechanisms to reinforce good ethical behaviour and leadership on a day-to-day basis.

Standard 12 touches on ethical leadership, but the Code could be made more explicit about the importance of improving organisational culture and setting the tone from the top.

Chartered Accountants Australia and New Zealand’s 2013 research on *Why business ethics matter to your bottom line* found that to improve ethical behaviour and increase organisational and institutional integrity, business leaders must move beyond compliance, to better measurement and management of organisational culture and governance (including shared practices, behaviour standards and reward structures), and encouraging greater self-regulation and individual accountability.

Our 2016 **future[inc]** report, [A Question of Ethics – Navigating Ethical Failure in the Banking and Financial Services Industry](#), which surveyed over 700 banking and financial services industry practitioners in six countries, proposes a range of interventions to help improve ethical behaviour, reduce ethical failures, re-shape organisational culture, and regain public trust in the banking and financial services industry:

- Harnessing data analytics to measure ethical performance indicators;
- Realigning remuneration and incentives to reward ethical behavior;
- Engaging in conscious, principled reasoning;
- Reducing the risk of insularity and groupthink by increasing diversity; and
- Making ethics part of the everyday conversation.

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 117,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.

Our financial advisory advocacy priorities

Increase consumer trust, confidence and engagement

Chartered Accountants ANZ has long advocated for industry reform to increase consumer trust, confidence and engagement in the financial advice industry. We support the development of a comprehensive, streamlined and enduring framework for the delivery of good quality, professional and ethical financial advice to the public.

Increasing numbers of Australians predict that their working life will continue into their retirement years. Despite a growing number of Australians needing financial advice, only around 1 in 5 seek advice. It is vital that more accountants become part of the financial advice industry. Accountants' depth of technical expertise, particularly in taxation, will help enable more Australians to obtain high quality, professional financial advice.

Reduce complexity and regulatory burden

We will continue to advocate for reducing complexity and compliance costs in the financial advice industry, in order to increase productivity and encourage more accounting practices to participate in the industry. This can be achieved through greater digitalisation, improving data usage and streamlining the regulatory approach.

Complexity and regulatory costs are increasing in the financial advice industry in Australia, particularly for small businesses and those located in rural and regional areas. Greater compliance costs reduce productivity, competition and the delivery of affordable, high quality financial advice to the public. A more simplified, streamlined and holistic approach is required to minimise duplication and costs being passed on to consumers, and to ensure that accounting practices are not driven out of the financial advice market.

Appendix C

FASEA's Draft Code of Ethics mapped to Chartered Accountants ANZ's Code of Ethics

FASEA's DRAFT CODE OF ETHICS	Chartered Accountants ANZ's CODE OF ETHICS (APES 110)	
VALUES	Fundamental principles	Reference
Trust	Integrity, Objectivity, Confidentiality	Paragraph (P) 100.5 & Sections (S) 110, 120 & 140
Competence	Professional competence and due care	P 100.5 & S 130
Honesty	Integrity	P 100.5 & S 110
Fairness	Integrity, Objectivity, Professional behaviour	P 100.5 & S 110, 120, 150 & 220
Diligence	Professional competence and due care, Professional behaviour	Paragraph 100.5 & Sections 130 & 150
STANDARDS	Fundamental principles	Reference
Ethical behaviour		
1 Act in accordance with the spirit – and not only the letter – of all relevant laws and regulations (including this Code).	Integrity	Paragraphs (P) 1.2, 1.3, 1.4, 1.6, 100.5(a) & 100.6
2 Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider.	Objectivity	P 100.5(b) & Sections (S) 120,200, 210, 220, 240 & 280
3 Act with personal integrity and as an independently minded professional, for the benefit of each client.	Integrity, Objectivity, Professional competence and due care	P 100.5(a)(b)(c) & S110,120,130 200,210,220
Client care		
4 Act only on the basis of the free, prior and informed consent of a client.	Integrity, Objectivity, Professional behaviour	P 100.5(a)(b)(e) & S 100,110,120, 150, 200,220 & 280
5 Ensure that all advice and products are: a) in the best interest of each client, b) appropriate to the individual circumstances of each client, c) presented in terms easily understood by the client.	Integrity, Objectivity, Professional competence and due care	P 100.5(a)(b)(c) & S 100, 110,120, 200,220, 130 & 280
6 Take into account the broad effects arising from a client acting on their advice.	Integrity, Professional competence and due care	P 100.5(a)(c) & S 110 & 130
Quality process		
7 Obtain informed consent to act and to receive agreed fees and payments for agreed services.	Professional competence and due care	S 130
8 Obtain informed consent, and agree, to maintain records relevant to the advice provided, in accordance with relevant privacy, regulatory and confidentiality obligations.	Confidentiality	P1.4 & 1.6 & S 140
9 Ensure that all advice and products are: a) offered in good faith and with competence, b) based on information that is neither misleading nor deceptive.	Professional competence and due care, Professional behaviour	S 110 & 130

Professional commitment		
10 Develop and maintain a high level of relevant knowledge and skills.	Professional competence and due care	P 100.5(c) & S 130, 210 & 330
11 Accept that potential breaches of this Code will be subject to investigation and discipline from the responsible Code Monitoring Body, undertaken in accordance with ASIC's approval and oversight of that Body.	N/A. Refer to our professional conduct process. We have authority to investigate and discipline members who breach of our By-Laws, Code of Ethics and other standards.	N/A.
12 Individually and in cooperation with peers, uphold and promote the ethical standards of the profession, and hold each other accountable for the protection of the public interest.	Professional behaviour	P 100.5(e) S 100 & 150