

19 December 2018

Financial Adviser Standards and Ethics Authority Limited  
c/o The Treasury  
Langton Crescent  
PARKES ACT 2600  
By email: [consultation@fasea.gov.au](mailto:consultation@fasea.gov.au)

Dear Sir/Madam

**RE: Consultation on the draft Financial Planners and Advisers Code of Ethics 2018  
Legislative Instrument and Explanatory Statement**

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the Financial Adviser Standards and Ethics Authority's (FASEA's) draft Legislative Instrument and Explanatory Statement on the *Financial Planners and Advisers Code of Ethics 2018*.

APESB is governed by an independent board of directors whose primary objective is to develop and issue, in the public interest, high-quality professional and ethical pronouncements. These pronouncements apply to the members of the three major Australian professional accounting bodies (Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants).

In Australia, APESB issues APES 110 *Code of Ethics for Professional Accountants* (APES 110) which specifies the fundamental principles of ethical behaviour for professional accountants, as well as a range of professional and ethical standards that deal with various professional services including APES 230 *Financial Planning Services* (APES 230). APES 230 sets the standards for members of the three professional bodies in the provision of quality and ethical financial planning services.

**Introductory comments**

APESB congratulates the FASEA for the development of the *Financial Planners and Advisers Code of Ethics 2018* Legislative Instrument (the FASEA Code) and the accompanying Explanatory Statement.

APESB is pleased to have the opportunity to comment on the FASEA Code and Explanatory Statement. We are of the view that the proposed FASEA Code has been substantially improved from the preliminary exposure draft released in May 2018.

The redrafting of the standards in the FASEA Code has improved its readability and understandability, and will contribute to the consistent application of its key principles. The inclusion of remuneration (e.g. fee for service, third party payments and benefits) within the

standards ensures the FASEA Code sets clear remuneration obligations for financial planners and advisers.

We are of the view that the new Explanatory Statement will assist financial planners and advisers on how to implement the FASEA Code and clarify the intent of the standards in relation to key terms such as 'best interests' and 'free, prior and informed consent'. It will encourage consistency of practice by financial planners and advisers and enforcement of the Code by the monitoring bodies.

## **Specific Comments**

APESB believes that the FASEA should consider the following matters in finalising the FASEA Code:

### **1. Interaction of FASEA Code with other applicable existing professional and ethical standards**

As we noted in our previous submission, financial planners and advisers who are professional accountants will be legally obliged to comply with the FASEA Code as well as the existing professional and ethical obligations in APESB's professional standards APES 110 and APES 230.

There is a need for further clarification in the FASEA Code as to how it will interact with other existing codes of ethics applicable to financial planners and advisers. This could be in the form of application material to the FASEA Code which clarifies that the most stringent requirements should be applied.

We are of the view that such clarification will address any potential confusion by financial planners and advisers and monitoring bodies about how to comply with different codes, as well as quality review and enforcement.

APESB would welcome the opportunity to collaborate with the FASEA to clarify how the FASEA Code interacts with APESB pronouncements, such as APES 110 and APES 230.

### **2. Conflicted remuneration**

We understand that the concept of conflicted remuneration is addressed in legislation, and support the cross-reference to the relevant sections in the law. However, as observed in the current Financial Services Royal Commission, even though there has been legislation in place conflicted remuneration has not been appropriately addressed by some financial planners and advisers.

APESB encourages the FASEA to include additional case studies in the Explanatory Statement that illustrate examples of conflicted remuneration which references the relevant laws, and also demonstrates which standards within the FASEA Code are applicable in the relevant circumstances.

### **3. Case studies on all Standards in the FASEA Code**

The addition of the case studies in the Explanatory Statement provides necessary guidance on how the FASEA Code can be applied in practice, and we are supportive of its inclusion. However, we believe the guidance could be enhanced by including case studies which address Standards 1, 11 or 12 (which are not currently included in a case study in the Explanatory Statement).

In addition, the values which are paramount and underpin the behaviour of financial planners and advisers could be referred to in all case studies to highlight the relevant values that have not been applied by the financial planner and adviser. This will provide context on the values and how individuals should be applying them.

### **4. Further clarification on some application material required**

The Explanatory Statement is an important resource which will guide financial planners and advisers on how the FASEA Code can be applied in practice. APESB is supportive of the guidance provided but we note the following instances where additional guidance or definitions may be useful for financial planners and advisers to be able to apply the requirements in practice:

- Standard 2 requires an adviser to enquire into the client's circumstances and to inquire 'more widely' into the client's circumstances. However, it does not provide any further context on what inquire 'more widely' means. It is also possible that the circumstances of the engagement may be limited in scope and may not require a wider inquiry than the information the client has provided.
- Standard 6 contains a requirement to consider the broad effects arising from a client acting on the financial advice. The Explanatory Statement states that 'broad effects' is not just from the client's perspective but can be broader than that (i.e. not investing in 'unethical' investments). This guidance implies that only certain types of investments could be used by financial planners and advisers. We are concerned about the unintended consequences of including this comment in the Explanatory Statement.
- Standard 12 contains a requirement for financial planners and advisers to hold each other accountable to protect the public interest. However, it is not clear how this will be applied in practice and what mechanisms will be made available to financial planners and advisers to support compliance with this standard.

### **5. Use of terminology**

APESB encourages FASEA to avoid legalese in the FASEA Code. We note that the FASEA Code is addressed to the relevant provider, but it would be appropriate for the language employed in the Code to also be easily understandable by the average consumer. Therefore, we recommend that the references to the term 'read down' should be replaced with a statement that the provisions in the FASEA Code should be read taking into consideration a reasonable person.

## **Concluding comments**

We trust that you will find these comments useful in your final deliberations. Should you require any additional information, please contact APESB's Chief Executive Officer, Channa Wijesinghe at [channa.wijesinghe@apesb.org.au](mailto:channa.wijesinghe@apesb.org.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nicola Roxon', with a long horizontal flourish extending to the right.

The Hon. Nicola Roxon

**Chairman**