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**BY EMAIL: [CONSULTATION@FASEA.GOV.AU](mailto:CONSULTATION@FASEA.GOV.AU)**

## **Draft Financial Planners & Advisers Code of Ethics 2019 Guide (the Draft) - Submission by The Advisers Association Ltd**

This submission has been prepared by The Advisers Association Ltd (TAA) on behalf of its members to highlight particular concerns and aspects of the Draft that may require further changes, clarification and guidance. We value the consultative approach being taken.

### **TAA BACKGROUND**

The Advisers Association Ltd (TAA) represents over 500 small businesses and over 1200 advisers authorised by the Hillross and AMP Financial Planning licensees.

The association is a non-profit member-based organisation, created in 2020 by the merger of two associations, the AMP Financial Planners Association (established 1925) and The Hillross Advisers Association (established 1987).

As a member-based association, our intentions are to:

- partner with members and their licensees,
- advocate the benefits of financial planning and financial advice,
- encourage consumer awareness and education on the benefits of financial planning,
- ensure quality personal advice is available, in a cost effective, viable way for everyday Australians, and
- provide a range of business benefits and solutions for our members.

We and our members are actively involved with the professional associations representing financial planning and financial advice.

### **SUBMISSION**

TAA has only recently decided to make submissions directly on behalf of its members, previously preferring to work behind the scenes, providing input to but leaving any formal submissions to the professional bodies representing financial planning and financial advice.

TAA strongly supports:

- The move to a profession and for advisers to act in a way that demonstrates, realises and promotes the five FASEA values ie Trustworthiness, Competence, Honesty, Fairness and Diligence ie aspects of being a professional.
- The twelve standards related to ethical behaviour that operate as a whole to support advisers in demonstrating the Code's values ie Ethical Behaviour (Standards 1-3), Client Care (Standards 4-6), Quality Process (Standards 7-9) and Professional Commitment (Standards 10-12), and
- The intent of the Code being principles-based rather than a checklist to follow.

We have contributed to the professional submissions over recent years, thus we are fully supportive of the submissions by Association of Financial Advisers (AFA) and the Financial Planning Association of Australia (FPA).

**The Advisers Association Ltd ABN 98 108 199 622**

**Mail:** PO Box R1390 Royal Exchange, Sydney, NSW 1225

**Location:** Suite 3, Level 9, 70 Phillip Street, Sydney, NSW 2000

**Phone:** 02 8199 8801 **Email:** [info@theadvisersassociation.com.au](mailto:info@theadvisersassociation.com.au) **Web:** [www.theadvisersassociation.asn.au](http://www.theadvisersassociation.asn.au)

## Overview

Before responding to the specific ‘fundamental questions to help illustrate the Code...’ we have some broader observations.

### Scope of Draft

The FASEA Code of Ethics is another positive step forward to being a profession providing ‘*an ethical framework of values and standards to assist advisers in exercising their professional judgement in the best interests of their clients*’.

The scope of the Draft should be broad enough to cover an individual’s expected values and standards in their profession. We believe the narrow focus on ‘clients’ in this Draft is too constraining, and is at odds with the broader intent of the Code ie to bring together and give effect ‘*to the expectations of the Australian community for the provision of professional financial advice*’ or the ‘interest of others’ as defined by The Australian Council of Professions<sup>1</sup> or the ‘consumer’ focus of the Professional Standards Councils<sup>2</sup>, all of which include the broader community of Australians who are not clients.

We are not sure whether this was a deliberate decision, to support the view of some that only intrafund or roboadvice should be available to everyday Australians, or an acceptance of defeat that professional advice is out of reach and not available to everyday Australians. Either way a narrow scope limits the utility and timeframe for this Draft.

Broadening the Draft’s scope would also make it clearer that being in a profession requires a broader outlook than just one’s own clients. It would also better align with the focus of key stakeholders, including advisers, parliamentarians and regulators on meeting the unmet advice needs of everyday Australians and ensuring that quality personal advice is accessible, viable and cost effective wherever and whenever it is required by all Australians.

One risk is that by broadening the Draft to include the expectations of the Australian community we need to be very clear who that is, as it is an impossible task to meet the expectations of all, especially when considering recent survey results that indicate consumers want to pay no more than \$500 for advice, which is just not feasible in the current regulatory and licensee environment.

### Principles Based

The FASEA Code and draft document states the Code is principles-based rather than a checklist to follow. Whilst we fully support that approach, one challenge is that in the short term until a single disciplinary body is established Licensees have obligations to monitor implementation.

The risk is Licensees will impose their existing biases, rules and processes that focus on the lowest common denominator, not the standards of actual behaviour but rather procedural rules and processes such as forms being required to be filled in a particular way as this is easy for them. For example, in their desire to demonstrate their advisers have met the Code requirements, including the requirement to be ‘guided by the values and standards of the Code’ they are very likely to implement at the very least checklists to demonstrate to their own

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<sup>1</sup> “A profession is a disciplined group of individuals who adhere to ethical standards and who hold themselves out as, and are accepted by the public as possessing special knowledge and skills in a widely recognised body of learning derived from research, education and training at a high level, and who are prepared to **apply this knowledge and exercise these skills in the interest of others**. It is inherent in the definition of a Profession that a code of ethics governs the activities of each profession. Such codes require behaviour and practice beyond the personal moral obligations of an individual. They define and demand high standards of behaviour in respect to the services provided to the public and in dealing with professional colleagues. Further, these codes are enforced by the profession and are acknowledged and accepted by the community.”

<sup>2</sup> ‘Economy - Professions improve consumers’ access to services and support economic activity by encouraging confidence and trust in the services offered by professionals. This is increasingly important in our services-oriented economy where knowledge forms the basis of many transactions.

governance and compliance teams, third parties (including regulators) and eventually the proposed single disciplinary body that they had met their obligations.

This approach is at odds with other professions, where it is the individual who commits to and is responsible for adherence to the ethical stands and is supported by a body of knowledge that is used to help make decisions and to objectively assess the quality of the advice by the disciplinary body.

### **Clarity of Messaging and Communications**

The draft states that it is in addition to, not a replacement to the previous documents released by FASEA. We are concerned that if this is true, it makes it much harder for advisers to quickly find relevant information, would not be in line with the principles of clear, concise and effective communications, nor with the government's stated intent of reducing the cost of advice and red tape as planners would need to consider 3 different documents with close to 100 pages to understand their obligations and come to a position. We recommend the 3 documents should be updated and then amalgamated into one document, and the old versions retired.

### **Change Management**

Whilst issuing a Code of Ethics, raising education standards, etc are all helpful, we also need to help advice professionals much better understand the benefits and obligations of being part of a profession. As such, we are interested in the proposed change management processes and support that will be available to embed these changes in every financial adviser.

### **Stakeholder Awareness**

There also needs to be a much better understanding of what it is to be a profession across all stakeholders, including a much clearer separation of advice and product, especially related to terms such as intrafund advice and roboadvice. If product provider staff are allowed to continue calling themselves advisers, this will continue to confuse consumers and muddy the waters on the journey to being an advice profession.

Moving to the specific Standards, Intent and Fundamental Questions.

## **Standard 1**

You must act in accordance with all applicable laws, including this Code, and not try to avoid or circumvent their intent.

### **Intent**

The intent of Standard 1 is to require advisers to not only comply with the letter of the law in meeting their legal obligations (including the Code of Ethics), but also to comply with the intent of those laws and not seek to avoid or circumvent them. This is a minimum ethical obligation.

It is intended advisers will take personal responsibility to understand their legal obligations including the Code. Advisers must ensure the advice they provide is not intended to circumvent the intent of financial services laws that mandate certain disclosures and provide certain protections to consumers receiving personal financial advice as retail clients, including requirements to act in the best interests of clients.

In addition, advisers must not knowingly circumvent the intent of the laws designed to protect investors who may lack competency in financial matters.

Standard 1 discourages advisers from setting up business structures merely to circumvent ethical obligations that would otherwise apply to them as individuals.

The standard encourages advisers to consider not only whether they can legally take a course of action but also whether ethically, acting in the best interests of the client, they should take that action.

### Comment

Agree with Standard, no additional comments.

## Standard 2

You must act with integrity and in the best interests of each of your clients.

### Intent

The intent of Standard 2 is to ensure that financial advisers act with integrity and in the best interests of each client.

### Comment

Q1 It would be hard to think of an example where a client has ignored your professional advice that it would be appropriate or worthwhile to act for them - perhaps better wording required.

### Additional Comment related to Standards 2, 3 and 5

We have commented separately that acting with integrity and in a client's best interest, should not be in conflict with giving simple or straightforward advice simply. However, the combination of FASEA, legislation, regulation, licensee policies and processes (related to considering broader, long-term interests and likely future circumstances) has meant that despite the stated intent of being able to scope advice, it has become too hard, as it is too expensive and too risky to provide.

This needs to be addressed as there is also a fundamental disconnect between what consumers need and want, the difference between low risk product advice for the client eg a decision can easily be changed the next year, and the more complex advice or on-going services a financial planner provides to clients where the initial advice is out of date the following day and is only part of the services and solutions offered to their client ie annual reviews to keep them on track.

## Standard 3

You must not advise, refer or act in any other manner where you have a conflict of interest or duty.

### Intent

The intent of Standard 3 is that advisers must not advise, refer or act in any other manner where they have a conflict of interest or duty that is contrary to the client's best interests.

### Comments

Agree with the intent, etc. See additional comments under Standard 2.

The 'standard for judgement' of a disinterested person is a recognised test in most other professions, but is new for many advisers. We note that you have commented on this in Applying the standard, but with the Royal Commission, ASIC lookbacks, consumer advocates, class actions, etc, many licensees have and advisers will err on the side of caution, again increasing the cost and limiting access to advice.

*'In making this assessment the adviser is to imagine standing in the shoes of an ordinary person – not the client, not a consumer advocate, not another adviser, not a regulator, just an ordinary person in the street with ordinary intelligence and good judgement.'*

## Standard 4

You may act for a client only with the client's free, prior and informed consent. If required in the case of an existing client, the consent should be obtained as soon as practicable after this Code commences.

### Intent

The intent of Standard 4 is to ensure the adviser takes reasonable steps to confirm that clients are well informed and freely consent to personal financial advice before they act. Advisers should confirm that the client freely consents to the ongoing service offering, fees payable and payments for any additional services offered.

### Comments

Agree with intent, etc.

With regard to the fundamental questions:

Q1 - This assumes that the adviser has implemented the personal advice recommendation, which would not be the case for businesses and/or registers purchased.

Q1 and Q2 These appear to be ideological views as there are no requirements for insurances or mortgages for on-going services. In many cases the providing adviser did not get their usual fee or costs recovered upfront for the advice provided on the basis that clients would not pay upfront, they were going to get a trail commission and the only future services were 'let us know if your circumstances change' and 'we will help you if/when you have a claim'.

We also wonder about the relevance of Q3 and Q6 as most trustees have already removed grandfathered commissions earlier than the 31 December 2020 deadline and most licensees and advisers are already moving to annual advice agreements.

## Standard 5

All advice and financial product recommendations that you give to a client must be in the best interests of the client and appropriate to the client's individual circumstances.

You must be satisfied that the client understands your advice, and the benefits, costs and risks of the financial products that you recommend, and you must have reasonable grounds to be satisfied.

### Intent

The intent of Standard 5 is to emphasise the need for advisers to ensure that advice and product recommendations are appropriate to each client's individual circumstances. Advisers have a duty to be aware of available products in the market and it may be necessary for product recommendations to go beyond what is currently on a Licensee's approved product list (APL) if the adviser is aware of a product that would be in the client's best interests.

### Comment

Agree, no comment with intent, etc. See additional comments under Standard 2.

Comments related to Fundamental Questions

Q1 We appreciate the clarification of good understanding for APL products compared to general understanding of other well rated products. We are a little concerned with the implied reliance on ratings, which is probably OK for investment products, but ratings for insurances and mortgages tend to be more focussed on cost and features, rather than actual client needs, insurance claims and underwriting and for mortgages, the ability and timing to get finance for the client.

## Standard 6

You must take into account the broad effects arising from the client acting on your advice and actively consider the client's broader, long-term interests and likely circumstances.

### Intent

The intent of Standard 6 is to ensure that, before giving advice, advisers have determined whether or not the advice is consistent with the client's broader long term interests and likely circumstances.

The requirement to actively consider client interests and circumstances applies regardless of whether the advice is intra-fund, scoped, limited, single issue and/or comprehensive advice. However, the depth and detail of the enquiry and determination should reflect the scope of the advice sought.

### Comment

See comments already provided in Standard 2.

Remove reference to intrafund Advice, it is information about a product, not professional advice.

## Standard 7

The client must give free, prior and informed consent to all benefits you and your principal will receive in connection with acting for the client, including any fees for services that may be charged. If required in the case of an existing client, the consent should be obtained as soon as practicable after this code commences.

Except where expressly permitted by the Corporations Act 2001, you may not receive any benefits, in connection with acting for a client, that derive from a third party other than your principal.

You must satisfy yourself that any fees and charges that the client must pay to you or your principal, and any benefits that you or your principal receive, in connection with acting for the client are fair and reasonable, and represent value for money for the client.

### Intent

The intent of Standard 7 is to ensure that clients freely give informed consent to benefits the adviser will receive, and that this consent is obtained before they receive advice. Benefits may cover more than fees and charges.

The standard provides protection to the client by requiring the adviser to be able to demonstrate that fees and charges are fair and reasonable and represent value for money to the client. The requirement to limit the benefits an adviser may derive from a third party is intended to reduce the likelihood of third party influence on the advice given.

Standard 7 is closely linked to Standard 3 and 4.

### Comments

We agree with the intent. However, the application and Fundamental Question creates an uneven playing field for those advisers who operate as sole traders and those that established a Corporate Authorised Representative (CAR) agreement prior to the commencement of the Code. The majority of advisers today would set up a CAR, but we are aware of some older advisers who have not.

Q3 please clarify the signature can be electronic for the avoidance of doubt.

## Standard 8

You must ensure that your records of clients, including former clients, are kept in a form that is complete and accurate.

### Intent

The intent of Standard 8 is to ensure that financial advisers keep complete and accurate records of advice and services provided to their clients and meet legislative requirements relating to storage of records.

Advisers should ensure that records are kept in a form that is complete and accurate for both current and former clients.

### Comment

Agree with the intent.

Q1 An old fashioned expectation that the records will be in one place, typically they will be easily accessed but planners will usually have separate 'best of breed' solutions such as a CRM, advice generation software, microsoft or google, cloud based document storage (eg Box), etc., and increasingly the use of podcasts, videos, etc hosted on Vimeo, etc, please update answer.

Q2 Answer needs to be changed. The existing licensee needs to have the files for the advice provided by them, the adviser could provide copies of those files, take copies or agree to mutual access depending on what both parties agree and/or their contractual arrangements related to exit.

## Standard 9

All advice you give, and all products you recommend, to a client must be offered in good faith and with competence and be neither misleading nor deceptive.

### Intent

The intent of Standard 9 is to require that all financial product advice, and all financial products, offered to a client be offered in good faith by an adviser who has the knowledge and skill (competency) to provide the advice.

Advice that is neither misleading nor deceptive requires demonstration of the value of honesty by providing advice that is both in the best interests of the client and in a form that the client can understand and rely upon 'at face value'. The adviser will not be acting in good faith if there is something they are aware of, or ought to be aware of, that would lead to the conclusion that their advice is not in the client's best interests or is misleading or deceptive or that has not been communicated, in clear terms, to the client.

### Comment

Agree with intent, etc.

Q1 it is more than 'appropriate' you must under the product in detail, suggest answer updated.

Q2 the licensee should not have that expectation in 2020 unless their in-house product meets BID for the client.

## Standard 10

You must develop, maintain and apply a high level of relevant knowledge and skills.

### Intent

The intent of Standard 10 is to ensure that financial advisers have and maintain an appropriate level of relevant knowledge and skills to provide competent advice in the best interests of their clients.

In developing relevant knowledge and skills, Section 921B of the Corporations Act (2001) requires at a minimum advisers will hold a bachelor or higher degree, or equivalent

qualification, approved by FASEA or, in the case of advisers educated internationally, a foreign qualification approved by FASEA.

To maintain relevant knowledge and skills, Subsection 921B(5) of the Corporations Act (2001) requires financial advisers to meet the requirements for continuing professional development set by FASEA. FASEA's Continuing Professional Development (CPD) standard provides a framework to assist advisers in meeting this requirement.

In applying relevant knowledge and skills it is expected that financial advisers will only provide advice in areas they have the necessary skills and competencies to do so in a professional way.

### **Comment**

Agree with intent and questions, although they appear very basic.

### **Standard 11**

You must cooperate with ASIC and monitoring bodies in any investigation of a breach or potential breach of this Code.

### **Intent**

The intent of standard 11 is to place personal responsibility onto financial advisers to uphold the ethical values of the Code by proactively cooperating with ASIC and monitoring bodies in any investigation of a breach or potential breach of this Code.

### **Comment**

We have not previously commented on intentions, but as a profession merely cooperating with ASIC and monitoring bodies with an investigation is too passive, there should be a proactive obligation for advisers to identify and notify ASIC and the regulatory bodies of breaches and potential breaches as/if they become aware of them.

### **Standard 12**

Individually and in cooperation with peers, you must uphold and promote the ethical standards of the profession and hold each other accountable for the protection of the public interest.

### **Intent**

The intent of standard 12 is to ensure financial advisers both individually and in cooperation with their peers not only meet the values and standards of the Code but that they promote meeting and maintaining those values and standards in their dealings with the profession and the public.

This Standard deals with relevant providers' professional relationships with each other, emphasising that they need to be supportive and aligned to the profession as a whole—being, and being seen to be, a profession that acts ethically and professionally.

The standard encourages financial advisers to hold each other accountable including by demonstrating a willingness to challenge others who are not upholding the values and standards of the Code of Ethics.

The intent of Standard 12 goes to the heart of financial advisers contribution to the promotion of financial advice as a trusted profession.

For those new to the profession, experienced financial advisers, as supervisors, play an important role in ensuring new entrants are given appropriate guidance and support and that they meet the requirements of the Professional Year to uphold the ethical behaviour expected in the profession.

## Comment

Agree with Intent.

Q1 are we happy that as a profession this is only best practice, rather than a mandatory requirement?

Q2 shouldn't one of the options, as a professional courtesy, be to contact the other adviser as well?

Thank you for the opportunity to provide a submission on behalf of TAA members. If you have any questions or need further clarification please feel free to contact us.

Yours sincerely

For The Advisers Association Ltd



Neil Macdonald, Chief Executive Officer



Craig Armstrong, Director/Chairman