



2 March 2020

Manager
Financial System Reform Taskforce
The Treasury
Langton Crescent
Parkes ACT 2600

By email: FSRCconsultations@treasury.gov.au

Dear Sir/Madam

Enforceability of financial services industry codes

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by, and operating in the interests of, its members. These are primarily individual and retail investors and self-managed superannuation fund (SMSF) trustees.

ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

ASA will not respond to the elements of the proposals paper but wishes to indicate our support for implementation of recommendation 1.5 of the Financial Services Royal Commission, enforceability of Financial Services code provisions.

We emphasise the importance of periodic reviews of the operation of the various codes by both the owner of the code and ASIC, and the success or otherwise of the implementation of enforceability, and its interworking with legal requirements.

As an example of the importance of a review of behaviour being captured either by the enforcement of code or legal requirement, we highlight an area of concern to us, being the misclassifying of wealthy clients as sophisticated clients, (notwithstanding the enforcement body to oversee the relevant code has yet to commence).

This misclassification circumstance arises where the client meets the financial tests of \$250,000 in annual income or \$2.5 million of net assets (inclusive of family home) but are not financially literate, such as when assets are inherited. There are legal requirements for an advice provider to consider or investigate the clients' objectives, financial situation and needs, and apply the best interests duty in s961B with the obligation to prioritise the clients' interests in s961J, provide appropriate advice as required in s961G.

The Code of Ethics of the Financial Adviser Standards and Ethics Authority which commenced 1 January 2020 also appears to require a client that is clearly not financially literate should be treated as a retail client.

Once the code is oversighted, it will be important to review this circumstance to be sure breaches of this nature are adequately punished.

If you have any questions about this submission, please do not hesitate to contact Fiona Balzer, Policy & Advocacy Manager on (02) 9252 4244.

Yours sincerely,

A handwritten signature in black ink that reads "John Cowling". The signature is written in a cursive style with a small apostrophe over the 'i' in "Cowling".

John Cowling
Chief Executive Officer
Australian Shareholders' Association