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Manager

Financial Services Reform Taskforce  
The Treasury  
Langton Crescent  
PARKES ACT 2600

On-line submission: [enforceablecodes@treasury.gov.au](mailto:enforceablecodes@treasury.gov.au)

Dear Sir/Madam

**Submission on Consultation Paper: Enforceability of financial services industry codes**

CPA Australia represents the diverse interests of more than 164,000 members working in 125 jurisdictions and regions around the world. We make this submission on behalf of our members and in the broader public interest.

We welcome the opportunity to comment on the *Consultation Paper: Enforceability of financial services industry codes* (the “Consultation Paper”).

**General Comments**

CPA Australia recognises the critical importance of high standards of conduct and behaviour for those working in the financial services industry, especially where they provide personal financial advice to others who do not have the same level of knowledge, skills and experience on financial matters. As such, CPA Australia supports the tenor of the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry (the “Royal Commission”) that focus on lifting standards of conduct and behaviour.

Codes of Conduct are important means by which to ensure that those bound by them are aware of the standards of conduct and behavioural expected of them. They should be written and implemented in a way that supports and enhances those expected high-level standards.

In its response to the release of the final report of the Royal Commission, CPA Australia noted that the government needed to be mindful of the pre-existing regulatory complexity that exists in financial services. There are many layers of regulation currently operating and it is important to ensure that responses to the recommendations of the Royal Commission do not lead to further regulatory complexity and inconsistency.

With that in mind, CPA Australia has reservations about the proposal to continue to approve a broad range of “voluntary” industry codes that will include “enforceable code provisions”, the contravention of which would constitute a breach of law. This would seem to be adding to the complexity of the web of regulation, creating greater uncertainty about the application and enforceability of codes (especially for those people who may be subject to several codes because of their statutory registrations and professional affiliations), leading to potential mis-labelling of codes as “voluntary” (where that may not be the case, at least for a number of the provisions included in those code), and potentially creating confusion about the status of codes.

CPA Australia recommends that consideration be given to promulgating—in legislation or regulation—all provisions that are considered “enforceable code provisions” and make them applicable to relevant financial service providers described in the Consultation Paper. In doing so, it is important that existing legislation is

reviewed and assessed to ensure that there are no conflicts or inconsistencies between new and existing requirements.

### **Specific Comments**

Rather than respond to the seventeen questions detailed on Page 4 of the Consultation Paper, CPA Australia offers the following points for consideration by Treasury.

- ***Potential Inconsistencies Between Codes***

All codes of conduct and professional standards need to be read, interpreted, implemented and applied, in their entirety. The background and context provided are critical in understanding all requirements and provisions and giving effect to the purpose and objectives of codes and standards. Therefore, having codes, written in different ways, formatted and presented differently, and using different language, has the potential to create a divergence of outcomes, and potentially even different interpretations of enforceable code provisions. Therefore, it is questionable whether including “enforceable code provisions” in a range of different “voluntary codes” will produce the desired, consistent outcomes being sought.

- ***Those Subject to More Than One Code***

It is likely that some individuals providing financial services will be subject to several different codes, depending on their statutory registrations and professional affiliations. The approval of a range of different codes, albeit with the same “enforceable code provisions”, creates uncertainty and confusion for those individuals; and may indeed encourage behaviour that aligns with the lowest standard required, rather than encourage the high quality, enhanced conduct and behaviour being sought. It is important to consider the need for clear consistency between codes, or at the least, that enforceable provisions are all contained in one point of reference.

- ***Implementation of Codes***

As important as the wording and formatting of any code of conduct, is the implementation and application of that code. The guidance materials provided to those subject to the code are critical to ensuring that codes are used and applied as intended. Therefore, it is important to consider how separate (diverse) guidance materials issued for a range of different codes will ensure that enforceable code provisions are interpreted in the same way, and that the overall outcomes of the codes are achieved in a consistent manner.

- ***Monitoring and Enforceability***

There is more than one approach to the way codes and standards are monitored and enforced. For example, within the accountancy profession, monitoring of members’ compliance with codes and standards, for those members offering public professional services, is undertaken in a “proactive” way. Quality assurance reviews are initiated by professional accountancy organisations utilising a periodic, risk-based approach, whereby significant numbers of members are reviewed each year. Actions for improvement are required and subsequently assessed, with failure to demonstrate improvement leading to potential action. In contrast, in some other industries compliance monitoring is reactive. That is, members’ compliance is assessed or examined, based only on complaints or information received from the public or clients of service providers.

The approach taken to code monitoring and enforcement can have a significant impact on levels of compliance and the extent to which the existence of a code ultimately can impact conduct and behaviours.

- ***Reporting Breaches***

For any codes with sections that are “enforceable code provisions”, it is important to clarify what level of reporting of breaches is required. Is it just breaches of enforceable code provisions that require reporting; or

is it any breach? That is, given that codes and standards need to be read and implemented as a whole (see *above*), there is an argument to support the reporting of all breaches. This suggests that regardless of the wording and inclusion of the “enforceable code provisions”, consistency in monitoring of codes becomes paramount (see *above*). Differences in the wording and formatting of codes and their monitoring will potentially lead to different, and even inequitable, outcomes. Careful consideration must be given to what constitutes a breach that requires reporting.

- ***Shared Regulatory Environment***

There are several references in the Consultation Paper to “self-regulation”. In reality, many financial services (and many professional services) in Australia are governed under a shared regulatory (or co-regulatory) environment. This sense of shared responsibility is evident where “voluntary” codes include “legally enforceable” provisions. Whatever approach is adopted by Treasury, it should be mindful that self-regulation is probably not evident and may be construed negatively by some commentators when used publicly.

- ***Separation of Responsibilities***

When establishing processes and structures for issuing enforceable requirements, for monitoring of those requirements, and for ultimate enforcement of requirements, it is important to keep in mind the need to have appropriate separation of responsibilities—akin to the separation between the legislature, police and the courts. This is important to ensure that those who are subject to the provisions of a code perceive that they are being treated fairly and equitably.

If you require further information on our views expressed in this submission, please contact Keddie Waller, Manager – Public Practice, on +61 3 9606 5183 or at [Keddie.Waller@cpaaustralia.com.au](mailto:Keddie.Waller@cpaaustralia.com.au).

Yours sincerely



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