

REGULATORY EXPERTS CALL FOR STANDARD 3 AMENDMENT

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<https://www.ifa.com.au/news/28038-regulatory-experts-call-for-standard-3-amendment>

A group of legal and industry experts have called for Standard 3 of the FASEA code of ethics to be amended, as the way it deals with conflicts of interest is inconsistent with established law and professional practice.

The Institute of Managed Account Professionals' Regulatory Group, which includes representatives from law firms Holley Nethercote and The Fold Legal, as well as industry executives from Macquarie and Praemium, has drafted a letter to FASEA chief executive Stephen Glenfield calling for the standard to be reviewed.

The letter outlined four key problems with Standard 3 in the group's view, including its inconsistency with established law and regulatory policy, conflicting messages between the standard and FASEA's guidance, inconsistencies with the application of the code between different members of the advice profession, and the lack of a materiality test in the application of the standard.

IMAP chair Toby Potter said the letter aimed to communicate to FASEA that the regulatory experts saw the standard as "structurally flawed".

"Importantly, we think it appropriate to note the differences between Standard 3 and the way in which conflicts are required to be addressed by other professions, like law and accounting, which have had considerably longer experience in addressing this issue," Mr Potter said.

The group also pointed out that Standard 3 was inconsistent with Standard 7, which appeared to allow more nuance when it came to managing conflicts of interest in an advice practice.

"Standard 3, as it currently sits, imposes a significant burden on the provision of advice. It contradicts another standard in the FASEA Code of Ethics, as well as established law," Mr Potter said.

The group's letter suggested a legislative amendment be put forward to alter the wording of Standard 3 and bring it more in line with other professions' methods of dealing with conflicts of interest.

One alternative wording proposed by the group was that "where a relevant provider has a conflict of interest or duty, they must: disclose the conflict; implement appropriate measures to manage the conflict; explain clearly why the conflict will not

result in a breach of the best interests duty; and obtain the client's express consent to the adviser's handling of the conflict, or alternatively avoid the conflict by refusing to provide the services".