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Dear Ms Roxon

Post-implementation review of APES 230 *Financial Planning Services*

We welcome the opportunity to make this submission as part of the post-implementation review of APES 230 *Financial Planning Services* on behalf of our members and in the broader public interest.

The financial services sector continues to undergo an evolution with a greater focus on enhancing consumer outcomes. Amendments to the Future of Financial Advice (FoFA) regime were only passed in 2016, the Life Insurance Remuneration Arrangements commence on 1 January 2018 and the Professional Standards of Financial Advisers regime commences on 1 January 2019, with a Code of Ethics being effective from 1 January 2020.

While reviewing the implementation of APES 230 is a valuable exercise, in light of the changing financial services landscape we believe it is premature to make any wholesale changes to APES 230 at this time, particularly taking into account the regulatory and legislative developments referred to above.

CPA Australia supports a transition to fee-for-service for the financial services sector, as evidenced by the establishment of CPA Australia Advice Pty Ltd which operates on a purely fee-for-service basis. As the sector transitions many members continue to receive asset based fees or third party payments due to requirements placed on them by their licensees or due to existing contractual arrangements. APES 230 currently provides safeguards to enable members to reduce the threats to compliance with the fundamental principles to an acceptable level while providing members the opportunity to transition to fee-for-service. Removing these provisions now would make it difficult and commercially unviable for many practices to transition to fee-for-service while complying with APES 230.

In the two years since all the requirements of APES 230 have become effective, only limited issues have been raised by our members in relation to its operation. We attribute this largely to members in financial services having to also comply with the Corporations Act requirements, such as the best-interest duty and fee disclosure, which are similar or the same.

However, members providing credit advice under an Australian Credit Licence continue to seek clarification regarding their obligations deriving from APES 230 and the *Corporations Act 2001*. The accounting bodies have issued guidance regarding obligations to act in the best interests of the client and members can refer to Division 2 of Part 7.7A of the *Corporations Act 2001*. However, confusion continues amongst members regarding the extent to which they are required to satisfy the Division 2 requirements.

We believe clarification would be achieved by including a principles-based definition of Best Interests of the Client Duty within APES 230 itself. Further, on the same issue, we have received some feedback from members on the lack of clarity of the interaction between the fundamental responsibility of members to act in the public interest and comply with the Code and acting in the best interests of the client. We are of the opinion that APES 230 should clarify that interaction, particularly since the Code explicitly states: 'Therefore, a Member's responsibility is not exclusively to satisfy the needs of an individual client or employer'. We also suggest that any review of APES 230 should try to align the language of APES 230 with that of the Code and other standards. For example, while the Code and other standards refer to independence, APES 230 refers to professional independence.

APES 110 *Code of Ethics for Professional Accountants*, APES 230 and other relevant Accounting Professional and Ethical Standards require all members to comply with relevant laws and regulations. Further, APES 230 is clear on what is acceptable in terms of remuneration a member may receive for providing financial planning services. Where a member receives remuneration from a third party, the Standard sets out available safeguards to address threats to compliance with the fundamental principles and prohibits soft dollar benefits, unless they are trivial and insignificant and the member follows the documentation requirements.

However, we have identified a very small number of instances where members have been unable to meet their obligations relating to third-party payments under paragraph 9 of APES 230. Sub-paragraph 9.2(b)(ii) requires a member to disclose to the client three comparative quotes, where available, to eliminate or reduce to an acceptable level the threats to the fundamental principles of the Code created by receiving a third party payment. However, in some instances members have had difficulty obtaining three quotes, particularly for some insurance products such as income protection, or they may be restricted to less than three products by their AFS Licensee's approved product list or contractual arrangements. Consideration should be given to change the wording in Sub-paragraph 9.2(b)(ii) from 'where available' to 'where practicable', or similar wording.

In addition to the points raised above, our responses to the questions raised in the consultation paper are detailed in the attached.

If you have any queries, please do not hesitate to contact Michael Davison, Senior Policy Adviser – Superannuation & Financial Planning on 02 6267 8552 or at michael.davison@cpaaustralia.com.au.

Yours faithfully



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CPA Australia responses to Consultation Paper: Post-implementation review of APES 230 Financial Planning Services

1. **Since APES 230 became effective in July 2014:**
 - a. **What provisions of APES 230 were easy to implement?**
 - b. **What systems, processes or policies have Members amended or developed to meet the requirements of the Standard?**

Members providing financial advice are required to meet similar requirements under Corporations Law, such as best interest, terms of engagement and fee disclosure, as they are under APES 230. Overall, members have not advised of any difficulties with implementing the provisions of APES 230.

However, we have identified a very small number of instances where members have been unable to meet their obligations under APES 230, in particular relating to third-party payments under paragraph 9. Sub-paragraph 9.2(b)(ii) requires a member to disclose to the client three comparative quotes, where available, to eliminate or reduce to an acceptable level the threats to the fundamental principles of the Code created by receiving a third party payment. However, in some instances members have had difficulty obtaining three quotes, particularly for some insurance products such as income protection, or they may be restricted to less than three products by their AFS Licensee's approved product list or contractual arrangements. Consideration should be given to change the wording in Sub-paragraph 9.2(b)(ii) from 'where available' to 'where practicable', or similar wording. We are available to work with the APESB to develop alternative wording.

2. **APES 230 requires Members to act in their clients' best interest and apply this requirement to all Financial Planning Advice. Have Members experienced any issues (positive and/or negative) implementing this requirement?**

Members providing credit advice under an Australian Credit Licence continue to require guidance regarding their obligations to act in the best interests of the client. The accounting bodies have issued guidance regarding this issue and members can refer to Division 2 of Part 7.7A of the Corporations Act 2001. However, confusion continues amongst members regarding the extent to which they have to satisfy the Division 2 requirements. We believe clarification would be achieved by including a principles-based definition of Best Interest Duty within APES 230.

3. **For holders of an AFSL:**
 - a. **How do AFSL holders apply the APES 230 requirement in respect of Terms of Engagement?**
 - b. **What challenges, if any, have AFSL holders encountered in respect of APES 230 requirements to Terms of Engagement?**

Members meet the APES 230 terms of engagement requirements through satisfying the obligations under APES 305 and the Financial Services Guide requirements under Part 7.7 of the Corporations Act. Members have not advised of any issues with meeting these requirements.

4. **APES 230 requires Members in public practice to obtain their clients' Informed Consent in respect of asset-based fees and third party payments.**
 - a. **If Members are using these remuneration methods, what are the new systems, processes and policies that Members have implemented in their practice relating to obtaining clients' Informed Consent?**
 - b. **What have been the positive benefits/outcomes of implementing APES 230 in your practice?**
 - c. **What are the challenges, if any, that Members have encountered in the application of these requirements?**

Members have not advised of any issues with meeting these requirements.

5. **The APES 230 remuneration provisions allow fee-for-service basis, asset based fees and third party payments.**
- a. **Have these provisions worked well for Members? Are some remuneration options used more often by Members?**
 - b. **If APES 230 was transitioned to limit remuneration to fee-for-service basis, would this work? Would such a change create any challenges?**
 - c. **What transition requirements would be needed?**

CPA Australia supports a transition to fee-for-service for the financial services sector, as demonstrated by our commitment to CPA Australia Advice. Our members use all three of the remuneration methods mentioned and over time they will transition to fee-for-service as the sector evolves. Many members continue to receive asset based fees or third party payments due to requirements placed on them by their licensees or due to existing contractual arrangements. APES 230 provides the safeguards to enable members to reduce the threats to compliance with the fundamental principles to an acceptable level while providing members the opportunity to transition to fee-for-service. Removing these provisions would make it difficult and commercially unviable for many practices to transition to fee-for-service while complying with APES 230.

6. **Given the recent legislative developments that impact on the financial services industry, what other issues do Members believe APESB should consider in its post-implementation review of APES 230?**

Any review or amendments to APES 230 should take into consideration how it would interact with, and be impacted by the Code of Ethics to be developed and introduced from 1 January 2020 by the Financial Adviser Standards and Ethics Authority under the Corporations Amendment (Professional Standards of Financial Advisers) Act 2017.

7. **Are there any further reforms, issues or ideas that Members believe the Board should consider in order to protect consumers who receive financial advice?**

No.