

APES 230 Financial Planning Services

Issues for discussion

CPA Australia and the Institute of Chartered Accountants Australia

April 2014

Since the release of APES 230 CPA Australia and the Institute of Chartered Accountants Australia have received feedback from members, financial services licensees and financial institutions. The majority of inquiries have focused on seeking clarity in relation to how and when the standard will apply. A table has been included on the following pages that summarises the key feedback received and some initial comments from CPA Australia and the Institute.

We acknowledge that some of these issues have been raised and recorded in the Issues Register (February 2014). In the interests of facilitating discussions, we have included further details where appropriate. The intention was for these issues to be further explored with the APESB Technical Staff prior to the April APESB meeting. However, to date only brief discussions have been held, which did not clarify all inquiries received.

For information, engaged stakeholders have indicated that without additional clarity on some of these issues, they are unable to appropriately consider how they may implement new systems to comply with the requirements APES 230.

As an example, Count Financial Limited (a subsidiary of CBA) has publicly stated that they will provide support for their representatives to meet the requirements of APES 230. However, during extensive discussions with CPA Australia and the Institute, Count has stated that they are unable to commence assessing what system changes will be needed without a number of requirements being clarified. Depending on these outcomes, they have indicated the system changes required could be extensive, with significant time and capital investment implications.

In addition to these issues, the Government introduced into Parliament on 19 March 2014 draft legislation to significantly amend the current Future of Financial Advice (FoFA) reforms. We believe the Board should consider the impact and significance of this critical development, noting that the Government intends to implement the obligations of the Bill through new regulations until the Bill is enacted. Importantly, the Bill is still being debated and has been referred to the Senate Finance and Public Administration Legislation Committee for inquiry and report by 16 June 2014. This is causing further uncertainty.

The current FoFA reforms were going to be instrumental in the successful implementation of APES 230, as it would have acted as the catalyst for crucial system changes for licensees necessary to implement key obligations of APES 230.

Since the Government announced these proposed amendments, many large licensees have publicly stated they have ceased making any changes to their current systems in anticipation that FoFA will be amended.

Consistent with the broader industry, the majority of members providing *Financial Planning Services* operate under another entity's licence which will in turn significantly challenge their ability to comply with APES 230.

CPA Australia and the Institute believe that given legislative uncertainty around amendments to key areas of FoFA reforms, in conjunction with the existing clarification issues, the Board should give consideration to extending the current transition provisions from 1 July 2015 to until at least 1 July 2016.

Representatives of the Australian Accounting Profession



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Chartered Accountants
Australia

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Issue	Comments
<p data-bbox="188 229 309 253">Referrals</p> <p data-bbox="188 292 1261 347"><i>Do the obligations of paragraphs 8 & 9 apply to a member who merely refers a client to a financial service provider?</i></p> <p data-bbox="188 384 1189 440">APES 230 only applies to members who provide financial planning services, as a consequence it does not apply to members providing non-financial planning services.</p>	<p data-bbox="1301 292 2022 440">It is understood that a member who is referring a client to a financial adviser / credit representative is not providing a 'Financial Planning Service' and therefore they can receive a commission referral fee provided they comply with the requirements of APES 110.</p> <p data-bbox="1301 477 2056 564">In addition, members would also be bound by the legal obligations of referring a client under the <i>Corporations Act 2001</i> and the <i>National Consumer Credit Protection Act 2009</i>.</p> <p data-bbox="1301 601 2029 689">Paragraphs AUST240.5-8 in APES 110 state the considerations, obligations and requirements a member must comply with if they receive a referral fee or commission.</p>
<p data-bbox="188 724 680 748">Grandfathering - Third Party Payments</p> <p data-bbox="188 786 1261 906">Paragraph 9.4 addresses the receipt of trail commissions for previously provided insurance and risk advice. However it does not state if the receipt of investment commissions (permitted under FoFA reforms) can also continue to be received in accordance with the requirements of this paragraph.</p> <p data-bbox="188 1187 1272 1307">Paragraph 9.4 states that trail commissions for insurance and risk advice can continue to be received provided the contracts were entered into prior to 1 July 2014. However under the transition provisions in paragraph 12, the requirements of paragraph 9 do not commence until 1 July 2015.</p>	<p data-bbox="1301 786 2040 906">It was understood that a member can continue to receive trail commissions from investment advice in alignment with the application of FoFA, which commenced prior to paragraph 9.4. (Note: Para 9.4 does not refer to investment products).</p> <p data-bbox="1301 943 2056 1121">We believe that investment commissions were not included in these provisions as the legal obligations of FoFA apply. However, its omission has created uncertainty and therefore we seek clarification how 9.4 may apply to existing arrangements where a commission attached to an investment product is received.</p> <p data-bbox="1301 1187 2029 1307">There is a discrepancy between applicable start dates for the provisions in paragraph 9.4 and the transition requirements in paragraph 12. Clarity is requested to confirm that the date in paragraph 9.4 should be 1 July 2015.</p>

<p>New engagements and Professional Fees</p> <p>Clarification has been requested on what is defined as a new engagement – is it dependent on new advice being provided or new advice relating to payments being received. For example, a client has existing insurance in place and their circumstances have changed requiring an increase in their level of cover vs. a new client requesting insurance cover.</p> <p>Does a new engagement occur where a statement of advice is provided? What if the client declines any further engagement?</p>	<p>For clarification and to ensure consistency with understood terms in the industry, paragraphs 8 & 9 apply to new clients from 1 July 2015.</p> <p>For existing clients, i.e. pre 1 July 2015, the obligations of paragraph 8 & 9 apply where a new statement of advice or record of advice is provided to the client.</p> <p>Commissions being received in regards to credit or insurance contracts entered into before 1 July 2015 are grandfathered.</p>
<p>3.6 Best Interests</p> <p>Members who provide credit advice are regulated under the National Consumer Credit Act not the Corporations Act.</p> <p>APES 230 requires members to act in the best interests of their client, which is defined in the standard as Division 2 of Part 7.7A of the Corporations Act.</p> <p>While members providing credit advice can comply with the general obligation to act in their client's best interest, they cannot comply with the remaining obligations defined in the Division 2.</p> <p>However, ASIC has stated in RG 175.239 that satisfying the safe harbour of S961B in Division 2 is not the only way to demonstrate an individual is acting in their client's best interest .</p>	<p>There needs to be a practical and flexible approach for members providing credit advice to ensure they can comply with the general principle of acting in the client's best interest, rather than complying specifically with all provisions of Division 2 of Part 7.7A of the Corporations Act 2001, which they would not be required to do if not imposed by APES 230.</p> <p>CPA Australia and the Institute propose to issue guidance stating that members providing credit advice captured by APES 230 will comply with the obligation to act in their client's best interests when they comply with the responsible lending provisions of the National Consumer Credit Protection Act.</p>
<p>Transition & Regulatory Framework</p> <p>On 19 March the Government introduced into Parliament draft legislation to significantly amend the current Future of Financial Advice (FoFA) reforms.</p>	<p>CPA Australia and the Institute believe that given legislative uncertainty around amendments to key areas of FoFA reforms, in conjunction with the existing clarification issues, the Board</p>

<p>The key amendments include:</p> <ul style="list-style-type: none"> • the abolition of 'opt-in' • fee disclosure statements (FDS) will only need to be provided to clients post 1 July 2013 • the loosening of the ban on conflicted remuneration; • amendments to the best interest duty. <p>Opt-in, fee disclosure statement requirements and the ban on conflicted remuneration was going to be instrumental in the successful implementation of APES 230. These reforms would have been the catalyst for crucial system changes for licensees necessary to implement key obligations of APES 230 under paragraph 8 and 9.</p> <p>Many licensees have publicly stated they have ceased making any changes to their current systems to implement these obligations in anticipation of the FoFA amendments.</p> <p>Consistent with the broader industry, the majority members providing <i>Financial Planning Services</i> operate under another entity's licence. As they rely on the systems of their licensee when providing advice, this will significantly challenge their ability to comply with APES 230 by the end of the current transition period.</p>	<p>should give consideration to extending the current transition provisions from 1 July 2015 to until at least 1 July 2016.</p>
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