Issues Summary - APES 230 Consultation Paper

This paper summarises the key matters raised by respondents to the Consultation Paper 01/17: *Post-Implementation Review of APES 230 Financial Planning Services*.

Summary of Submissions

APESB has received a total of 27 submissions from the professional accounting bodies, a regulator, associations of financial planners, individual practitioners and a consumer action group. See **Appendix A** for the list of respondents and a summary of their key comments.

Key Issues and Recommendations from Respondents

The key matters raised by stakeholders primarily relate to whether APES 230's remuneration provisions should be restricted to fee-for-service model only.

Supportive of limiting APES 230 to fee-for-service model

The majority of respondents (19 out of 27 submissions or 70%) recommended amending APES 230 to limit its remuneration requirements to the fee-for-service model. They comprise a regulator, an association of independent advisers, a consumer action group and individual practitioners. Their key reasons for supporting this move are listed in the *Support for Fee-for-Service Model* section.

These respondents opined that this move will:

- uphold public interest and assist Member comply with the principles of integrity and objectivity;
- demonstrate the accounting profession's ethical leadership in the financial planning industry; and
- influence the move to implement ethical reforms in the financial planning industry.

They suggested a period of up to 3 years to assist Members transition to a genuine fee-for-service approach. Two members of the previous APES 230 development Working Party also recommended grandfathering of previous client arrangements to mitigate commercial impediments to the transition.

Partly supportive of Fee for Service model

Two of the professional accounting bodies have expressed views that while Fee for Service is the preferred method that there is limited support from its members and that it would be difficult and commercially unviable for many practices.

Not supportive of limiting APES 230 to fee-for-service model

The respondents who are not supportive of limiting APES 230 for Fee for Service include a professional accounting body, associations of financial planners, individual practitioners and a firm. They believe this change is unjustified as it will be costly, and will place Members at a competitive disadvantage against other players in the financial planning industry. Some commented that the transition will further add to the prescriptive nature of APES 230, and that any amendments should be geared towards making it principles-based. See a list of their key arguments in the *Not supportive of Fee-for-Service Model* section below.

An association of financial planners recommended that a detailed consultation be conducted to clearly understand and identify the implications of a fee-for-service only policy in practice. Some respondents recommended that APESB should focus on balancing consumer protection with reducing complexity in professional obligations. They believe that any potential benefits to consumers arising from limiting APES 230 remuneration requirements should be measured against increased burden to financial advisers. Some pointed out that the focus on consumer protection should be shifted to improving consumer literacy.

Summary of Comments from Stakeholders

Support for Fee-for-Service Model

The key arguments from respondents to limit APES 230's remuneration requirements to fee-for-service are:

- It is the *only* approach that 'is consistent with a true profession acting in the public interest', 'ensures independence', and creates 'a relationship of unqualified trust between advisers and the public'.
- Regulatory experience shows that remuneration conflicts could result in advice that is not in a client's best interest, for example:
  - Correlation between poor advice and high life insurance commissions paid to advisers (ASIC Rep 413)
  - Some advice licensees gave priority to fee generation over ensuring delivery of required services to clients (ASIC Rep 499)
- This would show significant leadership by the accounting profession in the public interest.
- It is not an impediment to running a commercially viable business, with most supportive respondents indicating that they run profitable operations.
- During the development of APES 230, evidence from successful practitioners demonstrated that 'a genuine fee for service approach is possible, practical, desirable and even inevitable'. Since then, 'many stakeholders have reinforced the professional imperative and the commercial common sense of transitioning the financial advice industry to a genuine fee for service basis'.
- Informed Consent (required by APES 230 for asset-based fees/commissions) does not sufficiently protect consumers against risks relating to conflicted payments, as consumers often rely on the expertise of advisers to provide them with the best advice.
- Asset-based fees create conflicts when providing financial advice, are less transparent than fixed fees and encourage business models where clients continue to pay long after they have received any service.
- Recent industry developments have shown a movement to a fee-for-service model in response to declining consumer trust. Inevitably in the future, fee-for-service will be the only model acceptable in the market.

Not Supportive of Fee-for-Service Model

The key reasons of respondents not supportive of limiting APES 230 to the fee-for-service model are:

- Prescribing one remuneration model is inconsistent with the principle of self-regulation in which accountants can act as trusted professionals and decide on what is the best option in their clients' best interests.
- Accountants are committed to ethical practices underpinning their membership of professional bodies and their remuneration method should not be a basis for determining whether they behave ethically as professionals.
- Accountants will be at a competitive disadvantage and may be driven out of the financial planning industry.
- APES 230 will be inconsistent with current laws and regulations, and may bring accountants into conflict with future laws and industry codes of conduct.
- There will be different rules for different people in the market (amended APES 230 for accountants vs Corps Act for non-accountants), which may result in increased variations in consumers' experiences.
- Very few practitioners operate solely on fee-for-service, underlining that it is not widely accepted.
- The industry currently will be unable to fund a significant change in remuneration requirements, in view of increasing regulatory costs caused by recent changes in the industry.
- An accounting fee for service model is not transferrable to financial planning, as they are different services and business models.

- Asset based fees are in the client's best interest:
  - do not need constant negotiation with clients if an adviser's workload or fund complexity changes;
  - encourages an adviser to perform all the required work and be appropriately compensated for them, including work that are not always transparent to a client (e.g. portfolio monitoring), or that apply across client portfolios and which are difficult to charge at hourly rates (e.g. research); and
  - more transparent than hourly rates, widely-accepted by clients, scalable and can be tailored to a client's circumstances (e.g. fees based on FUM excluding cash and cash equivalents).
- Fee for advice is only practical for life insurance advice when packaged with other services for clients who also have superannuation and investments.
- A ban on commissions may make advice on insurance products unaffordable for many Australians.
- For small businesses, it is simpler to operate on an asset-based fees model, e.g. easier to charge asset based fees rather than send out 'fee-for-service' invoices to clients.
- There are practical impediments to implementing fee-for-service model, for example, an accountant who operates under another AFSL entity may not have influence over that entity's processes.
- Accountants may miss out on the benefits of new business models arising from new technologies and developments in the industry if they are restricted to the fee-for-service model.

Appendix A - Summary of Submissions

No.	Respondent	Key Comments
Supportive of Fee-for-Service Model		
1	ASIC *[confidential submission]*	• Supportive comments
2	CHOICE	• Supports removal of conflicts of interests / fee-for-service • Protects consumers interest • Disclosure of a conflict does not remove the conflict • Informed consent is not a strong protection against risks from conflicted payments
3	Independent Financial Advisers Association of Australia	• Supportive of fee-for-service • Upholds public interest • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation
4	Alan Keal – Keal Advisory	• Supportive of fee-for-service • Upholds public interest • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation
5	Broderick Knowles – BFG Financial	• Supportive of fee-for-service • APES 230 is easy to implement and has positive impact on client's best interest • Concerned about negative impact of conflicted remuneration to client's best interest, e.g. property investments recommendations
6	Fergus Hardingham – FM Financial Solutions	• Supportive of fee-for-service • Upholds public interest • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation
7	Glen Pitt – Beachside Financial Services	• Supportive of fee-for-service • Upholds public interest • Maximum transition period of 6 months for implementation but recommends that fee-for-service be implemented by 1st Jan 2018
8	Glenn Beard – Stuart Broadley & Associates	• Supportive of fee-for-service • Upholds public interest • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation
9	Halina Roach – Your Family CFO	• Supportive of fee-for-service • Upholds public interest • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation
10	Matthew Ross – Roskow Independent Advisory	• Supportive of fee-for-service • Upholds public interest • recommends transition period (2-3 years) for implementation
11	Ian McRae – MyLife MyAdvice	• Supportive of fee-for-service • Upholds public interest • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation
12	Naomi Horobin – Clover Group	• Supportive of fee-for-service • Upholds public interest • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation

Supportive of Fee-for-Service Model (continued)		
13	Neil MacKay – Ovens and Murray Advisory	• Supportive of fee-for-service • Upholds public interest • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation
14	Neil McPherson	• Supportive of fee-for-service • Upholds public interest • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation
15	Paul Trosti – Godfrey Pembroke Financial	• Supportive of fee-for-service • Upholds public interest • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation
16	Phil Thompson – Rise Financial	• Supportive of fee-for-service • Upholds public interest • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation
17	Robert Brown & Suzanne Haddan	• Supportive of fee-for-service • Recommends transition period of up to3 years for implementation • Grandfathering of client arrangements prior to commencement of standard • Cited more prominent stakeholders in the industry supporting move to fee-for-service model
18	Roland Knight – InFocus Money Mgt	• Supportive of fee-for-service • Not a hindrance to profitable operations • recommends transition period (2-3 years) for implementation
19	Wes Albert	• Supportive of fee-for-service
Partly not supportive		
1	CA ANZ	• CA ANZ supports fee-for-service as the preferred method of remuneration but majority of CA Members are not supportive • CA ANZ recommends that APES 230 should not be changed at this point in time
2	CPA Australia	• CPAA supports fee-for-service as the preferred method of remuneration but considers it commercially unviable for many practices at this point in time • Recommends clarification of definition of Best Interest Duty, and interaction between fundamental responsibility to act in public interest and acting in the best interest of the client
Not Supportive of Fee-for-Service Model		
1	Association of Financial Advisers	• Not supportive of banning commissions on life insurance and asset-based fees • No further reforms are needed at this stage • Developments in the industry have made it costly for advisers to run business • APESB should consider the obligations on Australian Financial Services Licensees and product providers to identify and remove rogue accountants and financial advisers who threaten the reputation of all participants in the financial services industry
2	Financial Planning Association of Australia	• Not supportive of fee-for-service • Changes to remuneration structures would be costly to implement • Limiting to fee-for-service could cut off remuneration options that restrict access to advice by consumers • Recommends a separate and detailed consultation on the implications of fee-for-service for the profession and consumers

Not Supportive of Fee-for-Service Model (continued)		
3	Institute of Public Accountants	• IPA uses Pronouncement 11 in lieu of APES 230 • Not supportive of fee-for-service • Legislation in place to ensure compliance with best interest duty • Will oppose limiting APES 230 to fee-for-service model if APESB undertakes it
4	Pitcher Partners Investments Services Pty Ltd	• Not supportive of fee-for-service • FUM/asset-based fees are in the client's best interest • Recommends principles-based standard
5	Stan Moffatt	• Not supportive of fee-for-service • Reduce prescriptive elements of APES 230 • Questions about integrity and professionalism are unwarranted and should not be based on remuneration method used
6	Tamara Gillman – TrueJourney Financial	• Not supportive of fee-for-service and recommends retention of commissions, in particular, on insurance products • Small clients are happy to pay insurance premiums but prefer not to pay advisers directly