



Annual Review of APES 230 *Financial Planning Services*

Prepared by APESB Technical Staff

2 August 2015

Background

Accounting Professional and Ethical Standards Board (APESB) issued APES 230 *Financial Planning Services* (APES 230) in April 2013 with an effective date of 1 July 2014 with the remuneration requirements commencing on 1 July 2015. Subsequently in August 2014 APESB performed a Six Month review of APES 230 to identify matters raised by stakeholders.

Reason for this report

In accordance with APESB's constitution, a review needs to be performed on an annual basis after a new standard is effective to identify any issues reported by stakeholders. This report presents a review of the issues reported to APESB or identified by an internal technical review and the proposed recommendations to address the identified issues.

Issues identified

Carry forward issues from prior years

1. *Defined terms*

Issue

The Technical Staff review identified that the Definitions section in APES 230 needs to be revised to be consistent with the Code.

Analysis of Issue

The definitions section in APES 230 requires revision due to amendments made to the IESBA's Code and subsequent changes made by APESB to APES 110 *Code of Ethics for Professional Accountants*.

Definition to be revised

Member in Public Practice means a Member, irrespective of functional classification (e.g. audit, tax or consulting) in a Firm that provides professional services. This term is also used to refer to a Firm of Members in Public Practice and means a practice entity and a participant in that practice entity as defined by the applicable Professional Body.

Impacted Stakeholders

Members, Firms and Professional Bodies.

Recommendation

The defined term in APES 230 should be revised in a manner consistent with the Code and other APESB standards. It is recommended that this change be processed at the next revision of APES 230.

2. ***Best Interests of the Client***

Issue

An issue that has been noted in the APES 230 Issues Register is the application of the *Best Interest of the Client* obligation in the *Corporations Act* to all Financial Planning Services provided by a Member and the impact it has on activities conducted under the *National Consumer Credit Protection Act*.

In the current year a stakeholder has noted that in relation to the definition of *Best Interests of the Client*, the definition should either:

- refer to section 961B *Corporations Act 2001* (rather than the whole Division 2 of Part 7.7A); or
- be defined by the APESB for APES 230; or
- be redefined to include the relevant references to the *National Consumer Credit Protection Act* to responsible lending.

Analysis of Issue

This issue has been previously discussed and noted by the Board at the May and August 2014 Board Meetings. The assessment a Member needs to perform to satisfy the *Best Interest of the Client* obligations in the *Corporations Act* is a more robust evaluation than what needs to be considered for the purposes of the *National Consumer Credit Protection Act*. This issue was addressed in the [Six Month Review of APES 230](#) and an extract is provided in Appendix A.

Impacted Stakeholders

Members in Public Practice, Firms and Professional Bodies.

Recommendation

We note that the CPA Australia and CA ANZ has recently issued its guide to [APES 230 Financial Planning Services](#) and guidance for members is provided on page 8 of this document.

Due to the recent issue of this guidance document and the commencement of the remuneration requirements of APES 230 from 1 July 2015, it is recommended that the Board continue to monitor APES 230 and revisit this matter in the next review.

New Issues

3. *Public Interest vs Best Interests of the Client*

Issue

A stakeholder is of the view that the interaction between the Code's obligation of acting in the public interest (paragraph 3.2 of APES 230) and APES 230's obligation of acting in the Bests Interests of the Client (paragraph 3.6) requires development and additional guidance.

Analysis of Issue

Generally there is an acceptance that professionals have a public interest duty. This is clearly stated in paragraph 100.1 of the Code that is referred to in paragraphs 3.1 and 3.2 of APES 230.

The issue that the stakeholder has alluded to is where a Member encounters a conflict between acting in the public interest and acting in the Client's Best Interest, and whether it is reasonably clear in the standard which obligation should take precedence.

Impacted Stakeholders

Members in Public Practice, Firms and Professional Bodies.

Recommendation

The Code clearly stipulates in paragraph 100.1 (which is referred to in APES 230) that Members have an overriding responsibility to act in the public interest and that the Member's responsibility is not exclusively to satisfy the needs of an individual client or employer.

Whilst we acknowledge that paragraph 3.6 can be potentially enhanced by including text to state that it is subject to the Member's public interest obligations, we believe that the obligation is adequately addressed by paragraphs 3.1 and 3.2 of APES 230.

Accordingly, at this stage Technical Staff do not recommend any amendments in respect of APES 230.

4. *Professional appointments and Marketing*

Issue

A stakeholder noted that Professional appointments (paragraph 3.17) and Marketing (paragraph 3.18) are included under the general heading *Fundamental*

Responsibilities of Members (section 3). The stakeholder has noted that these are not fundamental responsibilities and should not be included in this section.

Analysis of Issue

Section 3 *Fundamental responsibilities of Members* refer to the fundamental responsibilities of Members who provide a Financial Planning Service and not necessarily to the fundamental principles of the Code. Conceptually it is acknowledged that it may be preferable to have a separate section on these obligations.

Impacted Stakeholders

Members in Public Practice, Firms, dealer groups and Professional Bodies.

Recommendation

As noted above, it is acknowledged that it may be conceptually preferable to have these two obligations under a separate heading. However, as this is not issue of substance and has minimal impact on the practical application of the standard, Technical Staff do not recommend any amendments at this stage.

Appendix A : Extracts of APES 230 Six Month Review (August 2014)

2.6 Best interests

Issue

Members in Public Practice who provide credit advice are regulated under the *National Consumer Credit Act* and not the *Corporations Act*. 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*.

While Members in Public Practice 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. However, ASIC has stated in RG 175.239 that satisfying the safe harbor of Section 961B in Division 2 is not the only way to demonstrate an individual is acting in their Client's best interest.

CPA Australia/ICAA preliminary comments

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 they were not imposed by APES 230.

CPA Australia and ICAA propose to issue further guidance stating that Members providing credit advice captured by APES 230 will comply with the obligations to act in their Client's best interests when they comply with the responsible lending provisions of the *National Consumer Credit Protection Act*.

Impacted Stakeholders

Members in Public Practice, dealer groups and Professional Bodies

Technical Staff Response

The application of the Best Interests duty is a specific additional safeguard incorporated by the APESB against threats created to the fundamental ethical principles of the Code due to the receipt of Commissions. A Financial Planner will generally provide holistic advice in relation to investment and credit products. Thus the Board determined at the time to apply the Best Interest duty to all Financial Planning Advice as an additional safeguard against the threats created by Commissions.

Best Interests of the Client means the obligations as defined in Division 2 of Part 7.7A of the *Corporations Act 2001*. Provisions of *Corporations Act* Section 961B on *Provider must act in the best interests of the client* depends on the circumstances and states the following:

- (1) *The provider must act in the best interests of the client in relation to the advice.*
- (2) *The provider satisfies the duty in subsection (1), if the provider proves that the provider has done each of the following:*
 - (a) *identified the objectives, financial situation and needs of the client that were disclosed to the provider by the client through instructions;*
 - (b) *identified:*
 - (i) *the subject matter of the advice that has been sought by the client (whether explicitly or implicitly); and*
 - (ii) *the objectives, financial situation and needs of the client that would reasonably be considered as relevant to advice sought on that subject matter (the client's relevant circumstances);*
 - (c) *where it was reasonably apparent that information relating to the client's relevant circumstances was incomplete or inaccurate, made reasonable inquiries to obtain complete and accurate information;*
 - (d) *assessed whether the provider has the expertise required to provide the client advice on the subject matter sought and, if not, declined to provide the advice;*
 - (e) *if, in considering the subject matter of the advice sought, it would be reasonable to consider recommending a financial product:*
 - (i) *conducted a reasonable investigation into the financial products that might achieve those of the objectives and meet those of the needs of the client that would reasonably be considered as relevant to advice on that subject matter; and*
 - (ii) *assessed the information gathered in the investigation;*
 - (f) *based all judgements in advising the client on the client's relevant circumstances;*
 - (g) *taken any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances.*

Whereas, the provisions of the *National Consumer Credit Protection Act* only stipulates the general responsible lending conduct and obligations of credit assistance providers before providing credit assistance.

In accordance with APES 230, Members in Public Practice must *act in the Best Interests of the Client* by applying the safeguard of the Best Interest duty and can comply with this obligation by replacing the terminology of 'financial product' used

in the Provisions of Corporations Act Section 961B with 'investment in properties and credit products' (e.g. direct properties and loans).

Key stakeholders have requested that the Board consider developing a principles based definition of Best Interest Duty which is not linked to the *Corporations Act 2001*. The Board has indicated that the Board will consider this issue and requested that the key stakeholders submit a proposal for the Board's consideration.

August 2014 Update

The APESB Board considered the proposals submitted by stakeholders in respect of the Best Interest Duty definition at its August 2014 Board meeting. The Board determined that further clarification is not required and that the Board will continue to monitor APES 230.