Review of Submissions – Specific Comments Table
Consultation Paper 01/19: Review of APES 230 *Financial Planning Services*

Note: General comments relating to CP 01/19 are addressed in a separate table. This table excludes minor editorial changes.

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1	1	AFA	APES 230 goes further than the current law in a number of areas, however with the implementation of the current regulatory reforms related to the FASEA Code of Ethics and the Royal Commission recommendations, it seems likely that this gap will close markedly. It should also be noted that APES 230 only applies to a sub-section of the financial adviser market, being accountants. It is the AFA's view that in the context of the current regulatory reform agenda, the current APES 230 standard provides a sensible balance between the competing pressures of the demands of a profession and the practical realities of the financial services industry and the financial advice sector. We do not propose the need for any amendments or enhancements to APES 230. There is an opportunity to provide more tools and templates to assist with complying with the standard, however it may be necessary to wait for the finalisation of other matters such as the proposal that ASIC will determine a client consent form template (as per the proposed Section 962T of the Corporations Act) and other things that may emerge from the finalisation of the guidance on the FASEA Code of Ethics.
2	1	CA ANZ	CA ANZ believes the industry is in a period of significant change, many of which are outlined in the APESB's Consultation Paper CP 01/19. We believe that, once the legislation and associated Legislative Instruments in relation to the *Royal Commission into* Misconduct *in the Banking*, Superannuation and Financial Services have been finalized, it would then be timely to conduct a full review of APES 230. **Once legislation has been finalized, we then suggest that the legislation is referred to in this standard, and that any other specific references to legislative issues be removed. Members must obey the law, so we see no need for the law to be repeated in this standard.** We are also concerned that some of the comments contained in the Consultation Paper have overstepped the mark and should re re-adjusted to better reflect the practical state of the industry, whilst at the same time driving the need for high professional and ethical obligations of members who provide financial planning advice. Some of these issues will be addressed in the points to follow.
3	1	CPAA	Since its introduction, users of APES 230 have striven to comply with the requirements contained in the standard, and CPA Australia has aimed to monitor Members' compliance. However, there are challenges with adopting and implementing the standard, created by a lack of clarity with aspects of the standard scope and definition, as well as inconsistencies between the standard and existing legislative requirements (see comments in cover letter). Given the extensive regulatory and legislative changes that have taken place since the standard was issued, and which continue to be enacted in the financial planning services sector, it is not clear that APES 230 remains, or will continue to remain, fit for purpose. With respect to amendments or enhancements to the standard, CPA refers to its recommendations in the cover letter relating to the timing of a review and the importance of not duplicating regulatory and legislative requirements in the standard. With this in mind, it is premature to suggest amendments and enhancements to the standard.

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			As a general observation, CPA Australia supports the inclusion of a range of appropriate tools and templates for all professional standards, either within a standard (e.g., by including flowcharts, diagrams, references to applicable guidance, etc.) or separately through the use of guidance and implementation materials.
4	1	IPA	Overall, IPA members have advised that they do not consider APES 230 fit for purpose. **Comments:** • APES 230 is not effective in making accountants behave any more ethically than they would otherwise. • APES 230 makes practicing in financial advice too onerous and more than it needs to be, without any obvious benefits. This has the (unintended) consequence of making it easier for financial planners rather than for accountants, which has led to less consumers obtaining financial advice, and that this advice is of a poorer quality than it used to be. • Other views were in line with previous IPA submissions, that in light of the significant amount of over-regulation in Financial Planning Services, that APES 230 has become redundant. "It is no longer a guide for best practice nor is it an ethical pathway guide". Amendments to the Corporations Act and the establishment of FASEA have made APES 230 redundant. Reference should be made to S921E of the Corporations Act which requires adherence to the Standards Authority, which has the force of law and can impose sanctions.
5	1	PP	As a member of a large accounting firm, we recognise the importance of the accounting professional and ethical standards and continue to encourage and support their development. These standards are essential for the ongoing growth and advancement of our profession, the provision of protections for all parties relying on Member services and the overall confidence in the profession. Accounting standards provide guidance and clarification and establish core principles in areas which would otherwise not be properly governed. However, while we recognise the value of accounting standards in unregulated or lowly regulated environments, care needs to be taken when introducing accounting standards in highly regulated and changing areas of the law. Care must also be taken when applying accounting standards to other professions such as financial services. It is essential that the standards are progressive, have the support of the Members that they are seeking to regulate, do not restrict innovation and progress and do not place its members at a competitive disadvantage. While largely mirroring the onerous requirements of the Corporations Act (2001), APES 230 increases obligations in respect to credit advice and advice provided to wholesale clients. In our view it remains fit for purpose, but we caution against the expansion of the standard in the current regulatory environment and especially with the very recent introduction of the FASEA Code of Ethics and the release of FG002 Financial Planners and Advisers Code of Ethics 2019 Guidance. While the FASEA Code of Ethics is unlikely to change, the guidance and interpretation of the Code is expected to be heavily debated over the course of 2020 and beyond. We believe alignment with the FASEA Code of Ethics is important. Pitcher. Partners Investment Services Pty Ltd would be supportive of APES 230 being reviewed for ongoing compliance with the Corporations Law and its general alignment with the FASEA Code of Ethics. This would ensure that professional accountants would be expected to follow the FASEA Code of Ethics regardless of the scope or type of AFSL (or ACL) held. It would also ensure that services limited to only wholesale clients would be covered.
6	1(a)	BWM	The original purpose of APES 230 was to develop a standard for accountants, who also provide financial services, with a set of principles that addressed best practice in the provision of ethical advice, on a fee for service basis, that managed conflicts of interest, required client informed consent together with a set of disclosure requirements.

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			We believe the stated purpose of APES230 has been adequately considered and incorporated into the FASEA Code of Ethics that came into effect on 1 January 2020. For the benefit of clarity, we prefer that the APES 230 definition of financial services be mirrored to current legislation and treated accordingly. This means that Insurance, Finance and Real Estate should mirror legislation. Post FASEA we believe there are enough safeguards in place to ensure advice is in the clients best interest and requires their informed consent.
7	1(b)	BWM	Align all elements of APES 230 to legislation and the FASEA Code of Ethics.
8	1(c)	BWM	What is the surveillance of compliance with APES230 indicating would assist? Anecdotally we understand the Accounting Bodies are not closely monitoring or supervising compliance with APES230. This makes it difficult to understand what is currently being adhered to and where assistance or guidance could assist with compliance.
9	2	AFA	The definition is singularly focussed upon advice to people in their personal capacity and may therefore not incorporate advice to companies, trusts and small businesses. It is noted that it does not exclude advice provided to wholesale clients, which is, in our view, an appropriate approach, particularly given that the FASEA Code of Ethics does not apply to advisers who only provide advice to wholesale clients and the fact that the Fee Disclosure Statement and Opt-in obligations do not apply to wholesale clients. We have no objection to the fact that the APES 230 obligation applies to mortgage broking services and that it should also apply to strategic advice and real estate advice. It is important to note that most financial advisers will not be permitted by their licensee to provide advice on a specific property, however, will instead provide advice with respect to the level of exposure to the property sector as a whole. It is also important to note that a lot of property is owned within the SMSF sector and it is therefore appropriate that obligations apply in this context.
10	2	BWM	Please see our comments above about the breadth of the definition of Financial Planning Advice. If you include Real Estate and non-product advice in the definition some grey areas include Self-Managed Super Fund advice particularly in relation to the preparation of SMSF Investment Strategies.
11	2	CA ANZ	APES 230 specifies the professional and ethical obligations of Members who provide financial planning services. It covers financial planning advice in respect of clients' personal financial affairs relating to wealth management, retirement planning, estate planning, risk management and related advice. CA ANZ is currently working on a project with other member organisations to reform the extensive regulatory environment in which all members who practice in financial advice operate. We are developing a proposal which would differentiate members who provide strategic (non-product) advice from those who provide specific product advice. Both models currently fall under an Australian Financial Services Licence (AFSL) – limited or full. In addition, members also operate under an Australian Credit Licence (ACL), although the number is this category is far less than the former.

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			CA ANZ has been working on this project for almost two years. In conjunction with other member associations, we have developed the basis for a model going forward, details of which have been widely communicated to members. Our concept has been taken to various government bodies including, but not limited to: 1. The Prime Minister's office 2. The Federal Treasurer's office 3. The office of Senator Jane Hume (the Federal Assistant Minister for Superannuation, Financial Services and Financial Technology) 4. The Tax Practitioner's Board 5. The Treasury The key benefits of these proposed reforms are as follows: • To help address the growing advice gap created by both the high cost of providing financial product advice and the impact of the many regulatory changes impacting the structure of the financial planning sector. • To enable a broader range of consumers to access advisory services. • To encourage and attract professionals, such as accountants, to provide a strategic financial advice to their clients. • To maintain or improve the professional standards of our members which in turn will be in the public's best interests. • To enable existing advisers to continue providing financial advice to their clients through individual registration, rather than being forced to be authorised under another AFS licensee. • To help consumers prepare to either partially or fully fund their retirement will help reduce the pressure on the age pension, which will continue to increase with an ageing population. In all that we do for our members who practice in financial advice, CA ANZ continues to advocate for reform that: • Reduces complexity and duplication • Improves efficiency and effectiveness • Drives harmonization across different regulatory frameworks and • Better enables the provision of affordable, accessible and quality advice to businesses and consumers The Treasury has asked us to collectively provide further detail on the content of our proposed reforms and how they may be implemented, with our next full-day roundtable scheduled for Monday 23 March. Given the fact there are many moving parts in the current regulatory environment, we see no need to change the current scope of APES 230 and as such, do not endorse the proposed changes outlined in the Consultation Paper. **Specifically, we do not agree that 'real estate advice and non-product advice related strategies' should be added now. Rather, we would be happy to review terms like these, and others, in a full review of APES 230 once legislation resulting from the Royal Commission has been finalized and also after the government has had time to review the proposal being put forward by our working group of member associations.**

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			In due course, we also need to review how APES 230 applies to activities such as mortgage broking and how it relates to wholesale clients.
12	2	CPAA	As noted in the cover letter, CPA Australia is of the view that the scope of, and definitions included in, the standard need to be re-assessed and reviewed. A challenge for all standard setters is the importance of clearly identifying and articulating scope and definitions, to ensure that the standard is monitored and enforced in line with the intention of the standard setter. By interpreting (refer to the Consultation Paper) the current definition to be very broad and cover a range of other services not explicitly stated, the APESB has made it difficult to create explicit requirements that apply consistently across the range of services envisaged. This, in turn, creates compliance issues where the legislative frameworks that apply to these various services differ – for example, CPA Australia notes the differences in the legislative definitions of "best interests" that apply to professionals providing services under an AFS licence, and those providing services under an ACL. In revising APES 230, it is important for the APESB to consider whether the objective of the standard is a focus on financial planning services (as narrowly defined by legislation) and credit services, or whether the APESB intends to cover all financial advisory services that professional accountants may provide to their clients. The outcomes and pronouncements issued by the APESB may vary depending on the agreed focus.
13	2	IPA	Whilst there was some limited agreement to expanding the scope of APES 230, most members were against an expansion of the scope of APES 230. **Comments:** • Section 766 defines "financial service". Similarly, S766B defines personal financial advice, in detail. Similarly, by way of explanation, advice in relation to property purchases is not "financial advice" under S766 as "property" is not a financial product as defined under S763A of the Corporations Act. The APES Board therefore should not be able expand the definition of financial planning to include merely all (wealth) advice at its absolute discretion. No compelling explanation is provided as to why the remit or scope of APES 230 should be expanded and thereby further disadvantaging accountants comparative to those financial planners who are not also members of the accounting bodies and therefore not subject to APES 230.
14	2	PP	The current definition of Financial Planning Advice limits the application of APES 230 to advice in respect of a Client's 'personal financial affairs' but does not properly define 'personal'. The term 'personal' does not directly align with the term 'consumer' in the National Consumer Credit Protection Act 2009 (NCCPA) or with the terms 'wholesale or retail client' in the Corporation Act 2001. The term 'personal' is generally defined to mean "something that belongs to or affects a particular person rather than anyone else". An alternative definition might be "concerning one's private life, relationships, and emotions rather than one's career or public life". Either way, the term and its use in this context appears to limit the application of APES 230 to individual circumstances. This term therefore creates confusion and inconsistency in its application. A commercial loan is not a 'personal financial affair'. An investment portfolio for a not-for-profit organisation is not a 'personal financial affair' and yet this portfolio may not satisfy the wholesale client definitions within the Corporations Act (and is therefore considered a retail client). We don't believe it was the intention of APESB to create these scenarios. We believe, for example, that APESB was seeking to prohibit Members from accepting any form of commission - not just commissions in respect to personal loans. We are also unsure why selected financial products such as derivatives have been omitted from the definition within APES 230. We believe this definition should be changed as follows:

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			Financial Planning Advice includes: a) advice on 'financial products' as defined in section 763A of the *Corporations Act 2001* provided pursuant to an Australian Financial Services Licence; b) 'advice and dealing' in financial products as defined in section 766C of the *Corporations Act 2001*; c) advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence; and d) other advice such as taxation, real estate and non-product related advice on financial strategies or structures provided as part of the advice under (a) - (c).
15	2	RB and SH	**Clarification of Scope of Financial Planning Advice** Having been members of the taskforce that advised the APESB during the development of the current version of APES230, we recommend that there should be some clarification of the words in the standard defining the scope of 'financial planning' to ensure that they include real estate advice by members of the accounting profession who offer financial planning services. Our original intention was that this should be so, however, it would be wise to take the opportunity to amend the words of APES230 to avoid any doubt. Therefore, we propose the removal of the words '**provided as part of the advice under (a)-(c)**' within part (d) of the definition of Financial Planning Advice. The updated definition would be as follows: ***Financial Planning Advice*** *means advice in respect of a Client's personal financial affairs specifically related to wealth management, retirement planning, estate planning, risk management and related advice, including:* *a) advice on financial products such as shares, managed funds, superannuation, master funds, wrap accounts, margin lending facilities and life insurance carried out pursuant to an Australian Financial Services Licence;* *b) advice and dealing in financial products as defined in section 766C of the Corporations Act 2001;* *c) advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence; and* d) *other advice such as taxation, real estate and non-product related advice on financial strategies or structures.*
16	3	AFA	We are not aware of any issues with respect to the implementation of the best interests of the client requirement under APES 230. More broadly there have been significant issues with the implementation of the Best Interests Duty in the financial advice sector. Over a number of years, ASIC has released a number of reports highlighting poor outcomes with their assessment of the level of compliance with the Best Interests Duty. This has included Report 413 on life insurance advice, Report 562 on superannuation switching advice within vertically integrated groups, Report 575 on SMSF advice and more recently Report 639 on superannuation fund advice. We are conscious that the safe harbour steps in Section 961B(2) were subject to some questioning in the final report of the Banking Royal Commission, and there are arguments both in favour of it and opposing it. We do not believe that the Royal Commission adequately set out a case for why it might not be appropriate, and we favour the continuation of the safe harbour steps. This is an issue for consideration as part of a proposed review of financial

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			advice in 2022. In the absence of evidence to suggest that the safe harbour is contributing to poor outcomes for consumers, we would recommend that it be retained. There has been one other major influence on the financial advice sector with respect to the application of the Best Interests Duty, which is ASIC Report 515 Financial Advice: Review of how large institutions oversee their advisers. ASIC Report 515 was released in March 2017, however has had an ongoing impact, as ASIC has ramped up their response, with the large institutional groups. This has resulted in some fundamental changes to the way these businesses operate, including the addition of lengthy checklists and enhanced record keeping obligations.
17	3	CA ANZ	In his recommendations from the Royal Commission, Commissioner Hayne questioned whether the safe harbour provisions to the best interests' duties should be repealed. There are several issues of concern with best interest duties being included in this standard, some of these being: 1. Members in advice must comply with the Corporations Act 2001, so do we need these duties repeated in APES 230? 2. Members who provide financial product advice to retail clients must be authorised under an AFSL to do so. These members now must also abide by the FASEA Code of Ethics, which requires a broader duty of care – not withstanding the fact that there is concern over the exact duty required. Like many in the industry, we believe the Explanatory Statement to the Code of Ethics adds confusion to the requirements of the Code, and to that end, CAANZ is meeting with Stephen Glenfield, the CEO of FASEA, in two weeks' time to further discuss ambiguities 3. APES 230 doesn't currently include the best interest duties for members operating under an ACL which are now in the Credit Act. This issue should be addressed in a full review of APES 230 in due course. **Our recommendation is therefore to refer to relevant laws relating to best interests' duties within APES 230 and then remove all references to it within the standard itself.**
18	3	CPAA	CPA Australia notes that the best interests legislative arrangements differ for those professionals who provide financial advice under an AFS licence, and those providing credit advice under an ACL. For example, there are no safe harbour provisions included in the "Best Interests" statement in the Credit Act. Moreover, given the broad definition of financial planning services adopted by the APESB, it is not clear that the best interests definition in the Corporations Act is relevant for all the services that the standard aims to capture. This represents an implementation issue, where APES 230 has one general requirement that aims to be relevant to an extensive range of services. CPA Australia notes that ASIC's Regulatory Guide 175 – RG 175 *Licensing: Financial product advisers—Conduct and disclosure* – outlines ASIC's approach to assessing compliance with the best interests obligation described in the Corporations Act. The APESB may wish to refer to this guide, as well as the equivalent regulatory guide presently under consultation for mortgage broking services, when revising APES 230, with respect to the best interests obligations for financial planning professionals, providing financial planning advice under an AFS licence or ACL.
19	3	IPA	Overall, members have not experienced implementation issues around acting in the best interests of the client, which is a legal requirement. There were divergent views as to whether the safe harbour provisions should remain. **Comments:** • Section 961B is very clear as to the "best interest's duty" of financial planners. There have been no challenges in implementing this duty. Similarly, with S961C and S961D which require all reasonable and apparent investigations to be made in giving financial advice. Section 961E also provides that the client be in a better position after the advice is given. Reference should also be made to S961G, giving appropriate advice, and S961J where a

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			financial planner is required to prioritize the client's interests. ASIC has issued RG175 and RG 244 to guide the profession as to the requirements of the legislation and how they will enforce it. The Royal Commission recommended the removal of the "Safe Harbour" provisions. Such provisions contained in S961B(2) merely supplement what the legislation requires to meet the best interests duty standard. In practice it does not provide any so called "safe harbour" if the advice is inappropriate and not in the best interests of the client. Positively, it does outline the steps a financial planner may follow in fulfilling the duty to the client. • The view is that there is no practical or legal reason to repeal the safe harbour provisions, only political expediency.
20	3	PP	We believe that the best interest duties outlined in Section 961 B are extensive and relevant to any advice provided under an AFSL. The FASEA Code of Ethics, in a general sense, and Standard 5 specifically also reinforce the obligations on Advisers that all advice and financial product recommendations must be in the best interests of the client and appropriate to the client's individual circumstances. The Code goes one step further by requiring the relevant provider to have reasonable grounds to be 'satisfied' that the client understands the advice, and the benefits, costs and risks of the financial product recommended. Acting in the 'best interests of the client' has become a critical component of any adviser's advice and must be foremost in every decision and action the adviser takes. The 'why not litigate' attitude of the regulators and the threat of client complaint and/or litigation is driving the industry, licensees and advisers in this regard. The definition of *'Best Interests of the Client'* within APES 230 limits the best interest duties to Division 2 of Part 7.7A of the Corporations Act 2001 and may need to be expanded to incorporate the principle within Standard 5 of the FASEA Code of Ethics.
21	3(a)	BWM	As stated, a best interest duty exists in the Corporations Act 2001 and since the APES 230 review in April 2013, Standard 2 of the FASEA code has also been introduced. The Government response to the Royal Commissions into Misconduct in the Banking, Superannuation and Financial Services Industry in February 2019 states at **Recommendation 1.2** Best interests duty to introduce a vest interests duty for mortgage brokers to act in the best interests of borrowers **Recommendation 2.3** Review of measures to improve the quality of advice by 30 June 2022. Among other things, that review should consider whether it is necessary to retain the 'safe 'harbour' provisions in section 961B(2) of the Corporations Act. Unless there is a clear justification for retaining that provision, it should be repealed. We recommend waiting for the release of 30 June 2022 Government review as it will test whether the 1 January 2020 introduction of FASEA Standard 2 and the overarching Values of the Code and the requirement to read all 12 Standards in their entirety have been effective.
22	3(b)	BWM	We believe that the guiding principles and values of the FASEA Code should more adequately ensure the clients' best interests are met.
23	4	AFA	The impact of these changes would be substantial. Both asset-based fees and life insurance commissions are very major elements in the current business income models. Our first point is that we do not see any need for the removal of either asset-based fees or life insurance commissions. In Regulatory Guide 175, ASIC have stated a very clear view that the receipt of asset-based fees does not prevent an adviser from describing themselves as independent. It is also a fact that some clients prefer to have their adviser paid on the basis of an asset-based fee arrangement. They like to see that

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			their adviser has some "skin in the game". And this is exactly the case at present, as we observe the material declines in the value of the Australian and international share markets as a result of the Coronavirus. As the client's assets go down, so does the income of the adviser. We also struggle with the assumption that hourly fee arrangements or fixed fees are completely free of conflict, yet there is something inherently wrong with asset-based fees. There are risks with each of the models. In terms of an hour fee arrangement, this provides an incentive to take longer to complete the work, or to provide services that are not important to the client. Ultimately, we believe that clients should have the ability to choose how they pay for their financial advice, and asset-based fee arrangements are an option that many may choose. In terms of asset-based fees, this still represents a significant amount of the financial advice sector income. Investment Trends research in 2019, indicated that asset-based fees represent 28% of practice income, which is somewhat less than the 37% for flat fees, but still a very material amount. Since the introduction of the Life Insurance Framework (LIF), upfront commissions for life insurance advice have been subject to a cap. In 2020, the cap is 60% of the first year's premium. The amount that the adviser is paid is largely independent of which life insurer that they recommend. Commission rates can no longer inappropriately influence the selection of the insurer. Life insurance commissions have been the focus of some major reviews and the Parliament has decided to permit their continuation under the LIF. Subject to the agreed ASIC review in 2021, we can see no need for any consideration of further change at this stage. According to research by Investment Trends in 2019, upfront and servicing commissions on life insurance business make up a total of 23% of practice income. Fees for life insurance advice is a very small percentage of total income, and it does not even rate a mention in the Investment Trends research. Research undertaken by Zurich in 2019 (The Risk Advice Disconnect), demonstrated that only 8% of life insurance advice clients are prepared to pay more than $1,000 in fees for life insurance advice. Given that it costs more like $2,500 to provide life insurance advice, this paints the picture of a model that would be substantially unsustainable if commissions were banned. If forced to change, the transition impact would be substantial. If advisers were forced to move their clients from an asset-based fee arrangement to a fixed fee arrangement, then they would need to sit down with each client and negotiate a new arrangement. For some clients, this may be a difficult and drawn out process. This transition would involve a significant cost, which could not be recovered from clients. In the case of life insurance advice, the reality is that most advisers would simply walk away from providing life insurance advice or otherwise only focus upon the high income earners. The 2019 research by Zurich indicated that in the context of a commission ban, 50% of advisers would cease providing financial advice, whilst 12% would entirely cease providing life insurance advice and 22% would reduce their life insurance advice and focus upon other forms of advice. A ban on life insurance commissions would lead to a significant reduction in the amount of financial advice provided on life insurance. This would be a bad outcome for consumers and the country in general.
24	4	CA ANZ	CA ANZ has long supported ending conflicted remuneration for financial advisers, with appropriate transitional timeframes, and raising the standards of ethics and professionalism in the financial advice industry to better serve and protect consumers. This is vital to help restore public trust and confidence In general, CA ANZ supports removing grandfathering arrangements for conflicted remuneration and other banned remuneration. In principle we support 1 January 2021 as the effective date for this new law. We also support the regulations providing for a scheme under which amounts that would otherwise have been paid as conflicted remuneration are rebated to affected consumers. However, there are issues which will need to be carefully considered and managed to ensure that the provisions operate as intended and to avoid any detriment to consumers. Whilst we support 1 January 2021 as the effective date for this new law in principle, careful consideration should be given to the appropriateness of this timeframe in circumstances where ending grandfathered remuneration may not be in the best interests of the client. It is critical that care is taken to avoid any detriment to consumers and any liability to advisers for breach of the best interests' duty.

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			Acting in the best interests of the client CA ANZ has concerns that a complete ban on conflicted remuneration may in some circumstances result in greater risk or harm to consumers than that which already flows from the conflicted remuneration, such as where a complete ban on commissions in respect of life insurance products leads to significant underinsurance if the client cannot afford to pay the upfront fee. The client's advisers may also be in breach of their best interests' obligation. **Rebating conflicted remuneration** **Insurance contract issues** CA ANZ supports a ban on all bulk (volume) commissions to the extent this can be achieved without causing disadvantage to consumers. As part of these reforms, as soon as is practicably possible, but certainly by 2021, insurance companies should be required to rebate the quantum of existing upfront commissions against first year premiums, and no less, as is the case in many current circumstances. Where it is *inappropriate* to move an existing policy to a new insurance contract (for example in many instances where the client has been in the policy for a period of time and/or there is a level premium policy and/or the client is insured, has an injury, and is unable to obtain new insurances) all ongoing commission should be rebated against future ongoing premiums and, in these circumstances, this *should not* be deemed to be conflicted remuneration as the commission does not pass through the Australian Financial Services Licence. Insurance companies should be required to offer all new contracts from 1 January 2021 at reduced premiums, upfront and ongoing, as they will no longer be paying commissions on those new contracts. Insurance companies should be encouraged to introduce non-commission premium rates as soon as possible, with many offering this already. CA ANZ recommends that where advisers take on a new client and are bound by the best interests duty to look into existing policies (and hence the policy is under the adviser's name and a commission is received as a legacy issue), at the new adviser's request, insurance companies should be required to rebate any ongoing trail commissions to that client at the same quantum as the current commission was paid to the previous adviser. In this way, advisers can review existing policies and observe their best interests' obligations without being held liable for receiving commissions. **Investment product issues** Consideration should be given to the various issues that may impact on an adviser's ability to sell and/or move an investment that contains an ongoing commission without disadvantaging the client. Examples include, but are not limited to the following: • Cost of a Statement of Advice (SoA) to advise a client to move from a commission related investment • Inability to do a Record of Advice (RoA) if the adviser didn't recommend the product in the first place • Cost of realising unrealised capital gains • Buy/sell spreads • Cost of researching as part of an overall assessment of the client's situation – under the best interests' duty • Uniqueness of investment and its ability to be replaced • Illiquidity of the investment

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			• Transaction fees • Legacy products that are in the best interests of the client • Early redemption penalty costs • Exit costs • Deferred bonuses foregone on life insurance products • Practicality of doing so for a whole of life policy. CA ANZ recommends that where a client has an investment product, and it contains an ongoing commission, and it cannot/should not be sold or moved, the investment manager should be required to rebate the quantum of that ongoing commission back to the client's investment with no adverse tax and/or regulatory consequences. **Superannuation fund issues** As with investment products, consideration should be given to the numerous issues that may impact an adviser's ability to move a superannuation investment that contains an ongoing commission without detriment to the client. Examples include, but are not limited to the following: • Cost of an SoA to advise a client to move from a commission related super product • Inability to do an RoA if the adviser didn't recommend the product in the first place • Cost of realising unrealised capital gains on rollover • Buy/sell spreads • Cost of researching as part of an overall assessment of the client's situation – under best interests' duty • Inability to rollover the fund due to insurances • Illiquidity of investments within the super fund • Being part of a corporate super plan whereby the fees are at a cheaper rate than can be obtained by individual advisers • Transaction fees • Legacy products that are in the best interests of the client • Early redemption costs • Exit costs • Deferred bonuses foregone on life insurance products • Other life insurance issues.

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			CA ANZ recommends that where a client has a superannuation fund, and it contains an ongoing commission, and it cannot/should not be rolled over, the super provider should be required to rebate the quantum of that ongoing commission back to the client's super fund without any adverse tax and/or regulatory consequences. **In Summary:** **1. Asset-based fees should be banned from 1 January 2021** **2. Volume-based fees should be banned from 1 January 2021** **3. Third-party payments (subject to laws and regulations) should be banned from 1 January 2021, as this is in line with FASEA's Code of Ethics and** **4. Fee for service should be the preferred method of remuneration, provided that commissions (where a product either cannot or should not be sold or replaced) can be offset against that fee. This will require both education and time for implementation.** **Product providers should be legislated that they MUST rebate ongoing commissions directly to clients, which will assist in the process of moving to a true fee for service model.**
25	4	CPAA	In submissions in 2012 and 2017 to the APESB, CPA Australia stated its support for a transition to fee-for-service for the financial services sector. We again state our support for such a transition. As noted in the cover letter, problems are encountered in including a fee-for-service only requirement in APES 230, given the breadth of the scope of the standard and the definitions used (see cover letter). However, if these scope and definition problems are overcome, CPA Australia recommends that a transitional period for fee for services, for financial planning services provided under an AFS licence, should be consistent with any transitional arrangements provided for in legislation. Clearly, the biggest challenge for Members if APES 230 limits all services captured by the standard to fee for service only, is that they may be placed in a position to make a choice between complying with the professional standard or meeting their legislative requirements. While public interest arguments can be mounted in favour, and against, the proposition that professional accountants should be held to different standards of behavior than others providing a range of advisory services, it is clear that some Members will be forced to make difficult decisions. Additionally, if the APESB was to move to limit all services captured by APES 230 to fee for service only, it would need to carefully explain the decision to deviate from APES 110 requirements for only this one professional standard.
26	4	IPA	There was widespread though not unanimous support for the fee for service only model. Some members moved to a fee for service model some time ago and charge accounting fees on this basis, so applied the same model for financial advice. Some members moved to this model for financial advice some time ago and some have always been fee for service only from the commencement of offering financial advice services. Some members have already lost significant amounts of revenue due to changing fee models. Members considered a fee for service only model as promoting integrity and objectivity. APES 230 is designed for accountants who undertake some financial planning work, rather than for members who operate as financial planners and have retained membership of an accounting body, which would subject them to APES 230. The case study below is based on a member who operates a financial planning practice. **Comments:**

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			• Some of the rationale was that fee for service is free from inherent conflict and the client is aware of the services they are paying for. • The income from a pure fee for service is most likely lower than on the asset backed fee or third party payments models. • It puts the client's interest first which is the aim of any accountant (or professional body). • A fee for service gives accountants a competitive advantage over financial planners. • I would like to see the removal of the asset based fee and payments from third parties. Accountants should charge a fee for service based on an hourly rate or a fixed or negotiated fee for services to be rendered. All fees must be agreed with the client in writing. • The APES Board should be cognisant of the legislation and guidance which has since been issued by FASEA and ASIC. For instance, RG246 outlines ASIC's position on banned and conflicted remuneration, also promulgated in S963. Section 963B(1)(d)(ii) provides that asset based fees are specifically excluded from being conflicted remuneration. It should also be noted that S964F provides that a financial planner can still be called "independent" even though there is the receipt of asset based fees. Neither the Parliament, ASIC, FASEA or AFCA nor more importantly clients, have any objection to asset based fees. There should be no transitioning to a fee for service model unless it is part of legislation. • Asset based fees should be retained if accountants spend a lot of time and effort doing research and using the best possible resources and knowledge to help clients grow their portfolio. The same principle should apply to third-party payments. This should be driven by clients, not professional bodies or governments. It should depend on what clients want and what results are achieved, with fees being commensurate with results. • Asset based fees are paid to financial planners for the management of portfolios. It may also be paid as a replacement for any fees for the preparation of a Statement of Advice, as required under S946. The asset fee may also be paid to help the client understand the complexities of investments and superannuation. The asset fee is also paid to maintain and research the ongoing investments of the client. This is very different compared to a "fee for service". This is also particularly true when the financial planner actually manages the portfolio of a client by buying or selling direct assets. • Accountants are uniquely placed in the market place where clients see them on a regular basis for a range of business, accounting , taxation and other related matters, which financial planners do not experience. Hence the need for financial planners to charge a fee based on asset backed fees or fees from third parties. **Case study:** Consider the scenario of a financial planner who charges an asset fee of 0.5% to manage a $100,000 portfolio of direct shares. The financial planner not only researches which shares to buy (or sell) but also decides in what proportion the shares should constitute part of the portfolio, the dividend and franking credit profile of that share and the industry the share participates in. The financial planner then makes the purchase on behalf of the client and charges no brokerage. The asset fee of $500 is paid. Alternatively, the financial planner may just recommend the $100,000 be placed into a group of managed funds which charges say 0.9%, which is typically wholesale rates. The fund manager now collects $900. It can be argued that the financial adviser who actually manages a portfolio for the client is as deserving of such a fee as the fund manager. The main difference here is that the financial planner is constrained by APES 230 and the fund manager is not. It should also be noted in both scenarios, the financial planner incurs significant liability for asset allocation and fund manager selection. The fund manager incurs no such financial responsibility.
27	4	PP	The position of APESB in respect to fees appears to be premised on the assumption that only a fee for service model represents the client's best interests and is free from conflict. We believe this assumption is incorrect. Every fee model has embedded conflicts of interest that may only become apparent in certain circumstances.

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			A fixed fee arrangement may not align the client's best interests with the adviser. The adviser will collect the same fee at all times, regardless of the outcomes for the client. This fee does not automatically adjust during market downturns or when workloads reduce. An adviser on a fixed fee arrangement will benefit during significant market downturns when compared to an asset-based fee arrangement. An hourly rate may not align the client's best interests with the adviser. If an adviser undertakes work that takes a lot of time but does not appear to add value to the client, then how do they charge for this? Do they even bother to undertake the work? The onboarding of a client is one such example. Another is an extensive review of a client's current position which concludes that limited or few changes are required to the portfolio. It creates an environment where an adviser may recommend changes to enable them to justify the fee. During a market downturn, such as the GFC, the adviser may have to significantly increase their workload - allowing them to charge greater fees at a time that the client portfolio is falling. This exacerbates the portfolio leakage and may result in a strained relationship between the client and adviser. A client may not be willing to approach their adviser for work because of the cost involved. Opportunities may be missed as a result. A fixed fee or asset-based fee arrangement may be more acceptable to the client because the upfront fees are much less. Market volatility may be better for a client under an asset-based fee arrangement. An asset-based fee may mean that the adviser benefits greatly during the times of stable and positive returns, however, so too will the client. An argument might be put forward that this is not in the client's best interest and that during these times a fixed fee or time-based fee might be cheaper for the client. Retail clients may also be subsidised under these fee arrangements as the larger clients can pay a higher fee (depending on how the fee is structured) even though the costs of administration are similar. A larger portfolio does not necessarily translate into more work. However, under a fixed fee or fee for service (e.g. hourly rate) arrangement, the costs associated with onboarding the client and preparing the initial statement of advice are brought forward and can result in much higher initial costs to the client. These can be so extensive that clients are not prepared to proceed (or pay) - particularly as the client sees little benefit in the onboarding process and associated compliance costs. An asset-based fee arrangement will generally amortise the costs of onboarding the client over several year and therefore the adviser is incentivised to develop a strong lasting relationship with their client. In addition, adviser recommendations and market outcomes are more aligned to the client - an adviser is incentivised to achieve stronger investment outcomes in both rising and falling markets. The assumption that an asset-based fee is not good for a client does not take into consideration the many variables that might be built into a portfolio and the fee structure. What if the fees automatically adjust depending on the portfolio or investment value? What if certain investments, such as cash, are excluded from or adjusted for in the fees? What if the asset -based fee structure adjusts for the types of investments (e.g. less for managed funds or ETFs)? What if the asset-based fee adjusts for the frequency of meetings? What if fees are charged on a family basis and therefore the smaller client entities benefit from being associated with a larger portfolio? To simply conclude that an asset-based fee is not aligned with the client's best interests may be incorrect. Our point is that there are many elements at play when deciding what fee structure is appropriate for each client. The adviser should be able to retain the flexibility to determine what works best. For Pitcher Partners Investment Services Pty Ltd, this became very evident during the Global Financial Crisis (GFC). Because of our flexible 'asset-based' fee structure (we do not charge on cash and equivalent and direct property), the revenues for the licensee fell significantly at a time that our workloads greatly increased. Our fees fell by a higher percentage than the portfolio losses as we recommended our clients increase their cash position. This was in the client's best interest and won a great deal of loyalty from our clients and was and remains a significant factor in winning new clients today. Our clients were and remain highly supportive of our fee structure. At the time, a time-based or fixed fee arrangement would not have been in the best interest of our clients. This was recognised and appreciated by our clients.

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			We believe that APESB need to look at adviser remuneration through a different lens. We believe that the core principles of any fee structure, regardless of whether the client is wholesale or retail, must be as follows: • The fee arrangement must be in the client's best interest; • All fees must be collected in accordance with the law; • All fees must be transparent and appropriately disclosed to the client; • The fees must be accepted by the client and the client must be able to opt-out of the fee structure at any time; and • Fees must not be collected when no service is provided. We request that APESB give thought to developing core principles in place of a ban on asset-based fees. We also appeal to the APESB to consider the broader competitive landscape when considering this matter. It may not be in the best interests of the Members or our clients to be forced down a path that regulators, industry and consumers do not seek or support.
28	4	RB and SH	**Commissions on Mortgage Broking/Real Estate Advice** We acknowledge that the FASEA Code of Ethics may only prescribe ethical standards for activities falling under the AFSL provisions of the Corporations Act. Therefore, it is technically possible for accountants who are offering mortgage broking services and real estate advice as part of their wider financial planning services to continue to receive commissions and other forms of conflicted remuneration from these activities. However, we submit: a) given the approach of FASEA's Code of Ethics which requires advisers to adopt a series of ethical **principles** and the **substance** they represent, and to not merely comply with the **form** of a set of **rules**; and b) given that the Australian community (including the APESB and the accounting bodies) expect and require accountants to adopt the highest ethical standards; it would be strange indeed if APES230 quarantined from **'level 1'** certain activities such as mortgage broking and real estate advice which are clearly within the ordinary meaning and scope of financial planning/advice and allowed members to continue to receive commissions and other forms of conflicted remuneration from these activities. Such action would send a signal to our members and to the wider community that the accounting profession can only be trusted to a point. That would be a highly undesirable outcome. It would significantly diminish the impact of APES230 in terms of the APESB's objective of creating a cohort of accountants who can be unreservedly trusted to offer financial planning services in the best interests of consumers. And it would also substantially diminish the inherent trust (and therefore the value) of our professional designations. We submit that as a profession we have a duty to create a comprehensive ethical standard without caveats, carve-outs and exceptions which are usually designed to appease and support the conflicted business models of industry participants. That is, as a true profession we must mandate the highest standard of practice above the level of the law.

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			In short, as a profession, our duty must be to the public interest we serve. This requires adoption of the highest and most comprehensive standard of ethical practice which we submit is 'level 1' of APES230. **Transition Measures for Mortgage Broking/Real Estate Commissions** Best practice dictates that members should cease commission arrangements upon commencement of the up-dated standard, however, we would support a provision that allows existing commission arrangements for these activities to be granted a transition period of up to three years.
29	4(a)	BWM	We believe that the Life Insurance Framework regime that came into effect on 1 January 2018 should be able to run its course and commissions allowed, if client consent is obtained, as required by Standard 4, 5 and 7 of the FASEA Code. **Recommendation 1.3** Mortgage Broker Remuneration states "The government agrees to address conflicted remuneration for mortgage brokers. The Government stated it will proceed carefully and in stages, to ensure that the changes do not adversely impact consumers access to lenders and competition in the home lending market. We suggest alignment with the Government's approach to conflicted remuneration. Additionally, ASIC consultation paper 329 addresses other advice fee consents in response to the findings of the Royal Commission.

30	4(a)	WB	- As per the Consultation Paper, there have been significant developments and reforms in the financial services industry in Australian to enhance consumer outcomes. This includes the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, the establishment of the Financial Adviser Standards and Ethics Authority (FASEA) and the Financial Planners and Advisers Code of Ethics (FASEA Code) which is now in effect.
			- We believe the recent developments and in particular the FASEA Code will assist in ensuring that clients receive quality and ethical financial advice. As you would be aware, the FASEA Code has in place standards that must be adhered to including (but not limited to):
			  - A best interests duty (Standards 2 and 5)
			  - Not acting where there is a conflict of interest (Standard 3)
			  - Clients acting only with free and informed consent (Standard 4)
			  - Must be satisfied that fees and charges paid by the client are fair and reasonable (Standard 7)
			- Our view is that there is now significant legislation in place to ensure that clients receive the high quality service that they deserve.
			- We do not believe it is the Board's role to dictate how a Financial Planning or Mortgage Broking business should be remunerated.
			- With respect to charging based on funds under management, we believe in many situations this is the most appropriate method of charging, that is readily understandable and not intangible. This enables the consumer to compare on an equivalent basis. Whilst asset based fees are not perfect, it is a measurable starting point and exists across many industries in financial services inclusive of funds management, private banking and investment related industries. That is not to say these fees cannot be negotiated (and must be as per Standard 7 above).
			
			The critical point is the client knows what they are paying and has the ability to compare this with other providers in a measurable way. We have clients who engage us for advice on an asset based fee, which we agree with them in the form of a written service agreement and they prefer this method. We have other clients paying a flat fee and that is fine also.

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			- With respect to the banning of third party payments (commissions), we refer you to our previous submission to you dated 21 August 2012. Our view has not changed from that position. Over many years we have taken the position to provide a properly resourced insurance service and more recently a mortgage broking service. Our observations remain: - It takes significant time and effort to build a viable business in these disciplines - There has been multiple changes to the commission structure with flat commissions, FASEA standards and anti - churning regulation removing conflicts of interest - There is a significant fixed cost component - in particular salary and marketing costs - With respect to insurance, at no additional cost to the client, we handle all aspects of claims - We believe clients prefer in most instances prefer to pay for insurance and mortgage broking services via a commission payment.
31	4(b)	BWM	If the Government introduces transitional arrangements these can be incorporated into the APES 230 standard, otherwise no.
32	5	AFA	The requirement for informed consent is part of the FASEA Code of Ethics and relevant to the Royal Commission recommendation on Annual Renewal. Currently all post 1 July 2013 (FoFA) clients are required to Opt-in to continue an ongoing adviser service fee arrangement every second year. What is proposed is that this would be extended to all ongoing fee arrangement clients and with the frequency reduced to an annual obligation. The proposed law, in its current form, is a requirement for three separate documents, being a client agreement, an Opt-in notice and a client consent form(s) which would need to be provided to the product provider(s). Implementation of client consent for all ongoing fee for service clients can be achieved with the current systems, however processes and policies would need to be updated to incorporate these major changes. It is noted that informed consent is going further than the law, however this is the expectation of the FASEA Code. The challenges to implement these changes are the significant workload involved in this exercise and the fact that it would need to be done at the same time as the financial advice sector confronts a whole bunch of other changes (FASEA Exam, education requirement, banning of grandfathered commissions and the FASEA Code of Ethics). Further training would be required to assist advisers who were expected to undertake this obligation. Section 962T of the exposure draft legislation for Annual Renewal includes provision for ASIC to establish the requirements for the product provider client consent forms. It would seem that having APES also define another template may be duplication. However, should the APES Board proceed with this step, then the production of a template, as a voluntary guide only, would be beneficial.
33	5	CA ANZ	As these issues are currently being legislated, CA ANZ believes no amendments to APES 230 should be considered until the legislation is finalized.
34	5	CPAA	CPA Australia supports a requirement for Members to obtain informed consent for fee for service arrangements, and notes that this is now a requirement included in the FASEA Statutory Code of Ethics, where personal advice is provided to retail clients on relevant products. A significant challenge for Members in complying with such an informed consent requirement, is assessing the level of sophistication of those seeking advice; and therefore, whether the consent being provided is truly "informed". However, CPA Australia notes that this is now an essential element of FASEA obligations. As noted earlier, difficulties arise for the APESB in including explicit requirements, that purport to be general requirements for all services captured by the standard, but are most relevant to one specific service.

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			CPA Australia supports the inclusion of a template in APES 230 which includes matters to be disclosed to clients to obtain informed consent for remuneration. Consideration should be given to incorporating such information in the Terms of Engagement.
35	5	PP	All Members are obligated under APES 305: Terms of Engagement to issue engagement letters and these engagement letters should include the 'Fees and billing arrangements' (paragraph 4.8) and 'Confirmation by the Client' (paragraph 4.10). We therefore don't understand why it would be necessary for an adviser to obtain or beneficial for a client to give Informed Consent for fee for service arrangements. Why should this obligation exist for Financial Planning Advice but not all other Member services charged on a fee for service basis? One of the challenges with a time-based fee for service model is determining in advance exactly what the fee will be. Would the advisor need to obtain Informed Consent each time a client requests assistance? How does an adviser obtain Informed Consent for annual reviews of portfolios when the time commitment is unknown in advance? What happens if there is a subsequent fee dispute - can the consent be withdrawn? We believe that from a practical commercial position, obtaining Informed Consent for fee for service arrangements would become very time consuming and challenging. It could become a disincentive to move down this path and may place Members at a competitive disadvantage. We do not recommend that Informed Consent should be required for fee for service arrangements.
36	5(a)	BWM	FASEA Code of Ethics requires clients informed consent for all fees and charges. APES 230 should align itself with FASEA standards as they do does require client's informed consent for fee for service. A member would be in breach of FASEA standards if they did not obtain client's informed consent for fee for service.
37	5(b)	BWM	The challenges would be the same as those imposed by the introduction of the FAEA standards, we cannot foresee any additional challenges.
38	5(c)	BWM	Yes, but only if aligned with FASEA standards.
39	6	AFA	The Government has committed to introduce a ban on unsolicited telephone based sales (hawking) as law and it seems somewhat pointless to also build this into the APES 230 obligations. The AFA is supportive of a ban on unsolicited telephone sales, and believes that the best approach to achieve this is through legislative change. This ban will not be extended to email or mail based campaigns, which we would consider to be appropriate. We support an obligation that marketing and promotional activity should be appropriate and ethical and accept that this may also be covered through professional conduct provisions in a Standard. There is one key element of this that needs to be carefully considered, which is the implications for a financial adviser proactively contacting their existing clients about the suitability of their current insurance arrangements. It is important to ensure that this does not serve to prevent an adviser proactively working with their existing clients.
40	6	BWM	We recommend specifically calling out 'superannuation' products as does the Government in recommendation 3.4.
41	6	CA ANZ	As these issues are currently being legislated, CA ANZ believes no amendments to APES 230 should be considered until the legislation is finalized.

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42	6	CPAA	CPA Australia recommends that, as the Financial Services Royal Commission has made numerous recommendations that directly impact APES 230, revision of APES 230 should be delayed until after the government has responded to all of the recommendations of the Commission. Furthermore, the APESB should aim not to merely duplicate legislative and regulatory requirements within APES 230. (see cover letter).
43	6	IPA	No comments are provided to this question.
44	6	PP	All recommendations tabled by the Financial Services Royal Commission are likely to be enacted. We therefore expect that these additional 'hawking' limitations will extend the existing absolute ban for sellers of securities and managed funds to superannuation and insurance products. These are likely to continue to be limited to retail clients as per the existing anti-hawking provisions. The hawking prohibitions apply only to unsolicited telephone calls and meetings. They do not apply to unsolicited communications such as emails, letters, and media advertisements. It may be possible to expand the hawking prohibitions to Financial Planning Services, however we are unsure whether this is necessary.
45	7	AFA	It is our view that a Terms of Engagement document is one way to document the achievement of informed consent, and this may become an integral part of the process for financial advice arrangements to be established and renewed. More broadly, the provision of financial advice, through a Statement of Advice or a Record of Advice, should already include an expectation that the financial adviser has obtained informed consent. Informed consent has been a key element of the Association of Financial Advisers Code of Conduct for a number of years.
46	7	BWM	In the world of standalone financial planning FASEA and the Financial Planning Association refer to Terms of Engagement as a Letter of Engagement. Consistency of terminology across all Professional Bodies would assist members.
47	7	CA ANZ	As these issues are currently being legislated, CA ANZ believes no amendments to APES 230 should be considered until the legislation is finalized.
48	7	CPAA	Refer to response to Question 5.
49	7	IPA	Overall, members were in agreement that informed consent should be extended to the terms of engagement; and they do not expect many challenges from implementing these changes. **Comments:** • The concept of informed consent is apparent in S961 of the Corporations Act. It is also very clearly stated in FASEA standards 4, 5, 6, and 7. The operative words in standard 7 are "the client must give free and informed consent". Also, standard 4 states, "you may act for a client only with the client's free, prior, and informed consent." • It is important to ensure the client is not overwhelmed by paperwork and that the paperwork which is required is effective. • All the requirements must be necessary and relevant.

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50	7	PP	As raised at point 5 above, all Members are obligated under APES 305: Terms of Engagement to issue engagement letters and these engagement letters should include 'Confirmation by the Client' (paragraph 4.10). Why should a greater obligation exist for Financial Planning Advice than it does for other services provided by Members? We are concerned that points 5 and 7 create a sense of distrust of Members by APESB and that APES 230 could be seen to actively discriminate against the providers of Financial Planning Advice.
51	8	AFA	We can see no reason for the removal of the non-monetary benefit exemptions and the $300 cap. The cap, along with the training and education exemption ensures that the amount of the benefit and the nature of the benefit is highly unlikely to influence future financial advice. Having access to these exemptions ensures that financial advisers can attend training and related events that are run by product providers. This is a useful source of continuing professional development activity, that only serves to ensure that the adviser is well educated and that their knowledge is kept up to date. It makes no sense to make changes that could effectively ban attendance at these events.
52	8	BWM	FASEA Standard 7 reads "Except where expressly permitted by the Corporations Act 2001 you may not receive any benefits, in connection with acting for a client, that derive from a third party other than your principal. Yes the cap can remain as it is consistent with the law and FASEA Standard 7..
53	8	CA ANZ	As members must obey the law and the requirements of their AFSL which are, in some cases, a cap of $100, CA ANZ sees no point in any amendments to this cap at this point in time.
54	8	CPAA	As noted earlier, CPA Australia recommends that the APESB should aim not to merely duplicate legislative and regulatory requirements within APES 230. In considering soft dollar benefits, the APESB should be cognisant of the best interests duty obligations enshrined in legislation. Moreover, the conceptual framework in APES 110 notes that Members are required to consider threats to the fundamental principle of objectivity with respect to soft dollar benefits.
55	8	IPA	This was a divisive issue with some members agreeing the cap should remain; others saying it should be removed; and also that it should be increased to say $400 due to increases in the cost of living.
56	8	PP	The cap of $300 is very small and has not increased since 2001. We believe this cap remains appropriate.
57	9	AFA	The definition of conflicted remuneration as set out in Section 963A only applies in the context of the provision of financial product advice to persons as retail clients. This effectively excludes wholesale clients. The ban on asset-based fees on borrowed funds in Section 964D is restricted to retail clients as set out in Section 964B. This effectively means that a financial adviser can charge asset-based fees on borrowed funds to a wholesale client. The AFA does not consider this to be appropriate. It is not evident to us that Paragraph 8.2 of APES 230 would prevent the charging of an asset-based fee on a borrowed amount. Therefore, we would support the APES Board taking action on this.

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58	9	BWM	No, generally we are concerned that existing legislation around wholesale investors is flawed. Under the Corporations Act anyone earning $250,000 for two years or with $2,500,000 in net assets can be classified as a wholesale investor. Under FASEA Standard 2 Best Interest Standard 5 Client Understands the advice Standard 6 the requirement to consider the clients long term and broader interests Standard 9 for the advice to be offered in good faith advisers have an ethical obligation to make a professional judgement about how to classify a client.
59	9	CA ANZ	As the seven FASEA legislative instruments only apply to retail advisers, the issue of treatment for wholesale clients has been brought to the fore, and industry discussions are currently taking place to address unintended consequences of this. As such, CA ANZ recommends that this issue be deferred until more industry and regulatory intel is to hand, after which a full review of APES 230 should take place.
60	9	CPAA	CPA Australia refers to comments made in the cover letter and in response to Question 4. Additionally, with respect to wholesale clients, it is not clear that the APESB needs to provide explicit requirements in APES 230 that go beyond the requirements and associated guidance provided in APES 110.
61	9	IPA	With the advent of the Royal Commission, the introduction of FASEA and AFCA in 2017 along with surveillance and enforcement by a rejuvenated ASIC, there are now significant protections for consumers. Some of these protections already existed but were not effectively enforced by ASIC.
62	9	PP	While we agree with the intent of APES 230 in respect of life insurance, other risk contracts and the procurement of loans, we believe that paragraph 9.3 of APES 230 is too restrictive and limits the Member's ability to establish a sensible commercial arrangement with clients. Where a Member elects to charge a professional fee on a Fee for Service basis, the Member should be able to offset upfront and trail commissions (which continue to be paid by the loan providers) against the agreed fee. It is not commercially sensible to, for example, rebate $8,000 to the client and then immediately issue an invoice of $5,000. The Member should be able to issue an invoice (stamped as paid) for the $5,000 and should then rebate the additional $3,000 to the client. The words "shall fully rebate" does not contemplate this sensible commercial arrangement. Clients do not understand the logic of receiving a full rebate which is accompanied by an invoice that requires that all or part of the rebated funds are paid back to the Member. We request that 9.3 is amended to accommodate a fee offset against Third Party Payments.
63	10	AFA	The financial advice profession is subject to significant reform across a number of initiatives at the same time. These changes include the FASEA exam requirement, the education requirement, a ban on grandfathered commissions, fundamental changes to income protection insurance, Annual Renewal and disclosure of lack of independence amongst many others. This is on the back of other recent reforms, such as FoFA, MySuper and the Life Insurance Framework. All of these changes are in different stages of implementation and the full impact has not been assessed. Many in financial advice are

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			particularly concerned that the cumulative impact of these changes is significantly impacting the cost of providing financial advice, and as a result placing a genuine threat on the accessibility and affordability of financial advice for everyday Australians.
64	10	BWM	We believe there should be one Code and set of standards covering financial services. This will enhance compliance and agility of management of standards as new legislation is introduced. Currently financial service businesses have the following to abide by Corporations Act 2001 SIS Act Tax Agents Act AML and CTF Act Privacy FASEA Code of Ethics APES standards FPA Code of Ethics Tax Agents Board Code of Ethics Tony Bongiorno, many members of our team and I have already undertaken our required additional FASEA training requirements. We take our responsibilities seriously and ask for your consideration to align APES 230 with legislation and FASEA to ensure our business remains viable and we can service our clients and offer affordable advice. We believe the concerns the APESB originally had at the time of reviewing APES 230 in April 2013 have now been adequately addressed by the Government, the Royal Commission and FASEA.
65	10	CA ANZ	CA ANZ recommends APESB waits to see the final legislation resulting from the Royal Commission and then evaluate the impact it has on members. Further, APESB should evaluate the impact the FASEA reforms have on members. Once APESB has that information to hand, a full review of the APES 230 standard should be undertaken with an ideal outcome being that legislative requirements are removed, and that the standard focusses on professional obligation s of members to whom APES 230 applies.
66	10	CPAA	No further reforms, issues, or ideas are recommended.
67	10	IPA	Comments: • I am of the professional opinion that given the current regulatory climate it is unnecessary for IPA to adopt APES 230. • I think Pronouncement 11 is very good and caters for public practice accountants.

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			• This standard is adequate and should be taken on board. • At least the CPD requirements are catered for, preferably with a membership category that caters only for accounting professionals. • It would also be useful if the FPA could release their online mentoring program that aligns with FASEA's strict guidelines but does not require accountants to be mentored in person. • Maybe the mentoring and sign off can occur with the financial planning platform they are affiliated with, but without it being in person. Plus it would also allow accountants to do the FASEA exam if they wish to. To dive in more deeply if that is their desire, so to speak. • All costs should be disclosed, including all direct and indirect costs. • There are too many authorities and standards boards at the moment. • All members of IPA, CA, CPA who are tax agents running public practices should be able to provide financial advice, with reduced fees for clients. There should be different classes of licences. • Other members would also like to see a new form of licensing or some kind of accreditation to enable them to provide SMSF advice, without the imposition of a heavy regulatory burden. Currently, the cost is excessive and not necessarily in the client's best interests. One example is a member who said that at a cost of over $2,000 per month plus costs for CPD and other overheads, the member handed back the license. An effort should be made to keep a low cost entry point for fee for service planners to be able to operate in the public interest. Otherwise, the large institutions will dominate the market and we could see Royal Commission 2 in 2040.
68	10	PP	No.

Respondents

1	AFA	Association of Financial Advisers Ltd
2	BWM	Bongiorno Wealth Management Financial Planning
3	CA ANZ	Chartered Accountants Australia and New Zealand
4	CPAA	CPA Australia
5	IPA	Institute of Public Accountants
6	PP	Pitcher Partners Investment Services Pty. Ltd.
7	RB and SH	Robert M C Brown AM BEc FCA and Suzanne Haddan FCPA (FPS) CFP
8	WB	William Buck Wealth Advisors (SA) Pty Ltd