

## AGENDA PAPER

**Item Number:** 8  
**Date of Meeting:** 4 March 2021  
**Subject:** Status of APES 230 *Financial Planning Services*

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Action required     For discussion     For noting     For information

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### Purpose

To:

- obtain the Board's view and direction on the status of APES 230 *Financial Planning Services* (APES 230);
- provide an update to the Board on the APES 230 project; and
- obtain the Board's approval for the proposed way forward for the APES 230 project.

### Background

APESB issued APES 230 in April 2013, with an effective date of 1 July 2014 (with sections relating to remuneration effective on 1 July 2015).

Since APES 230 was issued, there have been significant changes in the political, legislative, and regulatory environment for financial planning services. A summary of actions taken by APESB to consider these changes were provided at the June 2020 Board meeting in Technical Staff's [update on the consultation regarding APES 230](#).

A further update was provided to the Board at the November 2020 Board meeting ([Agenda Item 4](#)). At the [November 2020 Board meeting](#), the Board discussed the purpose of APES 230 in setting the professional and ethical standards for accountants, existing regulations and guidance and the six ethical principles outlined in the Financial Services Royal Commission's final report. The Board agreed further work was required in relation to APES 230 and directed Technical Staff to engage with ASIC and FASEA and provide an update on this regulatory engagement at the March 2021 Board meeting.

In December 2020, APESB received a request from CPA Australia to suspend APES 230 in light of the ongoing regulatory changes and due to the standard not being universally adopted that create opportunities for regulatory arbitrage by professional accountants.

The Institute of Public Accountants (the IPA) issued *Pronouncement 11: Financial Planning Services* in 2013. APESB stated in a [2013 media release](#) its disappointment that the IPA issued an alternative standard to APES 230 and APESB's expectation that each of the professional accounting bodies support all APESB standards to maintain a strong and effective co-regulatory framework.

## **Matters for Consideration**

### **1. Government's Announcement on FASEA**

On [9 December 2020](#), the Federal Government announced that:

- ASIC's Financial Services Credit Panel (FSCP) functions would be expanded to include the capacity to act as the single, central disciplinary body for financial advisers (consistent with recommendation 2.10 of the Financial Services Royal Commission) and avoid the requirement of establishing a new body to undertake this role;
- FASEA's standards development functions would be transferred to Treasury and standards will be made by legislative instruments;
- FASEA's administration of adviser examinations will also be shifted to ASIC;
- FASEA will be wound up; and
- The legislation would be introduced to implement the above reforms in the first half of 2021 and Treasury and ASIC will work closely with FASEA for an orderly transition.

As per [FASEA's media release on 10 December 2020](#), FASEA continues to administer its functions under the *Corporations Act 2001*. Technical Staff understand that at this stage, the FASEA Code of Ethics continues in effect and the monitoring of that Code will be the responsibility of ASIC in due course. Further, Technical Staff's understanding is that the FASEA Code and its Standard setting functions are transitioning to Treasury, and there is no suggestion that these standards will be suspended or withdrawn.

### **2. CPA Australia's Request to Suspend APES 230**

CPA Australia wrote to the APESB in December 2020 requesting APESB reconsider progressing the current review and status of APES 230 in light of ongoing regulatory changes and the Federal Government's announcement regarding FASEA. CPA Australia believes that APES 230 should be suspended until there is greater regulatory certainty, after which APES 230 should be reviewed (refer attachment 8(a)).

In considering this request from CPA Australia, Technical Staff note the following important considerations:

#### **(a) Pace of legislative change**

The Federal Government's implementation of recommendations from the Financial Services Royal Commission is summarised in Agenda Item 8(b). The ongoing changes to legislation and regulation of the financial planning industry are likely to be protracted, especially with the COVID-19 pandemic delaying many legislative reforms. As such, whether any eventual changes impact APES 230 will only be able to be determined, evaluated and managed once the regulatory process has concluded.

(b) Capacity of APESB to suspend standards

The [primary objects of the APESB under its constitution](#) include the objects to:

- develop and issue in the public interest professional and ethical standards that will apply to the membership of the Professional Bodies; and
- provide a formal and rigorous forum for the consideration, promulgation and approval of APESB standards in an open, timely, independent and proactive manner.

The secondary objects of the APESB include regularly reviewing APESB Standards and monitoring the needs of the accounting profession, the public, and monitoring the effectiveness of the APESB Standards. The Board must regularly review APESB Standards and the Professional Bodies can request the Board to perform a review.<sup>1</sup>

APESB can issue, revise, compile, and reissue APESB pronouncements as set out in APESB's *Due process and working procedures for the development and review of APESB pronouncements* (APESB's Due Process). [Paragraph 5.6](#) of APESB's Due Process contemplates withdrawal of standards:

*The APESB may decide on the withdrawal of an APESB pronouncement, whether that withdrawal is due to the issue of a new or a revised APESB pronouncement that incorporates or replaces the subject matter of the existing APESB pronouncement, or for any other reason.*

Technical Staff are of the view that withdrawal 'for any other reason' would include where an APESB standard is no longer relevant.

Under its constitution, the APESB does not have the ability to suspend standards. Whilst APESB could withdraw APES 230, Technical Staff are concerned that this would not be in the public or consumers' interests, as highlighted in the following section on the relevance of APES 230.

(c) Technical Staff views on the relevance of APES 230

Technical Staff are of the view that APES 230 fundamentally remains fit for purpose and provides the overarching ethical overlay for financial planning services offered by members and should not necessarily be limited by legislation.

This is consistent with APESB's mandate as an *independent* national body that issues professional and ethical standards in the public interest that are relevant to services offered by members of the professional bodies. Meeting the public interest generally result in standards that contain additional professional requirements in addition to applicable legislation. Setting standards above legislative requirements is considered appropriate for a profession that promulgates recognition of its public interest responsibility as a core purpose.<sup>2</sup>

Financial Planning is a recognised public accounting service of the professional accounting bodies. Generally, significant areas of professional practice are covered by a professional standard.

The Professional Standards Scheme is a legal instrument available to Professional Bodies that may reduce civil claims under public indemnity insurance. Further, the professional accounting bodies' current Professional Standards Scheme approvals

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<sup>1</sup> [Clause 2.2\(a\) of the APESB Constitution](#).

<sup>2</sup> Paragraph 1 of *APES 110 – Code of Ethics for Professional Accountants (including Independence Standards)*

include that members of the professional bodies must comply with their organisation's Constitution, By-Laws, and all applicable APESB standards<sup>3</sup>.

APES 230 has broader coverage than the FASEA Code as it includes both wholesale and retail clients and captures activities not within an AFSL. The standard includes additional disclosures and requirements around remuneration and insurance, which reduces the risk for both accountants and the public who obtain financial planning advice.

It is generally recognised that there is an imbalance of financial knowledge between a consumer and a member who provides financial planning advice. Incorporating the best interest duties and the additional remuneration requirements in APES 230 helps address this imbalance.

Compliance with these additional obligations is also a mechanism by which a member demonstrates their professionalism and the value of their services provided to the client.

Agenda Item 8(c) provides a high-level comparison of key elements of the FASEA Code and APES 230. APES 230 captures a broader range of clients, including wholesale clients and has a broader scope than the FASEA Code.

Technical Staff note there has been some confusion in the financial services industry about the interaction and application of the FASEA Code of Ethics Standards 3 and 7. Standard 3 states that financial advisors "*must not advise, refer or act in any other manner where you have a conflict of interest or duty.*" Standard 7 includes that "*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*". Technical Staff are of the view that third-party fees/commissions are inherently conflicted; however, certain commissions are currently allowed under the *Corporations Act 2001*.

While the FASEA Code requires informed consent in relation to all forms of remuneration received (Standard 7), informed consent is not a defined term within the FASEA Code. The Explanatory Statement to the FASEA Code states that to meet Standard 7, "*the client must be given a clear and simple explanation of the fees and charges, and the benefits you or your principal will receive, that are attributable to you or your principal acting for the client.*"

Technical Staff believe the definition of informed consent and steps/requirements set out in APES 230 when charging asset-based fees<sup>4</sup> or receiving commissions<sup>5</sup> provide appropriate safeguards to ensure clients are informed (even when there is a conflict) about the arrangement initially and on an ongoing basis. These requirements complement the FASEA Code and provide greater clarity to members and clients.

Regulators and consumers have expressed concerns and shown a level of mistrust towards financial advisers based on remuneration driven conflicts. For example, recent ASIC research indicates almost half of those surveyed believed financial advisers were more interested in fees than assisting clients and over a third believed financial advisers did not have the clients' best interests at heart.<sup>6</sup> Up to 31 December 2020, over \$1 billion has been paid or offered by Australia's largest banks due to fees for no service or non-compliant advice.<sup>7</sup> Further, earlier ASIC surveillance on post-FOFA advice found many advisers "*may prioritise their own interests in earning commission income ahead of the interests of the client in getting good quality advice*".<sup>8</sup>

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<sup>3</sup> Refer [Professional Standards Scheme Obligations](#) – CPA Australia Website

<sup>4</sup> Refer [paragraph 8.2 of APES 230](#)

<sup>5</sup> Refer [paragraph 9.2 of APES 230](#)

<sup>6</sup> Page 8 of [ASIC Report 627 Financial advice: What consumers really think](#).

<sup>7</sup> [ASIC Update on 12 February 2021](#)

<sup>8</sup> Paragraph 154 of [ASIC Report 413 Review of retail life insurance advice](#).

APES 230's disclosures when not using a fee for service are designed to make clients aware of all the fees to be charged, to make an informed decision and to address potential mistrust, including:

- For asset-based fees and commissions, informed consent in writing before commencement;
- For asset-based fees:
  - annual disclosure of amounts collected and an explanation of any significant variance from previously advised fees; and
  - annual consent thereafter about continuing to charge on this basis
- For commissions:
  - providing three comparative quotes regarding life insurance and other risk products;
  - disclosing annually estimated third party payments and amounts received; and
  - where applicable disclosing impact of any proposed changes to life insurance or other risk products, including any resultant impact on fees/commissions.

Technical Staff believe APES 230 remains relevant and is in the public interest (and consumer's interest) and continue to support it as an issued standard.

Further, APES 230 was issued in 2013 and, over time, is well known by members of the professional bodies. APES 230 has been relatively stable since its introduction, enabling members to become familiar with and implement the standard's requirements.

If APES 230 was withdrawn, it would result in:

- financial planning services provided to wholesale clients (not covered by the FASEA Code), and those receiving advice in relation to personal financial affairs that does not fall under an AFSL or ACL, not being covered by a professional standard;
- for retail clients, the enhanced APES 230 remuneration requirements not complimenting the requirements in the FASEA Code with respect to managing conflicts;
- increased risk for consumers without the additional disclosures and requirements in APES 230 around remuneration and insurance, further expanding the imbalance of financial knowledge between consumers and financial advisers;
- potential impacts on professional indemnity insurance and the Professional Standards Scheme; and
- decreased ability for members to demonstrate their professionalism and value of services.

Technical Staff propose to continue to:

- monitor the legislative and regulatory environment in the financial planning industry flowing from the implementation of the Financial Services Royal Commission's recommendations and the transition of FASEA roles and requirements to ASIC and Treasury; and
- undertake a further detailed analysis between APES 230 and the FASEA Code and determine any overlap for retail clients and options for reducing and duplication.

Technical Staff seek the Board's views on the request by CPA Australia to suspend APES 230.

### **3. Stakeholder engagement**

As requested by the Board at the November 2020 Board meeting, Technical Staff met with Stephen Glenfield, CEO of FASEA, on 4 December 2020 to hold preliminary discussions about broad objectives of engagement between FASEA and APESB and respective scopes of the two organisations. Technical Staff will continue discussions with Mr Glenfield in 2021.

Agenda Item 8(b) includes a summary of stakeholder engagement undertaken by Technical Staff with FASEA, ASIC and AFCA since the November 2020 Board meeting.

#### **Way Forward**

Technical Staff propose, subject to the Board's approval, the following actions in respect of the APES 230 project:

- Technical Staff to continue to monitor the financial planning industry's legislative and regulatory environment;
- Technical Staff continue the dialogue with the FASEA CEO and undertake a detailed review of APES 230 and the FASEA Code requirements for retail clients and explore options to avoid overlap for retail clients and for this review to be added to the APESB Issues Register; and
- provide updates to the Board at the June 2021 Board meeting, including any relevant information obtained from liaison with ASIC and/or AFCA.

#### **Recommendations**

That the Board:

- provide the Board's view and direction on the status of APES 230;
- note the update on the APES 230 project; and
- approve the proposed way forward to progress the APES 230 project, including adding the Technical Staff review of APES 230 and the FASEA Code to address issues of overlap concerning retail clients to the APESB Issues Register.

#### **Materials Presented**

Agenda Item 8(a)	CPA Australia Letter
Agenda Item 8(b)	Royal Commission Implementation and Stakeholder Engagement
Agenda Item 8(c)	High-Level Comparison of Key Elements of FASEA Code and APES 230

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