INSTITUTE OF PUBLIC ACCOUNTANTS®

Consultation Paper: Review of APES 230 *Financial Planning Services*

March 2020

07 March 2020

Chief Executive Officer
Accounting Professional & Ethical Standards Board Limited
Level 11, 99 William Street
Melbourne VIC 3000 Australia

E-mail: sub@apesb.org.au

Dear Channa

Consultation Paper: Review of APES 230 *Financial Planning Services*

The Institute of Public Accountants (IPA) welcomes the opportunity to offer our views on Consultation Paper: APES 230 *Financial Planning Services*. The IPA has undertaken extensive member consultation in drafting this submission, including issuing a survey and holding one-on-one discussions. We have approximately 1,000 members who practice in the financial advice space, whether as full or limited AFSL holders and as authorized representatives.

In undertaking this consultation, it is apparent that our members hold divergent views on the proposals put forward in the Consultation Paper.

The IPA's response to the Consultation Paper is contained in the attached Annexure.

The IPA promulgated Pronouncement 11 in place of APES 230, which effectively follows the requirements of the *Corporations Act 2001* (Corporations Act).

The IPA is one of the three professional accounting bodies in Australia, representing over 38,000 accountants, business advisers, academics and students throughout Australia and internationally. Three-quarters of the IPA's members work in or are advisers to the small business and SME sectors, including many that operate small practices.

If you have any queries or would like further information about our submission, please don't hesitate to contact Vicki Stylianou, Group Executive, Advocacy & Technical, either at vicki.stylianou@publicaccountants.org.au or mob. 0419 942 733.

Yours sincerely

Vicki Stylianou

Group Executive, Advocacy & Technical

Institute of Public Accountants

Annexure

In our submission to APESB in June 2017 on the last post-implementation review of APES 230, the IPA concluded that given all of the events occurring since APES 230 was issued in 2013, that it was no longer required, and was in fact, superfluous. Since that submission the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Royal Commission) was undertaken and concluded with 76 recommendations, of which the Government has accepted all 76.

There has been bipartisan support for the acceptance and implementation of the 76 recommendations. We have been advised that the Government intends to introduce legislation into Parliament by June this year and we anticipate that the Federal Budget 2020 will contain measures to implement the recommendations. Therefore, the IPA contends that it is (still) premature for APESB to review and amend APES 230. We are not aware of any urgency or compelling reasons as to why APESB wishes to review APES 230 ahead of the implementation of the Royal Commission.

The fact that since 2013 there has been transformational and ongoing change in the financial advice space indicates that any proposed changes by APESB may be not only premature but also, respectfully, unnecessary.

In addition, the Financial Adviser Standards and Ethics Authority (FASEA) has progressed its remit, with the Code of Ethics commencing on 01 January 2020. As stated on the FASEA website, the Code of Ethics [is] a principles-based standard designed to professionalise the sector by committing advisers to a high standard of providing an ethical and professional service.

In any event, we have consulted with IPA members on the questions posed in the Consultation Paper and have asked them for any additional feedback or comments more broadly.

We refer to the questions in the Consultation Paper:

In view of substantial changes in the financial services industry since APES 230 became effective in July 2014: a) Do you consider that APES 230 remains fit for purpose? b) What amendments or enhancements, if any, should be made to APES 230? c) Are there any tools or templates that could be included in APES 230 to assist with complying with the standard?

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.

Do you believe that the definition of Financial Planning Advice in APES 230 captures all the relevant advice, products and services provided by members, including advice not provided under an AFSL or ACL such as real estate advice and non-product advice related strategies? If not, please provide an explanation and any recommendations or amendments to this definition to capture relevant Financial Planning Advice provided to a Client?

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.

APES 230 requires Members to act in the 'Best Interests of the Client' (as per the Corporations Act 2001): a) Have there been any implementation issues in respect of this requirement? b) Do you consider the 'safe harbour' provisions in the Corporations Act 2001 ensure clients' best interests are met?

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 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.

APES 230 currently allows remuneration as fee for service, asset based fees and third party payments (subject to laws and regulations). If APES 230 is limited to only allow fee for service: a) What are the challenges, if any, that Members consider would result from implementing these changes? b) Are there any transitional arrangements required?

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:

- 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.

APES 230 requires Members to obtain their clients' 'Informed Consent' in respect of asset-based fees and third party payments, but not for fee for service. If Informed Consent is required for fee for service arrangements in APES 230: a) Are there any new systems, processes and/or policies that Members would need to implement? b) What are the challenges, if any, that Members consider would result from implementing these changes? c) Would the inclusion of a template in APES 230 which includes matters to be disclosed to clients to obtain Informed Consent for remuneration be useful for Members?

If APES 230 extended the concept of Informed Consent to the Terms of Engagement and the provision of the Financial Planning Advice, what are the challenges, if any, that Members consider would result from implementing these changes?

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.

The Financial Services Royal Commission recommended that 'hawking' (unsolicited offer or sale) of superannuation and insurance products should be banned (recommendations 3.4 and 4.1): a) Does the requirement that Members' marketing or promotional activities must not bring the profession into disrepute adequately prevent unsolicited offers or sales in practice? b) If not, are there other mechanisms that could be put in place to prevent the unsolicited offer or sale of financial products?

No comments are provided to this question.

APES 230 currently allows soft dollar (non-monetary) benefits up to a cap of $300, which is consistent with Corporations Act 2001 requirements. Should this cap remain?

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.

Do you consider that there are sufficient protections in APES 230, in relation to debt and gearing around asset-based fees for wholesale clients?

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.

Are there any further reforms, issues or ideas that you believe the APESB should consider in APES 230 in order to protect consumers who receive financial advice from a Member?

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.
- 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.