

**WORKING DRAFT**  
**Constituents' Submissions – Specific Comments 7**  
**Exposure Draft 02/10: APES 230 Financial Advisory Services**

**Note: General comments relating to APES 230 Financial Advisory Services are addressed in a separate table. This table excludes minor editorial changes.**

Item No.	Paragraph No. in Exposure Draft	Respondent	Respondents' Comments
1	5.2	CONFP	Does the fact that the ASIC precludes ARs from using the term Independent in the marketing and promotion of their services, exempt members of the ascribing professional bodies from obligation under this section?
2	5.3	HPW	Para 5.3: it is strongly suggested that the words in the fourth line “and the resulting ..... professional independence” be deleted without replacement. It is sufficient to state the restriction and thus give the client the responsibility to interpret the restriction to their own affairs. To expect a member to comment on an effect on their own objectivity and independence as a result of a restricted service is bizarre.
3	5	AFAC	<i>[Technical Staff Note - the following dot point is repeated in Specific Comments – Table 6]</i> The broad intent and objective of APES 230 – i.e. quality, objective and professional financial advice – is to be applauded. Unfortunately, the objective of quality, objective and professional financial advice is poorly translated into the drafting of APES 230, including the following: Inclusion of components in this standard which do not properly reside within APES 230 (e.g. fiduciary obligations, professional independence) – these principles or standards are either covered elsewhere in the accounting professional standards (e.g. in APS 12) or are currently subject to Government determination (e.g. the precise positive fiduciary duty obligation to be incorporated into the Corporations Act)
4	5	SPAA	Professional Independence 11. The Exposure Draft requires Members to comply with the independence requirements contained in laws or regulations, such as the Corporations Act 2001. For consistency purposes, SPAA considers that the Professional Independence standard referred to in the Exposure Draft should specifically state that third party payments of embedded product fees (such as up-front commissions, trail commissions and volume based fees) paid to Members for the provision of a financial advice are prohibited. Recommendation No.3 – The Professional Independence standard should make specific reference to the prohibition of third party payments of embedded product fees to Members.
5	5	MSC	<b>Confidential submission</b>

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6	6	SPAA	<p>Terms of the Financial Advisory Service</p> <p>12. The requirement for the Client to expressly agree to the services and fees being charged by Members is not entirely clear in the Exposure Draft. SPAA recommends that the Exposure Draft should make it clear that a Member's charging model must be expressly agreed to by the Client prior to the service being provided. This agreement should establish a clear and written understanding with the Client regarding the terms and conditions under which the fees will be calculated and paid to the Member. This agreement should also require written consent from the Client for the Member to calculate and receive the fees as disclosed in the agreement.</p> <p>13. The Exposure Draft should also require Members to disclose how their fees will be collected.</p> <p>SPAA would expect that any collection method would be permissible provided all of the standards are complied with. Typically, collection measures would include one or a combination of the following:</p> <ul style="list-style-type: none"> <li>· Direct debit from one or more of the Client's financial products</li> <li>· Direct debit from the Client's nominated bank account</li> <li>· Invoicing and the receipt of fees via client cheque or EFT.</li> </ul> <p>Recommendation No.4 – The Exposure Draft should make specific reference to the need for the Client to expressly agree to the fees being charged by Members prior to any fees being charged.</p> <p>Recommendation No.5 – The Exposure Draft should require Members to disclose how their fees will be collected.</p>
7	6.2(d)  6.2(e)	CONFP	<p>I don't understand the relevance to the Client of disclosing the methodology used in calculating fees: the omission of the phrase 'and the methodology used for' would leave a workable solution.</p> <p>I don't understand the use of this provision unless the client has a right to waiver (refer comments on Acceptable Level definition). Provision 6.2 (f) provides for action to offset/ negate by the Member.</p>
8	6.2  6.3	HPW	<p>Para 6.2, (c), (e) and (g); sub paras (e) and (g) are well covered by (c). Are (e) and (g) necessary or perhaps (c) should be expanded instead?</p> <p>Para 6.3: this provision should be altered to instead only provide for a renewed disclosure where there is a change in the details of and/or the methodology used for determining the fee for service. As it is, this requirement creates work that adds no real value to the client.</p>
9	6.3	MSC	<b>Confidential submission</b>
10	6	ISN	<p><b>Terms of the Financial Advisory Service</b></p> <p>The proposed requirements of paragraph 6 set higher and more effective obligations on accountants than current or proposed legal requirements, in terms of providing a "terms of engagement" letter to clients on an annual basis.</p> <p>While the FoFA package includes a proposal to require financial advisers to gain annual client renewal of fee arrangements, paragraph 6.2 would put in place more effective and detailed disclosure of the specific engagement with the client. Unfortunately there remains a high level of client disengagement and inertia in relation to their financial affairs. Regular renewal of the terms of engagement with a client</p>

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			should over time lead to clients exercising greater control and interest in their relationship with their accountant adviser.
11	6&7	KPMG	<p>Information to be provided to clients</p> <p>The information required to be provided to a client under clause 6 and 7 are generally already required under the Corporations Act. Further, there may be other obligations under the Tax Agents Act or SIS legislation.</p> <p>Also, the need to disclose the nature and effectiveness or safeguards and a statement that the Financial Advisory Service was conducted in accordance with the Proposed Standard exceeds current regulatory requirements, in particular under the Corporations Act.</p> <p><b>Recommendation</b></p> <p>Clause 6 and 7 should not add to the extensive obligations that already exist under various regulatory requirements to promote meaningful disclosure. Also to avoid inconsistency and difficulties in implementation, we submit that requirements in relation to disclosure should be referenced to relevant legislation such as the corporations Act or Tax Agents Act etc.</p>
12	7	ISN	<p><b>The Basis of Preparing and Reporting Financial Advice</b></p> <p>ISN is supportive of the proposed requirements set out in paragraph 7. We believe that there are some particular aspects of the proposed obligations which are important in terms of ensuring a high minimum standard of advice.</p> <p>Currently, too much financial advice is provided where the possible strategies and product range available to the adviser are limited by the commercial arrangements put in place by the dealer group or licensee. ISN commends paragraph 7.1(b) in requiring accountants to reveal their evaluation of alternative strategies which could reasonably be expected to meet the client's financial needs. This should give rise to better competitive analysis of the strategies and products which will service the client's financial interests.</p>
13	7  7.1(a)  7.1.1  7.5.1  7.8(i)	CONFP	<p>Heading: include the word 'quality' before the words 'Financial Advice'. This will give fruition to the desire expressed in provision 1.2 for 'the provision of quality and ethical' services.</p> <p>Consider adding the words 'and/ or verified by the Client where otherwise sourced' after the words 'provided by'; as this covers for members sourcing information from related records or advisers and allows for the reconciliation of what might otherwise appear conflicting statements 'of facts'.</p> <p>(your numbering optional): add a provision, not in block type, along the following lines:- "where a client seeking advice where scope has been limited, the Member will be seen to have complied with this provision if they record that options were precluded by the client (where raised by the Member or not)."</p> <p>(your numbering optional): add a provision, not in block type, along the following lines:- "Where a Member discloses the matters in 7.4 and 7.5 in the text of a valid Statement of Advice, they will be seen to have complied with these provisions."</p> <p>I don't understand the need for this provision, particularly in a situation where not all advisers in an office will necessarily be members of an ascribing professional body. The requirement would add an administrative burden to the compliance regime in such an office. What does the requirement do for the protection of the Client?</p>

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14	7.2  7.4  7.8 (h)	DMR	<p>Paragraph (b) requires that in providing financial advice we are required to “take into consideration the Client’s financial needs, objectives and priorities”.</p> <p>An independent expert in preparing his advice cannot take into account the financial needs, objectives and priorities of individual shareholders, the reason is obvious as one letter of advice is prepared for the benefit of many shareholders.</p> <p>For the reason outlined above, an independent expert cannot comply with this paragraph.</p> <p>As above.</p> <p>We believe that APES 230 should not apply to assignments such as independent expert’s reports as these are adequately cover by existing standards. If you agree with this view the Exposure Draft should be amended to exclude this type of financial advice. Alternately, the Exposure Draft should be amended so that paragraphs 7.2(b), 7.4 and 7.8(h) do not apply to assignments where general advice is provided to a group of “clients” rather than to individual clients.</p>
15	7.8	MFS	Paragraph 7.8 should include a similar deeming provision to paragraphs 6.4 and 10.4, where a compliant Statement of Advice is provided by an AFS Licensee.
16	7.1	MS	<p>1) Limited advice issues</p> <p>It is likely under the current Government reforms and proposals that limited advice services will increase as the Government seeks to allow for the provision of advice for clients who may not be able to afford a full suite of services (or may not require them). Of concern in the proposed standard is paragraph 7.1 which seeks to propose that advisors research alternative strategies and courses of action that can reasonably be expected to meet the client’s financial needs. We believe that further clarification of this requirement is needed.</p>
17	7.1	AFAC	<p><b>3. DETAILED COMMENTS</b></p> <p><b>3.3. Limited advice</b></p> <p>It is likely under the current Government reforms and proposals that the provision of limited advice will increase as the Government seeks to allow for the provision of advice for clients who may not be able to afford a holistic service. Of concern in the proposed standard is paragraph 7.1 which seeks to propose the research of alternative strategies and courses of action that can reasonably be expected to meet the client’s financial needs. This will certainly be required for some advice work, but not all.</p> <p>We would recommend that clarification be provided so that scoped or limited advice is allowed for without the requirements that may exist for comprehensive or holistic advice.</p> <p>We recommend clarity be provided within APES 230 to cater for limited advice</p>
18	7.1	MSC	<b>Confidential Submission</b>
19	7.1	PWC	Paragraph 7.1 of the ED appears to impose a requirement for work to be done that may be in excess of what a client requests. We again assume it is not the APESB’s intention to impose on clients the requirement to pay for advice the client does not want, and may not need

***Staff Instructions***

- Comments of a “general” nature should be dealt with first, followed by paragraph specific comments.
- Respondents' comments must be copied verbatim into this table.
- Comments should be dealt with in paragraph order, not respondent order.
- Use acronyms only for respondents. Update the attached table with details of additional respondents.

**RESPONDENTS**

1	CFP	Crossing Financial Partners
2	DMJ	Daniel Mendoza-Jones
3	DFG	Davidson Financial Group
4	LBA	Lockhart Business Advisors
5	FFA	Fitzpatricks Financial Advisers
6	ORT	Ortmanns Pty Ltd
7	CRA	Cooper Reeves Accountants
8	SG	Surbal Group
9	SD	Shane Dumbrell
10	RMFA	Roberts & Morrow Financial Services P/L
11	FFP	Forsythes Financial Planning Pty Ltd
12	FAA	Forum Accounting & Advisory
13	FMFS	FM Financial Solutions
14	RIA- MR	Roskow Independent Advisory - MR
15	RIA - NS	Roskow Independent Advisory - NS
16	BIA	Brocktons Independent Advisory
17	IFAAA	IFAAA
18	NEX	Nexia Court Financial Solutions Pty Ltd
19	CONFP	Continuum Financial Planners
20	HPW	Hewison Private Wealth
21	DMR	DMR Corporate Pty Ltd
22	AP	Advantage Partners
23	PMHFP	Port Macquarie Hastings Financial Planning Pty Ltd
24	CFS	Colonial First State
25	MFS	Managed. Financial Strategy
26	JR	Johnston Rorke
27	MS	Moore Stephens
28	KEN	Kennas
29	QPPC	Qld Public Practice Committee
30	GBWW	GBW Wealthcare
31	RT	Roland Tan

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32	SCT	Strategic Consulting & Training Pty Ltd
33	PPA	Pitcher Partners Advisory Pty Ltd
34	CFPL	Curran Financial Pty Ltd
35	MHGL	McPhail HLG Financial Planning
36	FERB	Ferguson Betts
37	WB	William Buck
38	DFP	Direction Financial Planning
39	PU	Peter Uhlmann
40	BAG	Bosco Accounting Company Aust Ltd
41	GB	Greg Blaskett
42	PWC	PwC Australia
43	LFM	Landmark Financial Management Pty Ltd
44	KHFG	KH Financial Group
45	FPAA	Financial Planning Association of Australia Limited
46	DELOITTE	Deloitte Touche Tohmatsu
47	BG	Bongiorno Group
48	WHK	WHK Group Limited
49	KCA	Kothes Chartered Accountants
50	AMP	AMP Financial Services
51	AFAC	Accountant Financial Adviser Coalition
52	SPAA	SMSF Professionals' Association of Australia
53	Count	Count Financial Limited
54	MSC	Confidential Submission
55	CNIC	Cutcher & Neale Investment Services
56	FTS	Financial & Technical Solution Limited
57	GT	Grant Thornton Australia Limited
58	SHRB	Suzanne Hadden & Robert M. C. Brown
59	NCA	Noble Chartered Accountants
60	ISN	Industry Super Network
61	PB	The Joint Accounting Bodies
62	APPC	Australia Public Policy Committee
63	KPMG	KPMG
64	EY	Ernst & Young

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65	FSC	Confidential Submission
66	ASIC	Confidential Submission