

## AGENDA PAPER

**Item Number:** 13  
**Date of Meeting:** 16 August 2019  
**Subject:** Project Update on APES 230 *Financial Planning Services*

---

Action Required     For Discussion     For Noting     For Information

---

### Purpose

To provide the Board with an update on the project to revise APES 230 *Financial Planning Services* (APES 230) and seek Board approval for proposed actions to revise APES 230.

### Background

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

During 2017 the Board determined to undertake a post-implementation review of APES 230. Initially, a desktop review of developments in the financial services industry in relation to key aspects of APES 230 was undertaken. Subsequently, in April 2017, APESB issued Consultation Paper 01/17 (CP 01/17) to inform its post-implementation review of APES 230 and to obtain the views of stakeholders in respect of their implementation experience and whether APES 230 should transition to a fee for service approach.

APESB received 27 submissions in response to CP 01/17, which had diverging views about the application of APES 230 and whether to transition to a fee for service approach. The Board determined to undertake further stakeholder engagement in relation to APES 230.

Concurrent to the stakeholder engagement, a Royal Commission into misconduct in the banking, superannuation and financial services industry in Australia (the Banking Royal Commission) was held. Further, the Financial Adviser Standards and Ethics Authority Ltd (FASEA) was established to set a professional education and ethics framework for financial planners and advisers, including the FASEA *Code of Ethics* ([FASEA Code](#)), which becomes effective from 1 January 2020.

In addition to the external developments in the financial services industry, APESB commenced a project to restructure all of its pronouncements to align with the restructured APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) issued in November 2018. Due to the interconnectedness of the Code and the pronouncements, all APESB pronouncements are being revised by 1 January 2020 to align with the effective date of the restructured Code.

At the February 2019 Board Meeting, the Board requested Technical Staff to commence a project to revise APES 230 and to undertake further engagement with key stakeholders. Technical Staff initially addressed the revisions required to achieve consistency with the restructured Code and other APESB pronouncements and a [Draft revised APES 230](#) was presented at the [June 2019 Board meeting](#). The APES 230 Taskforce (the Taskforce) was supportive of the proposed changes as drafted and recommended the time frame for obtaining Informed Consent from a client should occur on an annual (rather than biennial) basis.

At the June 2019 Board meeting, the Board requested that Technical Staff work with the Taskforce to consider further some defined terms, grandfathered conflicted commissions and whether additional protections are required in APES 230, in relation to debt and gearing around asset-based fees.

## **Matters for Consideration**

Technical Staff have continued to monitor the political and regulatory environment for financial planning services, which remains uncertain, particularly in respect of potential legislative reforms resulting from the Banking Royal Commission and the commencement and implementation of the FASEA Code.

### *Grandfathered Conflicted Commissions*

The Banking Royal Commission made numerous recommendations on how to improve the financial services industry, including the abolishment of grandfathered conflicted commissions. There has been some uncertainty since the 2019 Federal Election as to when and how reforms to address these recommendations will be implemented. However, the Government introduced legislation to parliament to abolish grandfathered conflicted commissions (via a rebate scheme) on 1 August 2019, with a proposed effective date of 1 January 2021. This creates impetus to advance discussions with the Taskforce about this and other matters detailed below.

This legislation was yet to be approved by parliament as at the date of this Agenda Paper. Further, there are other exemptions to conflicted remuneration that remain in place, including for certain life and general insurance products. The Banking Royal Commission also recommended (including recommendations 2.5 and 2.6) that certain exemptions should be reviewed and may result in additional legislative reforms in the future.

Due to the current unpredictable nature of the legislative environment, Technical Staff are of the preliminary view that APES 230 should be amended to clearly state that third party payments can only be received where permissible under laws or regulations and remove guidance relating to grandfathered conflicted commissions.

Technical Staff are also of the preliminary view that for consistency the same principle should be applied to fees based on a percentage of funds under management. This would involve the inclusion of '*Subject to laws and regulations*' at the start of paragraphs 8.2 and 9.2 and removal of paragraph 9.4 of APES 230 which refers to grandfathered commissions.

This approach also avoids any future amendments to APES 230 for potential legislative changes for other commissions (and possible exemptions for mortgage broking) and maintains the principle-based nature of the standard.

## FASEA Code

As noted above, the FASEA Code becomes effective on 1 January 2020 and consists of 5 values and 12 standards. Technical Staff have undertaken a comparison of APES 230 and the Code to the FASEA Code and attach an analysis of the 5 most relevant standards (Agenda Item 13(a)).

Technical Staff's preliminary views in respect of these standards are as follows, which should be considered further with the Taskforce (refer Way Forward below):

- *Standard 2 of the FASEA Code* – no change should be made at this stage to the definition of best interests of the client in APES 230. However, Technical Staff will continue to review developments, the implementation of the FASEA Code and any findings from Australian Securities and Investments Commission's 2022 review;
- *Standards 3 & 7 of the FASEA Code* – APES 230 should be amended to clearly state that non fee for service fees can only be received where permissible under laws or regulations (refer discussion above); and
- *Standards 4 & 5 of the FASEA Code* – potential differences and implications should be considered with the Taskforce.

APES 230 and the Code include obligations for financial planners and advisors who are also Members of the professional bodies. The FASEA Code applies to the provision of services to retail clients, whereas APES 230 is not limited to retail clients.

As such, APES 230 impacts upon a broader population of consumers than the FASEA Code. Further, it is unclear at this stage how FASEA will implement the FASEA Code in practice.

## Matters for further consideration by the Taskforce

Technical staff are of the view that the following matters (in addition to amendments already made to align with the restructured Code) should be considered further with the Taskforce:

- grandfathered conflicted commissions (discussed above);
- the FASEA Code and its impact on APES 230 (discussed above);
- a new definition for Australian Financial Services licensee or holder;
- the definition of financial planning advice and whether it covers all relevant financial planning services;
- the establishment of FASEA monitoring bodies and potential impact on APES 230; and
- the consideration of whether additional protections are required in APES 230, in relation to debt and gearing around asset-based fees.

## **Way Forward**

Technical Staff propose the following actions to finalise a revised APES 230 exposure Draft:

- hold a Taskforce meeting in the first week of September 2019 to analyse the issues discussed above;
- if required, hold a follow up meeting with the Taskforce in the week commencing 30 September 2019;

- seek Board approval to issue an Exposure Draft of revised APES 230 at the Board meeting on 10 October 2019;
- convene a 30-day exposure period on the Exposure Draft for APES 230; and
- seek Board approval to issue a final revised APES 230 at the November 2019 Board meeting.

### **Staff Recommendation**

The Board discuss and note the progress made on the APES 230 project and the proposed actions to finalise an APES 230 Exposure Draft for public comment.

### **Material Presented**

- Agenda Item 13 (a) Preliminary Comparison of APES 230 and the Code to the FASEA Code of Ethics

**Authors:** Jacinta Hanrahan  
Jon Reid

**Date:** 6 August 2019