

28 February 2020

The Manager
Financial System Division
Treasury
Langton Cres
Parkes ACT 2600

By email: FSRCconsultations@treasury.gov.au

Dear Sir/Madam,

Ongoing fee arrangements and disclosure of lack of independence

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the Treasury's proposed draft:

- Legislation and regulations to include obligations for financial services licensees or authorised representatives providing personal financial product advice to retail clients under ongoing fee arrangements (recommendation 2.1 of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Financial Services Royal Commission)); and
- Legislation to require financial service licensees or authorised representatives to disclose a lack of independence (recommendation 2.2 of the Financial Services Royal Commission).

APESB is governed by an independent board of directors whose primary objective is to develop and issue, in the public interest, high-quality professional and ethical pronouncements. These pronouncements apply to the membership of the three major Australian professional accounting bodies (Chartered Accountants Australia and New Zealand (CA ANZ), CPA Australia and the Institute of Public Accountants (IPA)). In Australia, APESB issues APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) as well as a range of professional and ethical standards that address non-assurance services, including [APES 230 *Financial Planning Services*](#) (APES 230).

APES 230 includes mandatory requirements and guidance for members of CA ANZ, CPA Australia and IPA who provide financial planning services. It covers services provided to both retail and wholesale clients and includes, but is not limited to, the advice provided pursuant to an Australian Financial Services Licence (AFSL) or an Australian Credit Licence (ACL). APES 230 sets the standards for financial planning advice on clients' personal financial affairs relating to wealth management, retirement planning, estate planning, risk management and related advice.

APES 230 was first issued in April 2013 and was revised in December 2019 with an effective date of 1 July 2020. The predecessor to APES 230, APS 12 *Statement of Financial Advisory Service Standards* (APS 12), was issued in October 2005 by the Institute of Chartered Accountants in Australia (now CA ANZ) and the Australian Society of Certified Practising Accountants (now CPA Australia).

Overall comments

Ongoing Fee Arrangements – Financial Services Royal Commission Recommendation 2.1

APESB is supportive of the intent of Treasury’s proposals to require financial services licensees or authorised representatives to:

- Seek annual renewal of ongoing fee arrangements from clients;
- Include in fee disclosure statements the total fees to be charged and services to be provided in the following year; and
- Obtain written consent before fees are deducted from a client’s account and that consent generally cannot be obtained for a period of more than 12 months.

We believe these proposals are generally consistent with the requirements in APES 230, which members of the accounting profession that provide financial planning services have been subject to since 2013.

APES 230 requires members to disclose and obtain written agreement from the client before commencing a financial planning service, the details of the professional fees, including the basis on which the fees are determined and the services covered by the fees.¹ Further, the following table summarises some of the additional requirements in APES 230 for members who receive fees for financial planning services on a basis other than fee for service:

Fees Based on Assets/Funds Under Management²	Third-Party Payments (for example, Commissions)³
Informed consent in writing prior to commencing financial planning services of the fee on a percentage basis	Informed consent in writing prior to commencing financial planning services of the third-party payments
Annual disclosure of the amount of fees collected and an explanation of any significant variation from previously advised fees	Annual disclosure of the amount of third-party payments received
Annual written consent thereafter from 1 July 2020 (before this date it is biennial) to continue to charge and collect fees on a percentage basis	Annual disclosure of amount or estimated amount of third-party payments to be received

Although APES 230 currently allows asset-based fees and third-party payments (subject to laws and regulations and obtaining informed consent), there has been a strong preference since 2005 (in APS 12 and APES 230) for remuneration on a fee for service basis. The inclusion of safeguards, including informed consent in APES 230 in 2013, resulted in the inclusion of these alternative remuneration methods as it was considered to reduce threats to the fundamental principles of the Code to an acceptable level.

We note informed consent is a more stringent requirement than disclosure as per Treasury’s proposal. Informed consent requires that the client has a clear appreciation and understanding of the relevant facts in relation to the charging for services, as well as the implications of what the client agrees to. The member must form an objectively based view about the level of understanding of his or her client in particular circumstances (refer APES 230 for a full definition of informed consent).

¹ APES 230 paragraph 5.2(d).

² APES 230 paragraph 8.2.

³ APES 230 paragraph 9.2.

APESB issued a [Consultation Paper: Review of APES 230 Financial Planning Services](#) in December 2019 with comments due from stakeholders by 10 March 2020. A major focus of this consultation paper is to seek stakeholders' views on limiting APES 230 to only allow fees for service.

APES 310 *Client Monies* requires members to obtain the client's written approval before disbursing money from a trust account or a client bank account to pay the member's fees. Members of the professional accounting bodies that provide financial planning services are subject to this requirement and, therefore, Treasury's proposed legislative amendment in this respect would have minimal impact on these members.

Disclosure of Lack of Independence – Financial Services Royal Commission Recommendation 2.2

APESB is supportive of the intent of Treasury's proposals to require financial services licensees or authorised representatives to give written disclosure of lack of independence when authorised to provide personal advice to a retail client. We believe this proposal is generally consistent with requirements in APES 230, which members of the accounting profession that provide financial planning services have been subject to since 2013.⁴

APES 230 requires members to disclose various matters to clients that impact on objectivity and independence. It requires members to disclose to clients before commencing a financial planning service, terms of engagement and obtain the agreement in writing from the client, including:

- Any limitations of scope;
- Significant factors affecting the ability to provide the financial planning service on an objective and independent basis;
- Details of any actual, potential or perceived conflicts of interest that have the potential to affect the member's ability to act in the best interests of the client;
- If any safeguards have been applied, the nature of the safeguards and why they are considered effective; and
- The nature and extent of any interests, associations or relationships, including family, contractual or agency relationships, whether of a financial nature or otherwise, that have the potential to affect the member's ability to act in the best interests of the client.

Concluding comments

We trust you find these comments useful in your final deliberations. Should you require additional information, please contact APESB's Chief Executive Officer, Mr. Channa Wijesinghe, at channa.wijesinghe@apesb.org.au.

Yours sincerely

Nancy Milne OAM
Chairman

⁴ APS 12 also included requirements in respect of disclosures of conflicts of interest.