

## AGENDA PAPER

**Item Number:** 9  
**Date of Meeting:** 25 June 2020  
**Subject:** Update on consultation regarding APES 230 *Financial Planning Services*

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**Action required**     **For discussion**     **For noting**     **For information**

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### Purpose

To:

- update the Board on the consultation process and submissions received on CP 01/19 Consultation Paper: Review of APES 230 *Financial Planning Services*; and
- obtain the Board's approval for the proposed way forward for the APES 230 project.

### Background

APESB issued APES 230 *Financial Planning Services* (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).

Since APES 230 was issued, there have been significant changes in the political, legislative, and regulatory environment for financial planning services. To consider these changes APESB:

- performed a desktop review in 2017 into developments in the financial services industry;
- issued Consultation Paper 01/17 (CP 01/17) in April 2017 to obtain stakeholders views in respect of their implementation experience and whether APES 230 should transition to a fee for service approach;
- analysed the 27 submissions received in relation to CP 01/17 and determined there were still diverging views in practice;
- undertook further targeted stakeholder engagement in 2017 and 2018;
- provided two submissions to the Financial Adviser Standards and Ethics Authority Ltd (FASEA) in 2018 in response to their consultations on the *Financial Planners and Advisors Code of Ethics* (FASEA Code);
- analysed the recommendations and outcomes from the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services industry in Australia*

(the Financial Services Royal Commission) (summarised at [Agenda Item 7](#) of the February 2019 Board Meeting);

- compared the provisions of APES 230 and APES 110 *Code of Ethics for Professional Accountants* (the extant Code) to the FASEA Code (included in [Agenda Item 13](#) of the August 2019 Board meeting);
- held three APES 230 Taskforce meetings in May, September, and October 2019 and determined to deal with changes to APES 230 in two tranches:
  - in line with APESB's project to amend all pronouncements to align to the restructured APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the restructured Code) issued in November 2018 and effective 1 January 2020; and
  - released a consultation paper on more substantive changes in respect of the broader political, legislative, and regulatory environment for financial planning services.

### **Revised APES 230 to align to the restructured Code**

At the [June 2019 Board meeting](#), the Board considered an exposure draft of APES 230, which was subsequently approved at the October 2019 Board meeting, with comments due 11 November 2019 (ED 04/19). ED 04/19 proposed amendments to align APES 230 to the restructured Code and change the requirement to obtain informed consent to charge and collect fees on a percentage of funds under management basis from biennial to annual. The [revised APES 230](#) was approved by the Board at the [November 2019 Board meeting](#) with an effective date of 1 July 2020 and issued in December 2019.

### **APES 230 Consultation Paper**

Technical Staff drafted a proposed Consultation Paper following the September 2019 Taskforce meeting. Taskforce members supported the proposed Consultation Paper at the October 2019 Taskforce meeting and provided suggested amendments and enhancements. An updated Consultation Paper was sent to Taskforce members on 8 November 2019 and additional feedback was received.

The Board approved the release of [CP 01/19 Consultation Paper: Review of APES 230 Financial Planning Services](#) (APES 230 Consultation Paper) at the [November 2019 Board meeting](#), which was issued in December 2019. The APES 230 Consultation Paper sought feedback by 10 March 2020 on matters including the scope of APES 230, application of “*Best Interests of the Client*,” the fee for service remuneration method, and informed consent. Other relevant project documents are included on the APESB website page [Review of APES 230 Financial Planning Services](#).

### **Matters for Consideration**

Due to the impacts of the coronavirus and resource implications of other APESB projects, including the Independence Guide and the website development, Technical Staff have been unable to progress the analysis of the submissions and convene a Taskforce meeting at this stage.

Further, there have been delays to the Government's implementation of the Financial Services Royal Commission recommendations and the implementation/monitoring of the FASEA Code (discussed below), which provides time to undertake engagement with the Taskforce and relevant stakeholders in the coming months to progress the APES 230 project.

## APES 230 Consultation Paper

APESB received submissions from the following eight stakeholders:

- Association of Financial Advisers Ltd (AFA)
- Bongiorno Wealth Management Financial Planning (BWM)
- Chartered Accountants Australia and New Zealand (CA ANZ)
- CPA Australia (CPAA)
- Institute of Public Accountants (IPA)
- Pitcher Partners Investment Services Pty. Ltd. (Pitcher Partners)
- Robert Brown AM BEc FCA and Suzanne Haddan FCPA (FPS) CFP (Robert Brown and Suzanne Haddan)
- William Buck Wealth Advisors (SA) Pty Ltd (William Buck)

The following summarises the major themes from the submissions and attached at Agenda Items 9(a) to 9(h) are the submissions for the Board to obtain an appreciation of stakeholders' views in full.

Technical Staff propose to analyse the feedback received on the APES 230 Consultation Paper during July and August 2020, followed by Taskforce meeting(s) in September/October 2020 and to provide an update and proposed way forward at the November 2020 Board meeting.

### Theme 1 – Broader Regulatory Reform

Most stakeholders referred to the current flux of the financial services industry, particularly in relation to the Government's implementation of Financial Services Royal Commission recommendations, ongoing consultations on the requirements of the FASEA Code and the establishment of the single disciplinary body for the FASEA Code.

Many of these stakeholders believe that amendments to APES 230 are premature and urge APESB to delay such changes until the Government has finalised its implementation of the Financial Services Royal Commission recommendations.

### Theme 2 – Fees/Remuneration

Remuneration methodology remains the most contentious issue with all stakeholders expressing strong views, summarised as follows:

- AFA believe there is no need to remove either asset-based fees (as some clients prefer this method and should have the ability to make this choice) or life insurance commissions (due to the Life Insurance Framework (LIF) and parliament has allowed their continuation under LIF and if forced to change it would create substantial impacts;
- BWM is of the view that the LIF established from 1 January 2018 should be able to run its course, as long as client consent is obtained, and that APES 230 should be aligned to the Government's approach to conflicted remuneration;
- CA ANZ support the removal of grandfathered conflicted remuneration and other banned remuneration unless this is not in the best interests of the client. They advocate that asset-based fees, volume-based fees and third party payments (subject to laws and regulations) should be banned from 1 January 2021 and fee for service should be the preferred method provided commissions (where the associated product cannot or should not be sold or replaced) can be offset against the fee. CA ANZ also believe

product providers should be required by law to rebate ongoing commissions directly to the client;

- Although supporting a transition to fee for service models, CPAA believes that this is problematic due to the breadth of the scope of APES 230, which includes credit advice, that is mainly commission-based and not prevented by legislation. Further, CPAA note that banning commissions may be contrary to the Code, which allows commissions as long as threats are reduced to an acceptable level. CPAA recommend that APES 230 be consistent with requirements in legislation, regulation and the Code and any deviation must be based on clear public interest arguments;
- Members of the IPA that were consulted with noted widespread but not unanimous support for the fee for service approach with arguments presented for benefits of asset-based fees in certain instances;
- Pitcher Partners believe that the assumption that fee for service model is the only one that represents the client's best interests is incorrect and that core principles should be applied rather than banning asset-based fees and provide several different examples/scenarios to support their view. Pitcher Partners are of the view that any fee structure must be in the client's best interest, in accordance with the law, transparent and appropriately disclosed, accepted by the client and not collected where no service provided;
- Robert Brown and Suzanne Haddan advocate for APES 230 to only allow the fee for service remuneration method to ensure that accountants adopt the highest ethical standards. They believe that it is important for APES 230 to include this requirement to capture services, such as mortgage broking and real estate services, that are outside the FASEA Code; and
- William Buck are of the view that there is significant legislation in place to ensure that clients receive high-quality services, that APESB should not dictate how financial planning or mortgage broking businesses should be remunerated and that charging based on funds under management in many situations is the most appropriate method. William Buck also believe that there is now appropriate legislation/regulation in respect of commissions and that clients "*in most instances prefer to pay for insurance and mortgage broking services via a commission payment.*"

### *Theme 3 – Best interests of the client*

Mixed views were received from stakeholders in relation to the best interests of the client and whether the safe harbour provisions have been effective, including:

- AFA notes that there have been implementation issues with the best interests of the client requirement as per ASIC reports, the effectiveness of the safe harbour provisions will be reviewed by the Government in 2022 and in the absence of evidence that the safe harbour provisions contribute to poor outcomes they should be retained (AFA);
- BWM believes the FASEA Code requirements more adequately ensure the client's best interests are met and refers to Financial Services Royal Commission recommendations to include best interest requirements for mortgage brokers and the review of the safe harbour provisions in 2022. BWM recommends APESB waits until the findings from the 2022 review and the results of the FASEA Code requirements are known.
- CA ANZ believes there is duplication between the requirements in APES 230 and the *Corporations Act 2001* (Corporations Act), the FASEA Code requires a broader duty of care (although there remains some confusion as to how this will be applied in practice) and APES 230 does not include the best interest duties from the Credit Act. CA ANZ recommends that APES 230 should refer to relevant laws relating to best interests and remove other references to it from the standard;

- CPAA refers to legislative differences between financial advice provided under an AFSL compared to an ACL and that the Corporations Act definition of best interests of the client may not be relevant to all services captured under the broad definition of financial planning services in APES 230. CPAA also refer to ASIC Regulatory Guide 175 *Licensing: Financial product advisers* and ongoing consultations;
- The IPA note that members consulted with have not experienced implementation issues. However, there were divergent views on whether the safe harbour provisions should remain with reference to the Financial Services Royal Commission recommendation to remove it;
- Pitcher Partners are of the view the Corporations Act requirements are extensive and that the FASEA Code goes further to require the provider to have reasonable grounds to be satisfied that the client understands. Therefore, they believe the definition in APES 230 may need to be expanded beyond the Corporations Act requirements.

#### Theme 4 – Scope of APES 230

Stakeholders raised concerns about the scope of APES 230, including that it needs to be made explicitly clear which services are covered and those which are not captured by the standard and there are inconsistencies between the standard and legislative requirements (CPAA). Question 2 in the APES 230 Consultation Paper sought feedback on the definition of Financial Planning Advice in APES 230, which received mixed responses:

- AFA believes APES 230 captures wholesale clients, which is appropriate and broader than the FASEA Code. AFA also has no objection to APES 230 applying to mortgage broking services and should apply to strategic and real estate advice;
- Including real estate and non-product advice could create issues with SMSF investment strategies (BWM);
- CA ANZ notes that it is “*currently working on a project with other member organisations to reform the extensive regulatory environment in which all members who practice in financial advice operate*” and that real estate advice and non-product advice related strategies should not be added to APES 230 now;
- CPAA is of the view that the scope and definitions in APES 230 need to be re-assessed and reviewed and the broad scope of the standard makes it difficult to “*create explicit requirements that apply consistently across the range of services envisaged*”;
- Most of the IPA’s members consulted with were against expanding the scope of APES 230, and one member commented that “*APES Board, therefore, should not be able to expand the definition of financial planning to include merely all (wealth) advice at its absolute discretion*” beyond Corporations Act requirements which disadvantages members compared to non-member financial planners;
- Pitcher Partners believes the definition of financial planning services is limited to ‘personal financial affairs’ which is not properly defined and proposes an alternative definition; and
- Robert Brown and Suzanne Haddan recommend clarification to the definition to ensure that real estate advice is captured by the standard, which was the original intention of the standard and propose an alternative definition.

## Theme 5 – Avoid Duplication of Requirements

CPAA recommends that APES 230 does not duplicate legislative and regulatory requirements and should include professional obligations and expectations not currently addressed by law or regulations. Other stakeholders were of the view that much of the requirements of APES 230 are, or will be, covered by the FASEA Code and legislation resulting Financial Services Royal Commission recommendations (BWM and Pitcher Partners).

CA ANZ refers to the ongoing project to develop reforms in conjunction with Treasury to reduce complexity and duplication, improve efficiency and effectiveness, harmonise regulation and provide better access to advice for consumers.

The IPA believes that due to the events that have occurred since APES 230 was issued in 2013, APES 230 is no longer required and is superfluous.

While some positive feedback was received from stakeholders in relation to including informed consent for fee for service and the terms of engagement in APES 230, stakeholder believed this would create additional duplication including:

- That informed consent is part of the FASEA Code, relevant to the Financial Services Royal Commission recommendation on annual renewal and APES 230 potential templates may create duplication (AFA);
- APES 230 should align with the FASEA standards which require informed consent for fee for service (BWM);
- APES 230 should be considered after legislation on these issues is finalised (CA ANZ);
- CPAA supports informed consent for the fee for service arrangements, noting this is a requirement under the FASEA Code, but difficulties may arise including an explicit requirement trying to capture all services covered by APES 230;
- Informed consent should be extended to the terms of engagement which is apparent in the Corporations Act and the FASEA standards (IPA); and
- That requirements over and above those in APES 305 *Terms of Engagement* should not be imposed on providers of financial planning advice (Pitcher Partners).

## Government's Implementation of the Financial Services Royal Commission Recommendations

The [Financial Services Royal Commission Implementation Road Map](#) illustrates how the Government intended to take action on all 76 recommendations resulting from the Financial Services Royal Commission. The Government has issued numerous consultation papers and some legislation relating to the recommendations from the Financial Services Royal Commission, including the following of particular relevance to APES 230:

- [Recommendations 1.2 and 1.3 – Mortgage broker best interest duty and remuneration reforms](#) – consultation issued 26 August 2019 and closed 4 October 2019. [The legislation received assent on 17 February 2020](#) with the reforms commencing 1 January 2021.
- [Recommendations 2.1 and 2.2 – Ongoing fee arrangements and disclosure of lack of independence](#) – consultation issued 31 January 2020 and closed 28 February 2020.
- Recommendation 2.4 – Ending Grandfathered Conflicted Remuneration for Financial Advisers: Draft Regulations – consultation issued 28 March 2019 and closed 25 April 2019. [The legislation received assent on 28 October 2019](#), effectively ending grandfathered conflicted remuneration from 1 January 2021.
- [Recommendations 3.4 and 4.1 – No hawking of financial products](#) – consultation issued 31 January 2020 and closed 28 February 2020.

The Government [announced on 8 May 2020](#) a six-month delay to the implementation of commitments to the implementation of measures related to financial services due to the impacts of the coronavirus, meaning legislation expected to be introduced by 30 June 2020 will now occur in December 2020 and December 2020 will now occur by 30 June 2021. This announcement also highlights that the Government has implemented 24, and progressed another 35, of the Financial Services Royal Commission recommendations.

This will also delay [ASIC's update to Regulatory Guide 245 Fee disclosure statements](#) in respect of implementing the recommendations relating to advice fee consents and independence disclosures until (at least) the end of 2020. Technical Staff note that the [revised APES 230](#) requires informed consent to charge and collect fees on a percentage of funds under management basis on an [annual basis](#) from 1 July 2020.

### FASEA Update

Financial Advisers were required to comply with the FASEA Code from 1 January 2020. However, there is currently no oversight body. The Australian Securities and Investments Commission (ASIC) was originally to approve code monitoring bodies by 1 January 2020. However, the Government announced in October 2019 that instead a single disciplinary body would be established, which has not yet occurred. [ASIC's approach to advice licensee obligations](#) sets out reasonable steps that ASIC expects should be taken to comply with the FASEA Code from 1 January 2020.

FASEA issued [FG002 Financial Planners and Advisers Code of Ethics 2019 Guidance](#) (FG002) in October 2019 to help clarify the application of the FASEA Code in practice. FASEA subsequently consulted on FG002 and issued its [preliminary response to submissions on FG002](#) in December 2019, which was indicated to be *"the first in a series of responses to provide clarification on interpretation and application of the Code to clarify questions raised by stakeholders during the consultation period."* FASEA intend to continue to consult and engage with stakeholders during the lead up to the start of the single disciplinary body.

### **Way Forward**

Technical Staff propose the following actions in respect of the APES 230 Consultation Paper:

- analyse the feedback received on the APES 230 Consultation Paper during July and August 2020;
- provide an update on developments in the financial planning services industry at the August 2020 Board meeting;
- convene Taskforce meeting(s) in September/October 2020 focusing on the major themes arising from the APES 230 Consultation Paper; and
- present the results of the September/October 2020 Taskforce meeting(s) and proposed way forward for APES 230 at the November 2020 Board meeting.

### **Recommendations**

That the Board:

- note the update on the consultation process and submissions received in response to the APES 230 Consultation Paper; and
- approve the proposed way forward to progress the APES 230 project.

## **Materials Presented**

Agenda Item 9(a) – APES 230 AFA

Agenda Item 9(a) – APES 230 Bongiorno Wealth Management

Agenda Item 9(c) – APES 230 CA ANZ

Agenda Item 9(d) – APES 230 CPAA

Agenda Item 9(e) – APES 230 IPA

Agenda Item 9(f) – APES 230 Pitcher Partners

Agenda Item 9(g) – APES 230 Robert Brown and Suzanne Haddan

Agenda Item 9(h) – APES 230 William Buck

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