

16 March 2020

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

Email: sub@apesb.org.au

Consultation Paper (CP 01/19): Review of APES 230 Financial Planning Services

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to comment on the Consultation Paper (CP 01/19): Review of APES 230 Financial Planning Services. We have long advocated for industry reform to ensure that more consumers are able to access affordable, high quality, ethical and professional financial advice.

CA ANZ is a professional body comprised of over 120,000 members, including more than 25,000 members in public practice in Australia. Our members work in a wide range of roles in the financial services industry, as individual advisers as well as in small businesses, small and medium-sized accounting practices, the corporate sector, major financial institutions and financial product manufacturers.

We believe there is, and will continue to be, a need for trusted advisers to look after the financial advice needs of everyday Australians. This will be best served by retaining Chartered Accountants in the financial advice industry and we will continue our efforts to support this. Any exodus of CAs is likely to significantly reduce the overall level of training and expertise in the industry and be contrary to the overall objectives of the new legislation.

We therefore need to be mindful that any additional regulation adds to costs for our members, and these costs often need to be passed on to consumers. Higher costs of advice lead to less consumers being able to afford it whereas in reality – the government has acknowledged more consumers actually need it. We have a financial literacy issue, we have an ageing population and we need to be able to provide advice to assist with self-funding in retirement.

If you would like to discuss our submission, please do not hesitate to contact Bronny Speed FCA, Leader - Financial Advice on (02) 8078 5442 or at bronny.speed@charteredaccountantsanz.com.

Yours sincerely,








Simon Grant FCA
Group Executive
Advocacy & Professional Standing
Chartered Accountants Australia and New Zealand

Introduction

Accounting Professional & Ethical Standards Board Limited (APESB) is performing a review of APES 230 *Financial Planning Services* (APES 230), to ensure that it remains appropriate in the midst of the significant developments, including legislative and regulatory changes, that have occurred and are ongoing in the financial services industry.

It is therefore critical that the APESB takes into consideration the wider regulatory environment in which financial planners operate, which can be summarised in the table below:

Complex current state for CAs in retail advice...

	 ASIC	 TPB	 fasea	 Prof m'ship body CPA	 Disciplinary model (TBC)
Registrations	✓	✓	✗	✓	✓
Levies	✓	✗	✗	✗	TBC
CPD	AFSL reports non-compliance to ASIC	✓	✓ (Specific 40 hours not necessarily in harmony with other)	✓ (Prescribe own and comply with multiple including CA ANZ, CPAA, FPA, SMSFA)	TBC
Codes of Ethics	✗	✓ (TPB set and monitor)	✓ (Own Code not yet finalised)	✓ (Across multiple incl CA ANZ, CPAA, FPA, SMSFA + APES Codes)	Monitor FASEA CoE

18 CoE: Code of Ethics, FPA: Financial Planning Association, SMSFA: Self Managed Super Fund Association, APES: Accounting Professional & Ethics Standards



© Chartered Accountants Australia and New Zealand 2019

APES 230 *Financial Planning Services* (APES 230) must work in conjunction with our collective desire to remove the need for multiple licences, registrations, regulators and associated levies. We need to reduce the costs of providing financial advice and develop a framework that encourages consumers to seek affordable quality advice (increase financial literacy) that helps improve their financial well-being.

We urge the APESB to carefully consider any changes to APES 230 whilst we are in a period of such change. Further, we urge the APESB to be a principles-based standard rather than being bogged down in legislative issues, hence our request for legislative issues by which members must conform (by law) to ideally be removed from this standard.

CA ANZ has been an active participant in responding to the findings of The Commissioner, the Honourable Kenneth Hayne AC QC when he submitted his final report to the Governor-General on 1 February 2019.

We specifically request the APESB to be aware of the draft legislation and associated Legislative Instruments in relation to the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services* (the Royal Commission) which are currently being released, as these will shape the legislative framework for the future that all financial advisers must observe.

In our view, APES 230 cannot be finalized until such time as the legislation resulting from the Royal Commission findings has been completed.

Responses to questions for comment

Question 1

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?**

CA ANZ believes the industry is in a period of significant change, many of which are outlined in the APESB's Consultation Paper CP 01/19.

We believe that, once the legislation and associated Legislative Instruments in relation to the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services* have been finalized, it would then be timely to conduct a full review of APES 230.

Once legislation has been finalized, we then suggest that the legislation is referred to in this standard, and that any other specific references to legislative issues be removed. Members must obey the law, so we see no need for the law to be repeated in this standard.

We are also concerned that some of the comments contained in the Consultation Paper have overstepped the mark and should be re-adjusted to better reflect the practical state of the industry, whilst at the same time driving the need for high professional and ethical obligations of members who provide financial planning advice.

Some of these issues will be addressed in the points to follow.

Question 2

Does the definition of Financial Planning Advice in APES 230 capture all the relevant advice, products and services? If not, what other advice, products or services should be included in the definition?

APES 230 specifies the professional and ethical obligations of Members who provide financial planning services. It covers financial planning advice in respect of clients' personal financial affairs relating to wealth management, retirement planning, estate planning, risk management and related advice.

CA ANZ 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. We are developing a proposal which would differentiate members who provide strategic (non-product) advice from those who provide specific product advice. Both models currently fall under an Australian Financial Services Licence (AFSL) – limited or full. In addition, members also operate under an Australian Credit Licence (ACL), although the number in this category is far less than the former.

CA ANZ has been working on this project for almost two years. In conjunction with other member associations, we have developed the basis for a model going forward, details of which have been widely communicated to members. Our concept has been taken to various government bodies including, but not limited to:

1. The Prime Minister's office
2. The Federal Treasurer's office
3. The office of Senator Jane Hume (the Federal Assistant Minister for Superannuation, Financial Services and Financial Technology)
4. The Tax Practitioner's Board
5. The Treasury

The key benefits of these proposed reforms are as follows:

- To help address the growing advice gap created by both the high cost of providing financial product advice and the impact of the many regulatory changes impacting the structure of the financial planning sector.
- To enable a broader range of consumers to access advisory services.
- To encourage and attract professionals, such as accountants, to provide a strategic financial advice to their clients.
- To maintain or improve the professional standards of our members which in turn will be in the public's best interests.
- To enable existing advisers to continue providing financial advice to their clients through individual registration, rather than being forced to be authorised under another AFS licensee.
- To help consumers prepare to either partially or fully fund their retirement will help reduce the pressure on the age pension, which will continue to increase with an ageing population.

In all that we do for our members who practice in financial advice, CA ANZ continues to advocate for reform that:

- Reduces complexity and duplication
- Improves efficiency and effectiveness
- Drives harmonization across different regulatory frameworks and
- Better enables the provision of affordable, accessible and quality advice to businesses and consumers

The Treasury has asked us to collectively provide further detail on the content of our proposed reforms and how they may be implemented, with our next full-day roundtable scheduled for Monday 23 March.

Given the fact there are many moving parts in the current regulatory environment, we see no need to change the current scope of APES 230 and as such, do not endorse the proposed changes outlined in the Consultation Paper.

Specifically, we do not agree that 'real estate advice and non-product advice related strategies' should be added now. Rather, we would be happy to review terms like these, and others, in a full review of APES 230 once legislation resulting from the Royal Commission has been finalized and also after the government has had time to review the proposal being put forward by our working group of member associations.

In due course, we also need to review how APES 230 applies to activities such as mortgage broking and how it relates to wholesale clients.

Question 3

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?

In his recommendations from the Royal Commission, Commissioner Hayne questioned whether the safe harbour provisions to the best interests’ duties should be repealed.

There are several issues of concern with best interest duties being included in this standard, some of these being:

1. Members in advice must comply with the Corporations Act 2001, so do we need these duties repeated in APES 230?
2. Members who provide financial product advice to retail clients must be authorised under an AFSL to do so. These members now must also abide by the FASEA Code of Ethics, which requires a broader duty of care – not withstanding the fact that there is concern over the exact duty required. Like many in the industry, we believe the Explanatory Statement to the Code of Ethics adds confusion to the requirements of the Code, and to that end, CAANZ is meeting with Stephen Glenfield, the CEO of FASEA, in two weeks’ time to further discuss ambiguities
3. APES 230 doesn’t currently include the best interest duties for members operating under an ACL which are now in the Credit Act. This issue should be addressed in a full review of APES 230 in due course.

[Our recommendation is therefore to refer to relevant laws relating to best interests’ duties within APES 230 and then remove all references to it within the standard itself.](#)

Question 4

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?**

CA ANZ has long supported ending conflicted remuneration for financial advisers, with appropriate transitional timeframes, and raising the standards of ethics and professionalism in the financial advice industry to better serve and protect consumers. This is vital to help restore public trust and confidence

In general, CA ANZ supports removing grandfathering arrangements for conflicted remuneration and other banned remuneration. In principle we support 1 January 2021 as the effective date for this new law. We also support the regulations providing for a scheme under which amounts that would otherwise have been paid as conflicted remuneration are rebated to affected consumers. However, there are issues which will need to be carefully considered and managed to ensure that the provisions operate as intended and to avoid any detriment to consumers.

Whilst we support 1 January 2021 as the effective date for this new law in principle, careful consideration should be given to the appropriateness of this timeframe in circumstances where ending grandfathered remuneration may not be in the best interests of the client. It is critical that care is taken to avoid any detriment to consumers and any liability to advisers for breach of the best interests’ duty.

Acting in the best interests of the client

CA ANZ has concerns that a complete ban on conflicted remuneration may in some circumstances result in greater risk or harm to consumers than that which already flows from the conflicted remuneration, such as where a complete ban on commissions in respect of life insurance products leads to significant underinsurance if the client cannot afford to pay the upfront fee. The client's advisers may also be in breach of their best interests' obligation.

Rebating conflicted remuneration

Insurance contract issues

CA ANZ supports a ban on all bulk (volume) commissions to the extent this can be achieved without causing disadvantage to consumers.

As part of these reforms, as soon as is practicably possible, but certainly by 2021, insurance companies should be required to rebate the quantum of existing upfront commissions against first year premiums, and no less, as is the case in many current circumstances.

Where it is *inappropriate* to move an existing policy to a new insurance contract (for example in many instances where the client has been in the policy for a period of time and/or there is a level premium policy and/or the client is insured, has an injury, and is unable to obtain new insurances) all ongoing commission should be rebated against future ongoing premiums and, in these circumstances, this *should not* be deemed to be conflicted remuneration as the commission does not pass through the Australian Financial Services Licence.

Insurance companies should be required to offer all new contracts from 1 January 2021 at reduced premiums, upfront and ongoing, as they will no longer be paying commissions on those new contracts. Insurance companies should be encouraged to introduce non-commission premium rates as soon as possible, with many offering this already.

CA ANZ recommends that where advisers take on a new client and are bound by the best interests duty to look into existing policies (and hence the policy is under the adviser's name and a commission is received as a legacy issue), at the new adviser's request, insurance companies should be required to rebate any ongoing trail commissions to that client at the same quantum as the current commission was paid to the previous adviser. In this way, advisers can review existing policies and observe their best interests' obligations without being held liable for receiving commissions.

Investment product issues

Consideration should be given to the various issues that may impact on an adviser's ability to sell and/or move an investment that contains an ongoing commission without disadvantaging the client. Examples include, but are not limited to the following:

- Cost of a Statement of Advice (SoA) to advise a client to move from a commission related investment
- Inability to do a Record of Advice (RoA) if the adviser didn't recommend the product in the first place
- Cost of realising unrealised capital gains
- Buy/sell spreads
- Cost of researching as part of an overall assessment of the client's situation – under the best interests' duty
- Uniqueness of investment and its ability to be replaced

- Illiquidity of the investment
- Transaction fees
- Legacy products that are in the best interests of the client
- Early redemption penalty costs
- Exit costs
- Deferred bonuses foregone on life insurance products
- Practicality of doing so for a whole of life policy.

CA ANZ recommends that where a client has an investment product, and it contains an ongoing commission, and it cannot/should not be sold or moved, the investment manager should be required to rebate the quantum of that ongoing commission back to the client's investment with no adverse tax and/or regulatory consequences.

Superannuation fund issues

As with investment products, consideration should be given to the numerous issues that may impact an adviser's ability to move a superannuation investment that contains an ongoing commission without detriment to the client. Examples include, but are not limited to the following:

- Cost of an SoA to advise a client to move from a commission related super product
- Inability to do an RoA if the adviser didn't recommend the product in the first place
- Cost of realising unrealised capital gains on rollover
- Buy/sell spreads
- Cost of researching as part of an overall assessment of the client's situation – under best interests' duty
- Inability to rollover the fund due to insurances
- Illiquidity of investments within the super fund
- Being part of a corporate super plan whereby the fees are at a cheaper rate than can be obtained by individual advisers
- Transaction fees
- Legacy products that are in the best interests of the client
- Early redemption costs
- Exit costs
- Deferred bonuses foregone on life insurance products
- Other life insurance issues.

CA ANZ recommends that where a client has a superannuation fund, and it contains an ongoing commission, and it cannot/should not be rolled over, the super provider should be required to rebate the quantum of that ongoing commission back to the client's super fund without any adverse tax and/or regulatory consequences.

In Summary:

1. [Asset-based fees should be banned from 1 January 2021](#)
2. [Volume-based fees should be banned from 1 January 2021](#)
3. [Third-party payments \(subject to laws and regulations\) should be banned from 1 January 2021, as this is in line with FASEA's Code of Ethics and](#)
4. [Fee for service should be the preferred method of remuneration, provided that commissions \(where a product either cannot or should not be sold or replaced\) can be offset against that fee. This will require both education and time for implementation.](#)

Product providers should be legislated that they **MUST** rebate ongoing commissions directly to clients, which will assist in the process of moving to a true fee for service model.

Question 5

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 the 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 be useful for Members, which includes matters to be disclosed to clients to obtain Informed Consent for remuneration?**

As these issues are currently being legislated, CA ANZ believes no amendments to APES 230 should be considered until the legislation is finalized.

Question 6

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 in to 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?**

As these issues are currently being legislated, CA ANZ believes no amendments to APES 230 should be considered until the legislation is finalized.

Question 7

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?

As these issues are currently being legislated, CA ANZ believes no amendments to APES 230 should be considered until the legislation is finalized.

Question 8

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?

As members must obey the law and the requirements of their AFSL which are, in some cases, a cap of \$100, CA ANZ sees no point in any amendments to this cap at this point in time.

Question 9

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

As the seven FASEA legislative instruments only apply to retail advisers, the issue of treatment for wholesale clients has been brought to the fore, and industry discussions are currently taking place to address unintended consequence of this.

As such, CA ANZ recommends that this issue be deferred until more industry and regulatory intel is to hand, after which a full review of APES 230 should take place.

Question 10

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?

CA ANZ recommends APESB waits to see the final legislation resulting from the Royal Commission and then evaluate the impact it has on members. Further, APESB should evaluate the impact the FASEA reforms have on members. Once APESB has that information to hand, a full review of the APES 230 standard should be undertaken with an ideal outcome being that legislative requirements are removed, and that the standard focusses on professional obligations of members to whom APES 230 applies.

Appendix A

Chartered Accountants Australia and New Zealand

CA ANZ is made up of over 120,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses the world over.

Members of CA ANZ are known for professional integrity, principled judgment and financial discipline, and a forward-looking approach to business.

We focus on the education and lifelong learning of members and engage in advocacy and thought leadership in areas that impact the economy and domestic and international capital markets.

We are represented on the Board of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance, and Chartered Accountants Worldwide, which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.