

APESB Consultation Paper CP 01/19: Review of APES230 Financial Planning Services

Response to Request for Comments

Historical Context

The current version of APES230 was issued in April 2013. It may be viewed as a transitional standard in the long journey towards true professionalism in financial planning. This transition is no more stark than in the matter of adviser remuneration which was clearly the most controversial part of the debate in developing the current standard.

A compromise was reached by the APESB, allowing members to choose between adopting a genuine fee for service approach to financial planning/advice (**'level 1'**) or retaining the long-standing status quo of commissions, asset fees and other forms of conflicted remuneration with some safeguards, principally the need to obtain 'informed consent (**'level 2'**)'.

Since 2013, much has happened, including the revelations of the Hayne Royal Commission, the banning of grandfathered commissions and the establishment of the Financial Adviser Standards and Ethics Authority (FASEA). The latter issued a mandatory **Code of Ethics** for financial planners/advisers, effective 1 January 2020.

Principal Reform Required in APES230

Given the above-mentioned developments which are well outlined in the APESB's Consultation Paper CP 01/19, we submit that the time has come in the evolution of the discipline of financial planning/advice to mandate the **'level 1'** version of APES230 (as originally announced by the APESB in November 2012, but never implemented) and to remove **'level 2'**.

Such action will clearly reflect:

- a) The findings of Commissioner Hayne concerning the systemic detrimental impact of conflicts of interest in the financial planning industry (and the wider financial services industry);
- b) The intention of Commissioner Hayne and FASEA's Code of Ethics, especially standard 3 of the Code, which requires advisers to avoid (not just disclose) conflicts of interest;

- c) The recent finding of an important research project by the Australian Securities and Investments Commission and the Dutch Authority for Financial Markets that disclosure of conflicts doesn't work and should be replaced by their avoidance ("Disclosure: Why it shouldn't be the Default" October 2019); and
- d) The Australian community's expectations of the accounting profession as the principal trusted source of conflict-free financial planning advice.

Clarification of Scope of Financial Planning Advice

Having been members of the taskforce that advised the APESB during the development of the current version of APES230, we recommend that there should be some clarification of the words in the standard defining the scope of 'financial planning' to ensure that they include real estate advice by members of the accounting profession who offer financial planning services. Our original intention was that this should be so, however, it would be wise to take the opportunity to amend the words of APES230 to avoid any doubt.

Therefore, we propose the removal of the words '**provided as part of the advice under (a)-(c)**' within part (d) of the definition of Financial Planning Advice.

The updated definition would be as follows:

Financial Planning Advice means advice in respect of a Client's personal financial affairs specifically related to wealth management, retirement planning, estate planning, risk management and related advice, including:

- a) *advice on financial products such as shares, managed funds, superannuation, master funds, wrap accounts, margin lending facilities and life insurance carried out pursuant to an Australian Financial Services Licence;*
- b) *advice and dealing in financial products as defined in section 766C of the Corporations Act 2001;*
- c) *advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an Australian Credit Licence; and*
- d) *other advice such as taxation, real estate and non-product related advice on financial strategies or structures.*

Commissions on Mortgage Broking/Real Estate Advice

We acknowledge that the FASEA Code of Ethics may only prescribe ethical standards for activities falling under the AFSL provisions of the Corporations Act.

Therefore, it is technically possible for accountants who are offering mortgage broking services and real estate advice as part of their wider financial planning services to continue to receive commissions and other forms of conflicted remuneration from these activities.

However, we submit:

- a) given the approach of FASEA's Code of Ethics which requires advisers to adopt a series of ethical **principles** and the **substance** they represent, and to not merely comply with the **form** of a set of **rules**; and
- b) given that the Australian community (including the APESB and the accounting bodies) expect and require accountants to adopt the highest ethical standards;

it would be strange indeed if APES230 quarantined from **'level 1'** certain activities such as mortgage broking and real estate advice which are clearly within the ordinary meaning and scope of financial planning/advice and allowed members to continue to receive commissions and other forms of conflicted remuneration from these activities.

Such action would send a signal to our members and to the wider community that the accounting profession can only be trusted to a point. That would be a highly undesirable outcome. It would significantly diminish the impact of APES230 in terms of the APESB's objective of creating a cohort of accountants who can be unreservedly trusted to offer financial planning services in the best interests of consumers. And it would also substantially diminish the inherent trust (and therefore the value) of our professional designations.

We submit that as a profession we have a duty to create a comprehensive ethical standard without caveats, carve-outs and exceptions which are usually designed to appease and support the conflicted business models of industry participants. That is, as a true profession we must mandate the highest standard of practice above the level of the law.

In short, as a profession, our duty must be to the public interest we serve. This requires adoption of the highest and most comprehensive standard of ethical practice which we submit is 'level 1' of APES230.

Transition Measures for Mortgage Broking/Real Estate Commissions

Best practice dictates that members should cease commission arrangements upon commencement of the up-dated standard, however, we would support a provision that allows existing commission arrangements for these activities to be granted a transition period of up to three years.

Training Services for Implementation

As was the case in the current version of APES230, it will be important that there be adequate training services offered for the implementation of the standard. Therefore, we encourage the accounting bodies to plan for this requirement, including partnering with reputable specialist training organisations in the private sector which have knowledge in the field of financial planning and advice.

Robert M C Brown AM BEc FCA Suzanne Haddan FCPA (FPS) CFP

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