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Mr. Channa Wijesinghe
Chief Executive Officer
Accounting Professional and Ethical Standards Board Limited
Level 11
99 William Street
Melbourne Victoria 3000
Australia

Via email: sub@apesb.org.au

Dear Channa

Consultation Paper: Review of APES 230 *Financial Planning Services*

CPA Australia represents the diverse interests of more than 164,000 members working in 150 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia values the opportunity to respond to the Accounting Professional and Ethical Standards Board (APESB) *Consultation Paper: Review of APES 230 Financial Planning Services* (the “Consultation Paper”).

Over the years since *APES 230 Financial Planning Services* (APES 230) was first issued there has been considerable regulatory change in the area of financial planning services. The Consultation Paper refers to several of those key regulatory developments—the *Future of Financial Advice* (FoFA), the *Royal Commission into Misconduct in the banking Superannuation and Financial Services Industry* (Financial Services Royal Commission), and the establishment of the *Financial Adviser Standards and Ethics Authority* (FASEA)—some of which are still ongoing, with the impacts yet to be fully known.

The focus of these changes largely has been to address public’s concerns and expectations about the inappropriate behaviours and actions of some participants in the financial planning sector, and to enforce higher professional and ethical standards with the aim of promoting enhanced service quality, accessibility and transparency for those seeking professional financial planning advice.

The evolving regulatory landscape makes reviewing APES 230 a challenging proposition, at this time.

Timing of a Review of the Standard

The current changing regulatory environment for financial planning services makes it a difficult and complex task to revise APES 230. The government’s response to the recommendations of the Financial Services Royal Commission, and the implementation of requirements imposed by FASEA, will have a potentially significant impact on the financial planning profession, and the provision of financial planning professional services. Additionally, the significant structural changes in the market for these services – e.g., major banks exiting the market for the

provision of personal financial advice to retail customers – makes it difficult to envisage the environment into which a revised APES 230 would be placed.

CPA Australia is of the view that to aim to revise APES 230 at this time may lead to potential sub-optimal outcomes, that may require further revision to the standard at a later date, once the full impacts of current legislative, regulatory, and market changes become more apparent.

Recommendation: APESB delays the review of APES 230 until after the government's responses to the recommendations of the Financial Services Royal Commission have been identified and enacted.

Duplication of Legislative and Regulatory Requirements

It is important that professional standards do not merely duplicate the legislative and regulatory requirements that are imposed on professional accountants. Indeed, there is a danger that by aiming to replicate such requirements, the use of a different definition, a different word, or a cross reference to another standard (e.g., APES 110 *Code of Ethics for Professional Accountants*), may inadvertently make the requirement in a standard differ from legislative and regulatory requirements.

Therefore, instead of duplicating legislative and regulatory requirements, consideration should be given to whether APES 230 should be focused on professional obligations and expectations, that are considered to be in the public interest but are not currently addressed by law or regulations. The challenge is to ensure that conflicting obligations and requirements are not created. Moreover, an aim to not duplicate legislative and regulatory requirements in a standard requires one to consider whether a standard, or another pronouncement by the APESB, is the best way to detail the broader expectations of professional accountants in providing financial planning services.

Recommendation: APES 230 does not include requirements that duplicate existing legislative and regulatory requirements. Consideration might be given to the type of pronouncement by APESB that best meets the public's and users' needs and expectations, and whether it might be preferable to include references in the standard to relevant legislation and regulatory requirements.

Need for Clear Scope and a Clear Definition

In the Consultation Paper, under the section discussing the scope of APES 230, the APESB appears to provide an interpretation of the definition of financial planning services. It notes that certain words of the definition should be interpreted in a manner which is "generally read". It continues to explain that the definition intends to cover a very broad range of advice services; beyond just product advice captured under an Australian Financial Services (AFS) licence or Australian Credit Licence (ACL); as well as covering mortgage broking services.

This is problematic and creates significant complexity for a standard that aims to impose broad, general requirements across a range of activities; each of which is subject to its own extensive, and different, regulatory framework. It is worth noting that regulatory obligations and requirements for services provided under an AFS licence are not identical to regulatory obligations and requirements for services provided under an ACL. This is without giving consideration to the other services that the APESB states are covered by APES 230.

Given the complex nature of this area, it is imperative that the APESB aims to be very clear on the services that it intends to cover in a revised APES 230. Equally important is that the APESB also clarifies the services that would not be covered by the standard. By doing so, it may assist the APESB in determining the type of pronouncement that will best meet the public's and users' needs and expectations (refer earlier comments).

Recommendation: APES 230 should be very clear with respect to the scope of the standard, and the definitions that are used to describe the services that are captured by the standard; as well as being clear on those services which are not captured by the standard.

Remuneration

APESB discusses remuneration in the Consultation Paper, focusing primarily on issues relating to fee for service remuneration – and considers whether the standard should require fee for service only – and what is described as conflicted remuneration (i.e., third party payments, such as commissions).

In submissions in 2012 and 2017 to the APESB, CPA Australia stated its support for a transition to fee-for-service for the financial services sector. We again state our support for such a transition.

However, problems are encountered in including a fee-for-service only requirement in APES 230, given the breadth of the scope of the standard and the definitions used (see earlier comments). Credit advice remuneration is largely commission based; and early indications from the government when initially responding to the recommendations of the Financial Services Royal Commission are that it may continue to permit commissions-based remuneration for mortgage brokers. Moreover, APES 110 *Code of Ethics for Professional Accountants* anticipates that professional accountants may be remunerated through commissions, employing a threats and safeguards approach to ensuring that any conflicted remuneration has had conflicts reduced to an acceptable level.

Therefore, if the scope and definitions are not clarified and specified, having one fee-for-service requirement in APES 230 may be problematic.

Recommendation: Requirements in APES 230 relating to remuneration for professional services should be consistent with the remuneration requirements in legislation, regulations and in APES 110 Code of Ethics for Professional Accountants, unless there are clear public interest arguments for deviating from agreed or required practice.

Responses to the specific questions included in the Consultation Paper are detailed in the Attachment to this letter.

If you require further information on the views expressed in this submission, please contact Josephine Haste CPA, Policy Adviser – Ethics and Professional Standards, on +61 3 9606 9693 or at Josephine.Haste@cpaaustralia.com.au.

Your sincerely



Dr. Gary Pflugrath

Executive General Manager, Policy and Advocacy

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?

Since its introduction, users of APES 230 have striven to comply with the requirements contained in the standard, and CPA Australia has aimed to monitor Members' compliance. However, there are challenges with adopting and implementing the standard, created by a lack of clarity with aspects of the standard scope and definition, as well as inconsistencies between the standard and existing legislative requirements (see comments in cover letter). Given the extensive regulatory and legislative changes that have taken place since the standard was issued, and which continue to be enacted in the financial planning services sector, it is not clear that APES 230 remains, or will continue to remain, fit for purpose.

With respect to amendments or enhancements to the standard, CPA refers to its recommendations in the cover letter relating to the timing of a review and the importance of not duplicating regulatory and legislative requirements in the standard. With this in mind, it is premature to suggest amendments and enhancements to the standard.

As a general observation, CPA Australia supports the inclusion of a range of appropriate tools and templates for all professional standards, either within a standard (e.g., by including flowcharts, diagrams, references to applicable guidance, etc.) or separately through the use of guidance and implementation materials.

2. Do you believe that the definition of Financial Planning Advice in APES 230 captures all the relevant advice, products and service provided by members, including advice not provided under an AFSL or ACL such as real estate advice and non-product advice related strategies? If not, please provide an explanation and any recommendations or amendments to this definition to capture relevant Financial Planning Advice provided to a client?

As noted in the cover letter, CPA Australia is of the view that the scope of, and definitions included in, the standard need to be re-assessed and reviewed. A challenge for all standard setters is the importance of clearly identifying and articulating scope and definitions, to ensure that the standard is monitored and enforced in line with the intention of the standard setter.

By interpreting (refer to the Consultation Paper) the current definition to be very broad and cover a range of other services not explicitly stated, the APESB has made it difficult to create explicit requirements that apply consistently across the range of services envisaged. This, in turn, creates compliance issues where the legislative frameworks that apply to these various services differ – for example, CPA Australia notes the differences in the legislative definitions of “best interests” that apply to professionals providing services under an AFS licence, and those providing services under an ACL.

In revising APES 230, it is important for the APESB to consider whether the objective of the standard is a focus on financial planning services (as narrowly defined by legislation) and credit services, or whether the APESB intends to cover all financial advisory services that professional accountants may provide to their clients. The outcomes and pronouncements issued by the APESB may vary depending on the agreed focus.

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?**

CPA Australia notes that the best interests legislative arrangements differ for those professionals who provide financial advice under an AFS licence, and those providing credit advice under an ACL. For example, there are no safe harbour provisions included in the “Best Interests” statement in the Credit Act. Moreover, given the broad definition of financial planning services adopted by the APESB, it is not clear that the best interests definition in the Corporations Act is relevant for all the services that the standard aims to capture. This represents an implementation issue, where APES 230 has one general requirement that aims to be relevant to an extensive range of services.

CPA Australia notes that ASIC’s Regulatory Guide 175 – *RG 175 Licensing: Financial product advisers—Conduct and disclosure* – outlines ASIC’s approach to assessing compliance with the best interests obligation described in the Corporations Act. The APESB may wish to refer to this guide, as well as the equivalent regulatory guide presently under consultation for mortgage broking services, when revising APES 230, with respect to the best interests obligations for financial planning professionals, providing financial planning advice under an AFS licence or ACL.

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?**

In submissions in 2012 and 2017 to the APESB, CPA Australia stated its support for a transition to fee-for-service for the financial services sector. We again state our support for such a transition. As noted in the cover letter, problems are encountered in including a fee-for-service only requirement in APES 230, given the breadth of the scope of the standard and the definitions used (see cover letter).

However, if these scope and definition problems are overcome, CPA Australia recommends that a transitional period for fee for services, for financial planning services provided under an AFS licence, should be consistent with any transitional arrangements provided for in legislation.

Clearly, the biggest challenge for Members if APES 230 limits all services captured by the standard to fee for service only, is that they may be placed in a position to make a choice between complying with the professional standard or meeting their legislative requirements. While public interest arguments can be mounted in favour, and against, the proposition that professional accountants should be held to different standards of behavior than others providing a range of advisory services, it is clear that some Members will be forced to make difficult decisions.

Additionally, if the APESB was to move to limit all services captured by APES 230 to fee for service only, it would need to carefully explain the decision to deviate from APES 110 requirements for only this one professional standard.

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

CPA Australia supports a requirement for Members to obtain informed consent for fee for service arrangements, and notes that this is now a requirement included in the FASEA Statutory Code of Ethics, where personal advice is provided to retail clients on relevant products. A significant challenge for Members in complying with such an informed consent requirement, is assessing the level of sophistication of those seeking advice; and therefore, whether the consent being provided is truly “informed”. However, CPA Australia notes that this is now an essential element of FASEA obligations.

As noted earlier, difficulties arise for the APESB in including explicit requirements, that purport to be general requirements for all services captured by the standard, but are most relevant to one specific service.

CPA Australia supports the inclusion of a template in APES 230 which includes matters to be disclosed to clients to obtain informed consent for remuneration. Consideration should be given to incorporating such information in the Terms of Engagement.

6. The Financial Services Royal Commission recommended that ‘hawking’ (unsolicited offer or sale) of superannuation and insurance products should be banned (recommendation 3.4 and 4.1):

- a) Does the requirement that Members’ marketing or promotional activities must not bring the profession into 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?**

CPA Australia recommends that, as the Financial Services Royal Commission has made numerous recommendations that directly impact APES 230, revision of APES 230 should be delayed until after the government has responded to all of the recommendations of the Commission. Furthermore, the APESB should aim not to merely duplicate legislative and regulatory requirements within APES 230. (see cover letter).

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?

Refer to response to Question 5.

8. APES 230 currently allows soft dollar (non-monetary) benefits up to a cap of \$300 which is consistent with the Corporations Act 2001 requirements. Should this cap remain?

As noted earlier, CPA Australia recommends that the APESB should aim not to merely duplicate legislative and regulatory requirements within APES 230. In considering soft dollar benefits, the APESB should be cognisant of the best interests duty obligations enshrined in legislation. Moreover, the conceptual framework in APES 110 notes that Members are required to consider threats to the fundamental principle of objectivity with respect to soft dollar benefits.

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?

CPA Australia refers to comments made in the cover letter and in response to Question 4. Additionally, with respect to wholesale clients, it is not clear that the APESB needs to provide explicit requirements in APES 230 that go beyond the requirements and associated guidance provided in APES 110.

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?

No further reforms, issues, or ideas are recommended.