

AGENDA PAPER

Item Number: 4
Date of Meeting: 3 September 2024
Subject: Project Update on APES 230 *Financial Planning Services*

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

Purpose

To:

- (a) seek approval to close Consultation Paper 01/19: *Review of APES 230 Financial Planning Services*, and
- (b) provide an update to the Board on the APES 230 *Financial Planning Services* (APES 230) project.

Background

APES 230 was issued in April 2013 with an effective date of 1 July 2014, except for provisions relating to professional fees and third-party payments, which became effective a year later on 1 July 2015). APES 230 was revised in December 2019 (effective 1 July 2020) to align with the restructured Code, change the timing of written consent to continue charging fees on a percentage basis from biennial to annual and remove the expired transitional provisions.

Since APES 230 was first issued, the financial planning industry has undergone ongoing legislative and regulatory changes. In December 2019, APESB issued a Consultation Paper (CP 01/19 *Review of APES 230 Financial Planning Services*) seeking feedback from stakeholders on APES 230 and whether the standard remains appropriate in the midst of the significant developments, including legislative and regulatory changes, occurring in the financial services industry. APESB received 8 submissions to the consultation paper, and the themes from these submissions were presented to the Board at their June 2020 Board meeting ([Agenda Item 9](#)).

Further changes have occurred since that time, with the APESB considering these developments as follows:

- the Technical Staff's assessment of retail versus wholesale clients and the Australian Reform Commission's (ALRC) review of the financial services legislation at the September 2021 Board meeting ([Agenda Item 6](#)).

- the cessation of the Financial Adviser Standards and Ethics Authority (FASEA), ASIC's Financial Services Credit Panel (FSCP) becoming the single disciplinary body for the financial advisers, including the FASEA Code, the transfer of the FASEA Code to Treasury, the commencement of Treasury's Quality Advice Review and the ALRC's first interim Report at the March 2022 Board meeting ([Agenda Item 7](#)).
- the Quality of Advice Review Final Report (QAR Final Report) led by Ms Michelle Levy, the Government's likely response to the QAR Final Report and the ALRC's Interim Report B Financial Services Legislation at the May 2023 Board meeting ([Agenda Item 10](#)).
- the Government's initial response to the QAR Final Report and the release of the Delivering Better Financial Outcomes Package at the August 2023 Board meeting ([Agenda Item 10](#)).
- the Government's final response to the QAR Final Report and the release of the Australian Law Reform Commission (ALRC) Final Report at the March 2024 Board meeting ([Agenda Item 8](#)).

Matters for Consideration

Changes to legislation and regulations in the financial planning industry continue to evolve. This paper sets out some of the key developments since the last update on APES 230 was provided to the Board at the March 2024 Board Meeting.

Delivering Better Financial Outcomes Package

Following the release of the [Quality Review Advice \(QAR\) Final Report](#), the Government responded to the QAR recommendations in two phases: an initial response on 13 June 2023 ([Tranche 1](#)) and a final response on 7 December 2023 ([Tranche 2](#)).

Refer to August 2023 Board Meeting [Agenda Item 10 \(a\)](#) and March 2024 Board Meeting [Agenda Item 8 \(a\)](#), which provide details on the Government's positions on the 22 recommendations from the QAR Final Report.

Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024

On 11 June 2024, the Government released the [Treasury Laws Amendment \(Delivering Better Financial Outcomes\) Regulations 2024](#) for public consultation. These consequential amendments support the implementation of the [Treasury Laws Amendment \(Delivering Better Financial Outcomes and Other Measures\) Bill 2024](#) and the delivery of [Tranche 1](#) of the Government's Delivering Better Financial Outcomes reform package. The comment period for this consultation closed on 8 July 2024.

Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024

On 4 July 2024, the [Treasury Laws Amendment \(Delivering Better Financial Outcomes and Other Measures\) Bill 2024](#) passed both the Senate and the House of Representatives. This Bill, part of [Tranche 1](#) of the reform package, addressed QAR recommendations 7, 8, 10, 13.1-13.5 and 13.7-13.9. The Bill received royal assent on 9 July 2024 and became the [Treasury Laws Amendments \(Delivering Better Financial Outcomes and Other Measures\) Act 2024](#) (DBFO Act).

Schedule 1 of the Act:

- Clarifies the legal basis in the *Superannuation Industry (Supervision) Act 1993* for superannuation trustees to charge individual members for financial advice from their

superannuation account, and clarifies associated tax consequences under the *Income Tax Assessment Act 1997* (Part 1);

- Streamlines ongoing fee renewal and consent requirements in the *Corporations Act 2001*, including removing the requirement to provide a fee disclosure statement (Part 2);
- Amends the *Corporations Act 2001* to provide more flexibility in how Financial Services Guide requirements can be met (Part 3);
- Simplifies and clarifies the provisions governing conflicted remuneration in the *Corporations Act 2001* (Part 4); and
- Introduces new standardised consent requirements for life risk insurance, general insurance and consumer credit insurance commissions (Part 5).

On 4 July 2024, the Government also announced that [Tranche 2](#) legislation, in response to QAR recommendations 3 (Relevant Providers), 4 (Good Advice Duty), 5 (Statutory Best Interests Duty), 6 (Superannuation Advice) and 9 (Statement of Advice), would be developed in the second half of 2024.

Financial Services Minister Stephen Jones said, “*The Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024 implements reforms which reduce unnecessary red tape that adds to the time and cost of preparing financial advice without providing consumer benefits.*”

Minister Jones added, “*The second tranche of reforms will further increase access and affordability of financial advice and will be developed over the second half of the year. This includes the government’s commitment to reform statements of advice, modernise the best interests duty and remove the safe harbour steps and increase the provision of advice by financial institutions.*” The Treasurer’s media release can be found [here](#).

ASIC responds to the DBFO Act

On 11 July 2024, ASIC noted that the DBFO Act received royal assent and outlined advisers’ obligations to comply with it.

ASIC said in a statement, “*Industry should be aware of the reforms, including transitional periods if applicable, and have, or be in the process of updating, systems and processes as required.*” ASIC’s media release can be found [here](#).

ASIC further announced that it made changes to legislative instruments and pro forma in response to the DBFO Act. These include modifying ASIC instruments to reflect the new FSG requirements, amending the licence conditions of pro forma to ensure technology and format neutrality in FSG record-keeping requirements, and applying these changes to new AFS licensees in the future. ASIC also intends to update regulatory guidance impacted by the DBFO Act.

For more information about the reforms under the DBFO Act, including transitional timeframes and the regulatory guidance that ASIC anticipates updating, refer to the ASIC [website](#).

Technical Staff have summarised the key legislative developments, including the DBFO Act, against the Government’s positions on the 22 recommendations from the QA Final Report, refer to Agenda Item 4 (a).

Financial Planners and Advisors Code of Ethics 2019 – Review of FASEA Code

The FASEA Code will be reviewed to align with the Government's reforms in financial advice and ensure it remains fit for purpose. This review will occur following the implementation of the Delivering Better Financial Outcomes package. As the reform is ongoing, with [Tranche 2](#) legislation expected to be implemented in the second half of 2024, Technical Staff will continue to monitor developments relating to the FASEA Code.

Australian Law Reform Commission (ALRC) - Financial Services Law Simplification

On 11 September 2020, the Australian Law Reform Commission (ALRC) received Terms of Reference to undertake an inquiry into simplifying the legislative framework for corporations and financial service regulations. The review aimed to streamline Australian Financial Services Law, reducing its complexity and enhancing adaptability, efficiency and navigability.

Between 2021 and 2023, the ALRC issued 3 Interim Reports: [Interim Report A](#), [Interim Report B](#) and [Interim Report C](#). Refer to updates provided to the Board in March 2022 [Agenda Item 7](#) and May 2023 [Agenda Item 10](#).

On 18 January 2024, the [ALRC Final Report](#) was published in Parliament, which sets out all 58 recommendations made by the ALRC, including the 23 recommendations already released in the Interim Reports. To date, 13 recommendations from the Interim Reports have been implemented in full or in part. In this report, the ALRC also proposes to restructure and consolidate the existing legislation framework for financial service regulation into a coherent and principled legislative model, which comprises three elements: the financial service law, a scoping order and rulebooks. Refer to the update provided to the Board in March 2024 [Agenda Item 8](#).

At the time of writing this report, the Government has not yet responded to the ALRC Final Report and has not indicated a time frame for responding. Technical Staff will continue to monitor any developments relating to this inquiry.

Impact on APES 230 Financial Planning Services

In [Agenda Item 8](#) of the March 2024 Board Meeting, Technical Staff conducted a high-level assessment of the recommendations from the ALRC Final Report and Financial Outcomes Package, identifying three key areas that could impact APES 230:

- To modernise the Best Interests Duty (recommendation 4 of Financial Outcomes Package);
- To reform the Statement of Advice (recommendation 9 of the Financial Outcomes Package); and
- To have a single definition of "Financial Product" and "Financial Service" in the *Corporations Act 2001* (recommendation 31 of the ALRC Final Report).

As the Government is still developing [Tranche 2](#) legislative changes (which include modernise the Best Interests Duty and reforming the Statement of Advice) and has yet to respond to the ALRC Final Report, Technical Staff will continue to monitor developments in the financial planning industry to determine if any revisions to APES 230 are required.

Proposed closure of Consultation Paper 01/19

In 2019- 2020, APESB conducted a consultation that focused on reviewing APES 230 Financial Planning Services and ensuring it remains appropriate in light of the legislative and regulatory changes occurring in the financial services industry. APESB received 8 submissions to Consultation Paper 01/19 and the themes from the submissions were discussed by the Board in 2020. However, due to the continuing changes in the financial planning industry, the Board determined to delay making any revisions to APES 230 and to monitor the developments in the industry.

Technical Staff note this consultation paper is still listed as under consideration on the APESB's projects page. Technical Staff are of the view that this consultation has been superseded due to subsequent legislative and industry reform noted above, and the consultation paper should be closed and removed from APESB's website. The Board could consider whether a new consultation paper is required in due course once the current spate of legislative reforms for the financial planning profession has been enacted.

Impact on small and medium practices (SMPs)

There are no proposed changes to APES 230 at this stage, and therefore, there will be no impact on SMPs from a professional standards perspective. Technical Staff will continue to monitor these changes and consider their effects in any future deliberations related to APES 230.

Way Forward

Technical Staff propose to continue monitoring the legislative and regulatory environment in financial planning. The board will receive further updates during future meetings.

Recommendations

That the Board:

- (a) approve the closure of the superseded Consultation Paper 01/19: *Review of APES 230 Financial Planning Services*; and
- (b) note the update on the APES 230 project.

Materials Presented

Agenda Item 4 (a) Review of DBFO Act to QAR Recommendations

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Date: 14 August 2024