

# Meeting Highlights

5 APRIL 2013

1. The Chairman briefly introduced the background to the development process of the proposed APES 230 *Financial Planning Services* and the Board noted the following:
  - The *Best Interest Duty* in *Future of Financial Advice (FoFA)* is to be extended to all Clients (retail and wholesale) and all Financial Planning Services performed by Members of the accounting profession. For example, APES 230 will capture mortgage broking and wholesale clients who are currently not subject to *FoFA* legislation;
  - The area of greatest focus for respondents and stakeholders was the remuneration requirements. The approach to determining fees in APES 230 was developed to provide adequate safeguards against the threats created by the conflicted remuneration methods of asset based fees and Third Party Payments;
  - APESB has a strong preference for fees determined on the basis of Fee for Service as defined in the Standard because it significantly reduces the risk of conflicted remuneration. When determining the Fee for Service the Member may consider a wide range of factors as specified in APES 230, but a Fee for Service excludes asset based fees and Third Party Payments;
  - APESB has determined to permit in APES 230 alternative remuneration methods, subject to some significant safeguards. The strongest of these safeguards is the requirement for the Member to obtain 'Informed Consent' from the Client;
  - The concept of Informed Consent, when applied in conjunction with other safeguards, is a way to reduce to an Acceptable Level the threats posed by conflicted remuneration. 'Informed Consent' is an established legal principle that requires a higher standard than simple disclosure and therefore some Clients will not have the capacity to provide Informed Consent. Informed Consent requires that the Client has a clear appreciation and understanding of the relevant facts in relation to the charging for services, as well as the implications of the fee arrangement. The Member must form a view about the level of understanding of the Client. In the event of any challenge to this view, its reasonableness would be assessed by an adjudicating body on an objective basis. The Informed Consent test is widely used in other commercial contexts;

- Members who provide Financial Planning Services can be remunerated by either a Fee for Service, or by a fee based on funds under management subject to the Member complying with the following requirements:
  - obtaining the Client's written Informed Consent to the fee arrangements;
  - making an annual disclosure of fees collected and any significant variation from previously advised fees; and
  - thereafter obtaining written consent from the Client on a biannual basis to continue to charge and collect the professional fee on a percentage basis.
- Third Party Payments such as Commissions are not transparent payments as they are not paid directly by the Client. The receipt of Commissions paid by a financial services company to a Member for selling a product creates a self-interest threat for the Member, since the advice to the Client may be influenced (or be seen to be influenced) by the Commissions.
- The Board's clear preference is for any Third Party Payments to be rebated. The Board also recognised the current structure of the industry and that it may take time to move completely away from Third Party Payments. Accordingly, the Board's has determined to permit alternative remuneration methods, but with significant safeguards. Members may be remunerated by Third Party Payments subject to the Member complying with the following requirements:
  - obtaining the Client's written Informed Consent to the fee arrangements;
  - disclosing three comparative quotes where available;
  - making annual disclosures to the Client on the estimated and actual amount of Third Party Payments received; and
  - where applicable, disclosing to the Client the impact of any proposed changes to existing life insurance and other risk contracts and loans.
- Members in Public Practice will not be prevented from continuing to accept Third Party Payments (commonly referred to as trailing income) for Financial Planning Services in respect of life insurance, other risk contracts and the procurement of loans which are entered into prior to 1 July 2014 provided that the Member does not subsequently provide any further Financial Planning Services in respect of those contracts and loans.
- APESB is of the view that the approach taken in APES 230 is balanced and the Standard contains acceptable safeguards, the effectiveness of which will be evaluated following its implementation. As with all APESB pronouncements, APES 230 will be subject to regular reviews by the Board;

- Members are also advised to refer to ASIC's Regulatory Guides RG 245 *Fee Disclosure Statements* and RG 246 *Conflicted remuneration* (RG 246) which provide ASIC's final guidance to assist the financial services industry understand the practical operation of fee disclosures and the ban on conflicted remuneration, and how ASIC intends to administer it;
- If the safeguards prove to be inadequate, the Board will readdress the issue of conflicted remuneration in the future;
- The Standard provides flexibility to Members in Business due to the fact that such Members may not be in a position to determine or change the policies and procedures of their employer.
- APESB has determined to allow an additional year for Members in Public Practice to implement the remuneration requirements in paragraphs 8 and 9 of the Standard (i.e. 1 July 2015). The commencement date for the rest of the Standard is 1 July 2014, which is one year after *FoFA* commences (i.e. 1 July 2013). This timeframe should allow Members in Public Practice sufficient time to adapt their business practices and for the Professional Bodies to conduct training for their Members.

The Board approved the issue APES 230 *Financial Planning Services* together with the Basis for Conclusions document and the accompanying Media Release.