

ASF:JM4401092

16 March 2020

The Chairperson
Accounting Professional & Ethical Standards Board Limited
Level 11, 99 William Street
MELBOURNE VIC 3000

Dear Sir/Madam

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

We refer to previous submissions dated 6 October 2010 and 21 August 2012 and the most recent Consultation Paper: *Review of APES 230 Financial Planning Services* dated December 2019.

We note the following major points upon review of the Consultation Paper:

- Accounting Professional & Ethical Standards Board Ltd (APESB) is performing a review of APES 230 *Financial Planning Services* (APES 230), to ensure it remains appropriate in the midst of recent legislative and regulatory changes that have occurred in the financial services industry.
- **The Board's view has been that third party payments (such as commissions) and fees based on funds under management result in an actual or perceived conflict.**
- APES 230 specifies the professional and ethical obligations of Members who provide financial planning services. It covers advice provided under an Australian Financial Services Licence (AFSL) or Australian Credit Licence (ACL).
- The scope of APES 230 is broader than the Future of Financial Advice (FOFA) legislation (2012) as it **applies to activities such as mortgage broking and extends to wholesale clients.**
- APESB undertook a consultation on the post-implementation review of APES 230 in 2017 which had diverging views about whether APES 230 should transition to a fee for service approach. The Board has determined to undertake further stakeholder engagement in relation to APES 230.

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- APESB is seeking comments from stakeholders to assist in a review of APES 230 relating to changes in the financial planning services' legal and regulatory environment.

Our submission is focused on question 4 of the Consultation Paper:

“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?*

- As per the Consultation Paper, there have been significant developments and reforms in the financial services industry in Australia to enhance consumer outcomes. This includes the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, the establishment of the Financial Adviser Standards and Ethics Authority (FASEA) and the Financial Planners and Advisers Code of Ethics (FASEA Code) which is now in effect.
- We believe the recent developments and in particular the FASEA Code will assist in ensuring that clients receive quality and ethical financial advice. As you would be aware, the FASEA Code has in place standards that must be adhered to including (but not limited to):
 - A best interests duty (Standards 2 and 5)
 - Not acting where there is a conflict of interest (Standard 3)
 - Clients acting only with free and informed consent (Standard 4)
 - Must be satisfied that fees and charges paid by the client are fair and reasonable (Standard 7)
- Our view is that there is now significant legislation in place to ensure that clients receive the high quality service that they deserve.
- We do not believe it is the Board's role to dictate how a Financial Planning or Mortgage Broking business should be remunerated.
- With respect to charging based on funds under management, we believe in many situations this is the most appropriate method of charging, that is readily understandable and not intangible. This enables the consumer to compare on an equivalent basis. Whilst asset based fees are not perfect, it is a measurable starting point and exists across many industries in financial services inclusive of funds management, private banking and investment related industries. That is not to say these fees cannot be negotiated (and must be as per Standard 7 above).

The critical point is the client knows what they are paying and has the ability to compare this with other providers in a measurable way. We have clients who engage us for advice on an asset based fee, which we agree with them in the form of a written service agreement and they prefer this method. We have other clients paying a flat fee and that is fine also.

- With respect to the banning of third party payments (commissions), we refer you to our previous submission to you dated 21 August 2012. Our view has not changed from that position.

Over many years we have taken the position to provide a properly resourced insurance service and more recently a mortgage broking service. Our observations remain:

- It takes significant time and effort to build a viable business in these disciplines
 - There has been multiple changes to the commission structure with flat commissions, FASEA standards and anti – churning regulation removing conflicts of interest
 - There is a significant fixed cost component – in particular salary and marketing costs
 - With respect to insurance, at no additional cost to the client, we handle all aspects of claims
 - We believe clients prefer in most instances prefer to pay for insurance and mortgage broking services via a commission payment.
- We have a reputable financial planning business. There have been many challenges to this business over the years, however, we have always sought to do the right thing by our clients and will continue to do so.

Yours sincerely

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