

AGENDA PAPER

Item Number: 10
Date of Meeting: 31 May 2023
Subject: Project Update on APES 230 *Financial Planning Services*

Action required For discussion For noting For information

Purpose

To update 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 (with sections relating to remuneration effective on 1 July 2015). APES 230 was revised in December 2019 (effective 1 July 2020) to align with the restructured Code, change from a biennial to annual written consent to continue charging fees on a percentage basis and remove transitional provisions.

Since APES 230 was first issued, the financial planning industry has undergone ongoing legislative and regulatory changes. A summary of actions taken by APESB to consider these changes and an update on the *Consultation Paper: Review of APES 230 Financial Planning Services* were presented at the June 2020 Board meeting ([Agenda Item 9](#)).

A further update was provided at the November 2020 Board meeting ([Agenda Item 4](#)). The Board discussed the purpose of APES 230 in setting the professional and ethical standards for accountants, existing regulations, and guidance and the six ethical principles outlined in the final Financial Services Royal Commission (FSRC) report.

The status of APES 230 was considered at the March 2021 Board meeting ([Agenda Item 8](#)), including CPA Australia's request in December 2020 for APESB to suspend APES 230. The Board discussed APES 230's relevance and consumer interest focus and agreed it should continue as an issued standard. The Board reiterated their hope that each professional body would support APES 230 given its public interest perspective and supported Technical Staff to continue monitoring the legislative and regulatory environment.

A further update was provided at the September 2021 Board meeting ([Agenda Item 6](#)), including the Technical Staff's assessment of retail versus wholesale clients and the Australian Law Reform Commission (ALRC) review of the financial services legislation.

An update was provided at the March 2022 Board meeting ([Agenda Item 7](#)) on the cessation of the Financial Adviser and Ethics Authority (FASEA) on 31 December 2021, 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.

Matters for Consideration

Changes to legislation and regulations in the financial planning industry have continued since March 2022. Accordingly, the eventual impact on APES 230 cannot be determined, evaluated, and managed until the regulatory process has concluded.

Quality of Advice Review Final Report

The Quality Advice Review commenced on 11 March 2022 and was led by Michelle Levy as the independent reviewer to ensure Australians can access high-quality, affordable advice. The Quality of Advice Final Report (QA Final Report) was issued to the Government on 16 December 2022 and publicly released on 8 February 2023. The Government is still considering its response to the recommendations in the QA Final Report.

The QA Final Report recommends a focus on the merits of the advice rather than the conduct of the provider, the introduction of a 'good advice duty' and replacing the current 'best interest duty' (including the removal of the safe harbour provisions) with a statutory duty based on fiduciary duty. Some recommendations could reduce compliance costs, but others, such as maintaining commissions on insurance products, preserve conflicted remuneration.

Agenda Item 10(a) provides a high-level summary of the QA Final Report and its recommendations, and the following summarises some of the divergent stakeholder views.

On 2 February 2023, the Joint Association Working Group (JAWG), which consists of 13 industry bodies representing investors, wealth managers, accountants and stockbrokers, wrote an [open letter](#) to the Minister for Financial Services, Mr Stephen Jones, urging the Government not to implement obvious and easy changes to financial advice laws and pursue more holistic reforms. The JAWG advocate for the Government's response to the QA Final Report to increase access to quality advice, maintain consumer protections and interests, enable scaled advice including access via digital means, removal of unnecessary regulatory and disclosure requirements and the reduction of time and cost to prepare quality financial advice.

Consumer activist groups¹ support two important recommendations in the QA Final Report to enhance the availability of financial advice but oppose other more contentious proposals. The group supported shortened and simplified mandatory disclosures and removing the 'safe harbour' steps from the best interest duty. However, the group disagrees with exempting banks, insurers, and super funds from acting in clients' best interests when providing simple and cheap advice and believes the proposed replacement duty to provide 'good advice' is "vague and poorly defined".²

Minister Jones has emphasised the QA Final Report is "*not a blueprint for legislation*", and the implementation of the review's recommendations will be the "*slowest train to the destination*". Minister Jones has not expressed support for non-relevant providers (working for a relevant provider) giving advice, but believes super funds have a role in giving advice.³

¹ Choice, Super Consumers Australia, Financial Counselling Australia, the Consumer Action Law Centre and Financial Rights Legal Centre.

² Sourced from *Consumer groups give ground*, Aleks Vickovich, Australian Financial Review, 10 March 2023.

³ [Jones avoiding 'heroic claims' red tape reduction will improve advice access - Professional Planner](#)

Ms Levy recently stated that the Government's delay on the reforms intended to achieve accessibility is leaving families without professional assistance in the current cost of living crisis, including approximately 100,000 people retiring into difficult circumstances every year. Minister Jones has not established a timeline for the reform, and Ms Levy criticised the opening of further consultation. Choice CEO, Alan Kirkland disagrees, as seeking financial advice is not a top priority for consumers in these economic times.⁴

Australian Law Reform Commission (ALRC) – Financial Services law simplification

The ALRC is undertaking an inquiry to simplify Australian financial services law in response to the FSRC and to make the legislation more adaptive, efficient and navigable within existing policy settings and covers three broad matters⁵:

- Interim Report A focused on definitions used in corporations and financial services legislation was released on 30 November 2021;
- Interim Report B focused on the coherence of regulatory design and hierarchy of laws released on 30 September 2022; and
- Interim Report C focused on restructuring Chapter 7 of the *Corporations Act 2001* (Corporations Act) and *Corporations Regulations 2001* (Corporations Regulations) to be clearer, coherent and effective. This Report is expected on 25 August 2023.

A consolidated final report is expected to be published on 30 November 2023.

The ALRC published [Interim Report B Financial Services Legislation](#) & [Report B Summary Financial Services Legislation](#) on 30 September 2022 and received 20 submissions.

Many stakeholders have identified that the Corporations Act is complicated, includes duplicative provisions, is prescriptive and hard to navigate. Accordingly, Interim Report B contains 6 recommendations to clarify the legislation, enhance navigability and address unclear or outdated provisions, 16 proposals to reform the legislative hierarchy model and 2 questions on draft guidance on the delegation of legislative power.

Overall, submissions support the ALRC's proposed legislative model with concerns mainly relating to the delegated law-making power between the Minister and ASIC. Most submissions did not support giving concurrent power to both authorities to make scoping orders and rules due to potential diminished authority, responsibility shifting, confusion and double handling.

The ALRC will consider the feedback further in the final Report. Agenda Item 10(b) summarises the ALRC Interim Report B and the submissions received.

Improvements to Corporations and Financial Services Law

On 6 March 2023, the Australian Government published [ALRC Exposure Draft Regulations](#) for public comment until 2 April 2023, to simplify Australia's corporation and financial services laws and enhance and maintain Treasury laws to ensure they remain up-to date and fit-for-purpose.

The ALRC Exposure Draft Regulations include consequential amendments to the Corporations Regulations resulting from changes to the primary legislation from the [Treasury Laws Amendment \(Measures for consultation\) Bill 2022](#), which was open for comment between 12 December 2022 and 15 January 2023. The amendments therein aim to implement two recommendations from ALRC Interim Report A and partially implement three recommendations from ALRC Interim Report B.

On 24 August 2022, Treasury released exposure drafts on [Improving Corporations and Financial Services Law](#) and [Rationalisation of Ending ASIC Instrument Measures](#) for public

⁴ Source *Fix the financial advice 'mess' now*: Levy, Hannah Wootton, Australian Financial Review, 2 May 2023.

⁵ [Review of the Legislative Framework for Corporations and Financial Services Regulation | ALRC.](#)

comment until 20 September 2022. The first ED aimed to reduce the complexity of the laws and implement recommendations from ALRC Interim Report A. The second ED aimed to move matters in legislative instruments made by ASIC to primary law and regulations.

Final ASIC update: Compensation for financial advice-related misconduct

ASIC started a project in 2015 to investigate financial institutions for receiving fees for ongoing services that were not provided and non-compliant advice. On 10 March 2023, ASIC released an update on compensation from the six largest providers in Australia to customers who suffered loss or detriment.

AMP, ANZ, CBA, Macquarie, NAB and Westpac undertook the review and remediation programs to compensate customers. As at 31 December 2022, a total of **\$4.7 billion** has been paid or offered, which includes the **\$1.1 billion** between 1 July and 31 December 2022. ASIC expects this will be the final compensation update as most of the programs are complete (refer to ASIC's [media release](#)).

Treasury Update

The FASEA Code remains unchanged since the function moved from FASEA to the Minister as per [Treasury's Financial Adviser Standards page](#). On 10 August 2022, Minister Jones issued a [media release](#) that Treasury will undertake a consultation on the FASEA Code in 2023 after the Government has considered its response to the Quality Advice Review.

Impact on small and medium practices (SMPs)

There are no proposed changes to APES 230 at this stage and, therefore, no impact on SMPs from a professional standards perspective. However, there remains significant, ongoing regulatory change and uncertainty in the financial planning industry, having a marked effect on SMPs. Accordingly, technical Staff will continue to monitor these changes and consider their impact in any future deliberations related to APES 230.

Way Forward

Technical Staff propose to continue monitoring the legislative and regulatory environment in the financial planning industry flowing from the implementation of the FSRC's recommendations, the outcomes from the Quality of Advice Review, and the ALRC's findings to provide further updates to the Board at future Board meetings.

Recommendations

That the Board note the update on the APES 230 project.

Materials Presented

Agenda Item 10(a) Summary of Quality of Advice Review Final Report
Agenda Item 10 (b) Summary of submissions on ALRC Interim Report B

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