

AGENDA PAPER

Item Number: 10
Date of Meeting: 24 August 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 the timing of written consent to continue charging fees on a percentage basis from biennial to annual, and remove expired transitional provisions.

Since APES 230 was first issued, the financial planning industry has undergone ongoing legislative and regulatory changes. The APESB has considered the changes and provided updates on the following:

- the *Consultation Paper: Review of APES 230 Financial Planning Services* at the June 2020 Board meeting ([Agenda Item 9](#)).
- the purpose of APES 230 in setting 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 at the November 2020 Board meeting ([Agenda Item 4](#)).
- the status of APES 230, including CPA Australia's request in December 2020 to suspend APES 230 at the March 2021 Board meeting ([Agenda Item 8](#)). The Board discussed the significance of APES 230, particularly its focus on consumer interest and agreed it should continue as an issued standard. The Board expressed its wishes for the Professional Bodies to continue supporting APES 230.
- the Technical Staff's assessment of retail versus wholesale clients and the Australian Reform Commission (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 (QA Final Report) led by Ms Michelle Levy, the Government's response to the QA Final Report and the ALRC's Interim Report B Financial Services Legislation at the May 2023 Board meeting ([Agenda Item 10](#)).

Matters for Consideration

The Quality of Advice Review commenced on 11 March 2022 and was led by Ms Michelle Levy, a Partner at Allens, 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 QA Final Report includes 22 recommendations.

On 13 June 2023, the Government [responded](#) to the Quality of Advice Review as part of its Delivering Better Financial Outcomes package. Out of the 22 recommendations in the QA Final Report, the Government accepted 9 of those recommendations in full and 5 of those recommendations in principle.

The Delivering Better Financial Outcomes comprises three streams of consultations:

- Stream one — removing regulatory red tape that adds to the cost of advice with no benefit to consumers
- Stream two — expanding access to retirement income advice
- Stream three — exploring new channels for advice

The Government plans to consult with industry professionals and consumer stakeholders on the three streams over the coming months. The issue of its final response on the Delivering Better Financial Outcomes package will be expected later in 2023.

Following the Treasury's response, the Independent Financial Adviser (IFA) published an article on a message delivered by the Minister of Financial Services, Mr Stephen Jones, to the Association of Independently Owned Financial Professionals (AIOFP) Conference in Bangkok. The article states that Mr Jones remarked the Albanese government is "solely focused on the outcomes for consumers."

Mr Jones acknowledged the challenges in the industry and highlighted the critical importance of retirement incomes for consumers, with over 5 million Australians nearing retirement. In June 2023, Mr Jones introduced legislation to enact the experience pathway and is "confident that it will pass through Parliament soon." The legislation aims to retain good advisers and improve entry points for new advisers.

Mr Jones also expressed a desire to reduce regulatory red tape and streamline the process of providing financial advice. He urged the need for quality advisers to address consumers' diverse needs effectively, ensuring positive outcomes for Australians, advisers, and the nation as a whole. Read the full article [here](#).

1. Government Response to Quality of Advice Review Final Report's Recommendations

An Australian Financial Review article on 13 June 2023 reported that Mr Jones shares alignment with Ms Michelle Levy regarding the challenge of accessing affordable quality advice. However, he holds a differing view on the approach to address this issue, including whether financial institutions such as banks, insurers and superannuation funds should have more flexibility in providing such services.

Both parties share a common desire to offer financial advice without being burdened by costly and complex regulations originally designed to protect consumers. To address the needs of consumers seeking straightforward and limited guidance advice, Ms Levy recommends allowing superannuation funds, banks, and insurers to offer personalised advice, as long as it meets specific quality standards. However, Mr Jones is not fully convinced about the suitability of Ms Levy's recommendation to allow banks, insurers, and other fund managers to offer what she calls "good advice".

On 13 June 2023, Mr Jones presented the Treasury's response on the Quality of Advice Review and Delivering Better Financial Outcomes to the Association of Superannuation Funds of Australia. At the presentation, Mr Jones highlighted the following:

Stream One – Removing regulatory red tape that adds to the cost of advice with no benefit to consumers

The first stream aims to streamline the process of providing advice through existing channels. The review has identified weaknesses in the current regulatory framework. Certain rules intended for consumer protection have resulted in excessive documentation, causing harm to consumers and increasing the costs of providing advice without delivering better outcomes. The Treasury has accepted the recommendations to:

- replace complex statements of advice with advice record that is more fit for purpose;
- remove legalistic "Safe Harbour" steps;
- enhance consumer protection by providing clearer guidelines on conflicted remuneration for commissions in life and general insurance; and
- enhance transparency by mandating advisers to disclose the commissions they receive on products.

Stream Two – Expanding access to retirement income advice

The second stream addresses the financial advice industry's critical challenge of retirement incomes. To improve the outcomes for members, superannuation funds must play a more comprehensive and effective role under the guidance of the Retirement Income Covenant. Many retirees do not seek financial advice, resulting in their needs not being met.

The Government supports the review's recommendations that call for funds to provide more retirement advice to their members and intends to provide legal clarity for funds on how to collectively charge for advice. Superannuation funds are well-suited to meet the member needs as they are governed by strong obligations to act in the best financial interest of their members. The Government has also taken steps to enhance disclosure requirements to ASIC.

While some outstanding questions remain, such as the scope of advice permissible from a fund, appropriate feedback from the industry will assist Treasury in ensuring meaningful outcomes for members. In the upcoming weeks, Treasury will engage with the industry to finalise the implementation details.

Stream Three – Exploring new channels for advice

The final stream of the review focuses on exploring new channels for advice, involving other institutions like banks and insurers to provide advice. However, the priorities remain directed towards resolving challenges financial advisers face and expanding access to retirement income advice to the 5 million Australians nearing retirement.

While the review offers guiding principles for discussions, the model proposed is not fit-for-purpose for these sectors. There is a difference between the obligations governing these institutions in contrast to those overseeing superannuation funds.

Treasury is actively implementing recommendations to encourage superannuation funds to offer more advice. It will also work with the industry to tailor the model for other institutions to ensure that it will positively impact the consumers. Read the [media release](#) for further details.

Agenda Item 10 (a) details the 22 recommendations from the QA Final Report and the Treasury's responses.

2. Impact on APES 230 *Financial Planning Services*

Given a considerable number of the recommendations from the QA Final Report were either accepted in principle or require further consultation, Technical Staff believe it is essential to continue monitoring Treasury's response and the outcome from their consultation process before considering potential changes to APES 230. However, the high-level review of the Treasury's response have identified the following points that could impact APES 230:

a) Definition of Best Interest of the client and paragraph 3.6

In APES 230, paragraph 3.6 states that members providing financial planning advice must act in the best interest of the clients, as defined in Division 2 of Part 7.7 A of the *Corporations Act 2001*.

The QA Final Report's recommendation 5 – "Statutory Best Interest Duty" proposes replacing the existing Best Interest Duty (the duty to give appropriate advice assuming the Best Interest Duty is satisfied, the duty to warn the client if the advice is based on inadequate or insufficient information, and the duty of priority if there is a conflict) and related obligation with a new Statutory Best Interest Duty. The new Best Interest Duty would be a true fiduciary duty that reflects the general law and will not include a safe harbour.

The Treasury accepted recommendation 5 in principle and will remove the "Safe Harbour" steps from the Best Interest Duty. However, further consultations are required to determine the implementation details and the implications of adopting the remaining parts of recommendation 5. APESB Technical Staff will need to review the definition of the Best Interest of the client and paragraph 3.6 in APES 230 to determine if amendments are required to align with the revised statutory definition of the Best Interest Duty.

b) Reporting the Financial Planning Advice – paragraph 6.8

The Treasury has accepted, in principle, recommendation 9 – "Statement of Advice" from the QA Final Report. This recommendation proposes replacing the statement of advice with the requirement for advice providers to maintain complete records of the advice given and to provide written advice upon client request.

The Treasury intends to replace the statement of advice with a more fit-for-purpose advice record with consultations to determine the final design of the replacement advice records. Technical Staff believe this change may impact paragraph 6.8, which requires Members in Public Practice to provide a written form report to the client for the financial planning advice provided.

Technical Staff note the importance of documenting and effectively communicating the work performed and the advice given in a written form to the client. This practice ensures the existence of evidence for the tasks undertaken and the client's understanding of the advice given.

Maintaining sufficient and appropriate records for the work performed and advice given is regarded as best practice. Hence, Technical Staff will continue to monitor the outcomes from the consultation and re-assess whether any amendments are required to the extant requirements.

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. 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) Treasury Responses to QA Financial Report Recommendations

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Date: 18 August 2023