

13 March 2020

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Dear Channa

Consultation Paper – Review of APES 230 Financial Planning Services

Please find attached our submission in relation to the review of APES 230. We appreciate you taking the time to consider its content and thank you for granting us an extension. Our comments relate to the appropriateness of the standard in the current legislative and regulatory environment and the ongoing changing landscape for financial services more broadly.

Our response is provided in the context of a multi-disciplinary financial services business, offering a range of professional services to our professional retail clients, including

- tax and accounting
- superannuation
- wealth management
- personal risk management
- residential finance.

We are in an environment striving to restore trust in the community, increase transparency, reduce red tape, make advice as affordable as possible and improve simplicity and clarity for our team and clients.

We are passionate about providing advice to our clients, helping them manage, grow and protect their wealth and to spend as much time as possible face to face with them. This means collectively the Government and Professional Bodies need to consult and work collaboratively to provide clear and streamlined legislation, codes of conduct and best practice principles.

make every day a good day



As a business we are currently investing heavily in further education as required by FASEA. This has and will continue to place a further impost on business productivity, profitability and time available to see clients.

In a Post Royal Commission world and following the implementation of the FASEA Code of Ethics we agree now is the time to review APES 230.

Our feedback is set out in the table below.

1.	<p>In view of substantial changes in financial services since APES 230 became effective in July 2014</p> <p>(a) Do you consider that APES 230 remains fit for purpose?</p>	<p>The original purpose of APES 230 was to develop a standard for accountants, who also provide financial services, with a set of principles that addressed best practice in the provision of ethical advice, on a fee for service basis, that managed conflicts of interest, required client informed consent together with a set of disclosure requirements.</p> <p>We believe the stated purpose of APES230 has been adequately considered and incorporated into the FASEA Code of Ethics that came into effect on 1 January 2020.</p> <p>For the benefit of clarity, we prefer that the APES 230 definition of financial services be mirrored to current legislation and treated accordingly.</p> <p>This means that Insurance, Finance and Real Estate should mirror legislation.</p> <p>Post FASEA we believe there are enough safeguards in place to ensure advice is in the clients best interest and requires their informed consent.</p>
	<p>(b) What amendments or enhancements, if any, should be made to APES 230</p>	<p>Align all elements of APES 230 to legislation and the FASEA Code of Ethics.</p>
	<p>(c) Are there any tools or templates that could be included in APES230 to assist with complying with the standard?</p>	<p>What is the surveillance of compliance with APES230 indicating would assist?</p> <p>Anecdotally we understand the Accounting Bodies are not closely monitoring or supervising compliance with APES230. This makes it</p>

		difficult to understand what is currently being adhered to and where assistance or guidance could assist with compliance.
2.	Do you believe that the definition of Financial Planning Advice in APES230 captures all the relevant advice, products and services provided by members, including advice not provided under an AFSL or ACL such as real estate advice and non-product advice related strategies? If not, please provide an explanation and any recommendations or amendments to this definition to capture relevant Financial Planning Advice provided to a Client?	<p>Please see our comments above about the breadth of the definition of Financial Planning Advice.</p> <p>If you include Real Estate and non-product advice in the definition some grey areas include Self-Managed Super Fund advice particularly in relation to the preparation of SMSF Investment Strategies.</p>
3.	APES230 requires Members to act in the 'Best Interests of Client' (as per the Corporations Act 2001)	
	(a) Have there been any implementation issues in respect of this requirement	<p>As stated, a best interest duty exists in the Corporations Act 2001 and since the APES 230 review in April 2013, Standard 2 of the FASEA code has also been introduced.</p> <p>The Government response to the Royal Commissions into Misconduct in the Banking, Superannuation and Financial Services Industry in February 2019 states at</p> <p>Recommendation 1.2 Best interests duty to introduce a vest interests duty for mortgage brokers to act in the best interests of borrowers</p> <p>Recommendation 2.3 Review of measures to improve the quality of advice by 30 June 2022. Among other things, that review should consider whether it is necessary to retain the 'safe 'harbour' provisions in</p>

		<p>section 961B(2) of the Corporations Act. Unless there is a clear justification for retaining that provision, it should be repealed.</p> <p>We recommend waiting for the release of 30 June 2022 Government review as it will test whether the 1 January 2020 introduction of FASEA Standard 2 and the overarching Values of the Code and the requirement to read all 12 Standards in their entirety have been effective.</p>
	(b) Do you consider the 'safe harbour' provisions in the Corporations Act 2001 ensure clients' best interests are met?	We believe that the guiding principles and values of the FASEA Code should more adequately ensure the clients' best interests are met.
4.	APES 230 currently allows remuneration as fee for service, asset-based fees and third-party payments (subject to laws and regulations). 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?	<p>We believe that the Life Insurance Framework regime that came into effect on 1 January 2018 should be able to run its course and commissions allowed, if client consent is obtained, as required by Standard 4, 5 and 7 of the FASEA Code.</p> <p>Recommendation 1.3 Mortgage Broker Remuneration states "The government agrees to address conflicted remuneration for mortgage brokers. The Government stated it will proceed carefully and in stages, to ensure that the changes do not adversely impact consumers access to lenders and competition in the home lending market.</p>

		<p>We suggest alignment with the Government's approach to conflicted remuneration.</p> <p>Additionally, ASIC consultation paper 329 addresses other advice fee consents in response to the findings of the Royal Commission.</p>
	(b) Are there any transition arrangements required?	If the Government introduces transitional arrangements these can be incorporated into the APES 230 standard, otherwise no.
5.	APES 230 requires Members to obtain clients "informed Consent" in respect of asset-based fees and third-party payments, but not for fee for service	
	(a) Are there any new systems, processes and/or policies that members would need to implement?	<p>FASEA Code of Ethics requires clients informed consent for all fees and charges.</p> <p>APES 230 should align itself with FASEA standards as they do does require client's informed consent for fee for service.</p> <p>A member would be in breach of FASEA standards if they did not obtain client's informed consent for fee for service.</p>
	(b) What are the challenges, if any, that members consider would result from implementing these changes?	The challenges would be the same as those imposed by the introduction of the FAEA standards, we cannot foresee any additional challenges.
	(c) Would the inclusion of a template in APES 230 which includes matter to be disclosed to clients to obtain Informed Consent for remuneration by useful for Members?	Yes, but only if aligned with FASEA standards.

6.	<p>The Financial Services Royal Commission recommended that 'hawking' (unsolicited offer or sale) of superannuation and insurance products should be banned (recommendations 3.4 and 4.1)</p>	
	<p>(a) Do the requirements that Members' marketing or promotional activities must not bring the profession into disrepute adequately prevent unsolicited offers or sales in practice?</p>	<p>We recommend specifically calling out 'superannuation' products as does the Government in recommendation 3.4.</p>
7	<p>If APES 230 extended the concept of Informed Consent to the Terms of Engagement and the provisions of the Financial Planning Advice, what are the challenges, if any, that members consider would result from implementing these changes?</p>	<p>In the world of standalone financial planning FASEA and the Financial Planning Association refer to Terms of Engagement as a Letter of Engagement.</p> <p>Consistency of terminology across all Professional Bodies would assist members.</p>
8	<p>APES 230 currently allows soft dollar (non-momentary) benefits up to a cap of \$300, which is consistent with Corporations Act 2001 requirements. Should this cap remain.?</p>	<p>FASEA Standard 7 reads "Except where expressly permitted by the Corporations Act 2001 you may not receive any benefits, in connection with acting for a client, that derive from a third party other than your principal.</p> <p>Yes the cap can remain as it is consistent with the law and FASEA Standard 7..</p>

<p>9.</p>	<p>Do you consider that there are sufficient protections in APES 230, in relation to debt and gearing around asset-based fees for wholesale clients?</p>	<p>No, generally we are concerned that existing legislation around wholesale investors is flawed.</p> <p>Under the Corporations Act anyone earning \$250,000 for two years or with \$2,500,000 in net assets can be classified as a wholesale investor.</p> <p>Under FASEA</p> <p>Standard 2 Best Interest Standard 5 Client Understands the advice Standard 6 the requirement to consider the clients long term and broader interests Standard 9 for the advice to be offered in good faith</p> <p>advisers have an ethical obligation to make a professional judgement about how to classify a client.</p>
<p>10.</p>	<p>Are there any further reforms, issues or ideas that you believe the APESB should consider in APES 230 in order to protect consumers who receive financial advice from a Member?</p>	<p>We believe there should be one Code and set of standards covering financial services. This will enhance compliance and agility of management of standards as new legislation is introduced.</p> <p>Currently financial service businesses have the following to abide by</p> <ul style="list-style-type: none"> Corporations Act 2001 SIS Act Tax Agents Act AML and CTF Act Privacy FASEA Code of Ethics APES standards FPA Code of Ethics Tax Agents Board Code of Ethics

		<p>Tony Bongiorno, many members of our team and I have already undertaken our required additional FASEA training requirements.</p> <p>We take our responsibilities seriously and ask for your consideration to align APES 230 with legislation and FASEA to ensure our business remains viable and we can service our clients and offer affordable advice.</p> <p>We believe the concerns the APESB originally had at the time of reviewing APES 230 in April 2013 have now been adequately addressed by the Government, the Royal Commission and FASEA.</p>
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With kind regards

Anthony S Bongiorno, Founding Partner
Margaret Mote, CEO
Bongiorno Group