

AGENDA PAPER

Item Number: 8
Date of Meeting: 5 March 2024
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 is to set 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's (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 likely 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](#)).
- The Government's initial response to the QA Final Report Review and the release of the Delivering Better Financial Outcomes Package at the August 2023 Board meeting ([Agenda Item 10](#)).

Matters for Consideration

Changes to legislation and regulations in the financial planning industry continue to evolve. This paper sets out some of the key developments since the last update on APES 230 was provided to the Board at the August 2023 Board Meeting.

Quality of Advice Review and the Delivering Better Financial Outcomes Package

In June 2023, the government issued their initial [response](#) to the [Quality of Advice Review \(QAR\) Final Report](#). The initial response outlined three streams of reforms to improve access to financial advice and addressed the 22 recommendations from the QAR. Of the 22 recommendations, 9 were accepted in full, 5 were accepted in principle, 1 was not accepted, and 7 may be considered depending on further consultation (refer to Agenda Item 8(a) for more information about the recommendations and the Government's response).

On 14 November 2023, the government released an exposure draft [Delivering Better Financial Outcomes package](#) for public consultation. The exposure draft set out draft legislation that aimed to ensure legal certainty for adviser fee payments from a member's superannuation fund account, accompanied by the removal of burdensome red tape that contributes to the cost of advice without delivering tangible benefits to consumers. It addressed the following QAR recommendations:

- Fees (Recom 7, 8, and 13.2);
- Financial services guides(Recom 10);
- Provision or receipt of benefits by various parties (Recom 13.1, 13.3 and 13.5); and
- Insurance (Recom 13.7, 13.8 and 13.9). It

The comment period for the exposure draft closed on 6 December 2023.

On 7 December 2023, the Government provided its [final response](#) to the QAR. The Financial Services Minister Stephen Jones announced a comprehensive package to address the gap in accessible, affordable financial advice for Australians, particularly those at or nearing retirement.

The package aims to ensure Australians have access to quality and affordable financial advice and will:

- Modernise the best interests duty to ensure customers receive helpful advice, including on an issue or limited scope issues, at a high standard. The existing obligations to act in the best interest of the client and to prioritise their interest in the event of a conflict will remain at the core of the renewed standard. However, the safe harbour steps will be removed. The QAR recommendation of replacing the 'best interest duty' with a 'good

advice' duty has not been adopted, with Minister Stephen Jones stating "because Australians deserve the best, not just good."

- Replace the statements of advice with a plain English record to provide helpful information for informed decision-making. The record will need to cover the subject matter/scope, the advice, the reasons for the advice and, the costs of advice to the client and the benefits received by the advisor.
- Introduce a new class of financial advisers (i.e., qualified advisers) who can provide advice on simple topics without charging fees or commissions while being subject to the modernised best interests duty. It is expected that this new class of advisors will generally be employees of licensed financial institutions. The licensee will be wholly responsible for the advice provided.
- Clarify the topics that superannuation funds can charge for advice on and the circumstances they can consider.
- Allow super funds to provide helpful 'nudges' to members to drive greater engagement with superannuation at key life stages.

Minister Stephen Jones said, "*Our approach to financial advice is that it must be safe, helpful and quality. Safe to ensure that we protect Australians from bad advice. Helpful to ensure that it is usable by the client and quality to ensure it delivers the best outcome for Australians*". The media release by the Treasurer can be found [here](#).

As part of their announcement, the Government confirmed they won't proceed with the adoption of the following QAR recommendations:

- broadening the definition of personal advice (recommendation 1);
- removing the requirement of general advice warning (recommendation 2);
- limit the exception to the requirement to take reasonable steps to ensure the distribution of a financial product is consistent with its target market to personal advice provided by relevant providers only (recommendation 12.1); and
- remove DDO reporting requirements for relevant providers in the Corporations Act to report significant dealings outside the target market, comply with the additional reporting obligations specified by a product issuer in the Target Market Determination and report the product issuer where there have been no complaints (recommendation 12.2).

The government will engage in consultations with industry and consumer stakeholders in the coming months to develop the legislation, with the goal of implementing this model in 2024.

Technical Staff have reviewed the Detailed Overview of the package released in December 2023. Refer to Agenda Item 8 (a), which provides further details on the Government's positions on the 22 recommendations from the QA Final Report.

Financial Planners and Advisors Code of Ethics 2019

As part of the announcement on the Delivering Better Financial Outcomes package, the Government announced that the FASEA Code will be reviewed to ensure that it aligns with the Government reforms in financial advice and remains fit-for-purpose as the financial advice industry advances in professionalism. The review will occur following the implementation of the Delivering Better Financial Outcomes package.

Australian Law Reform Commission (ALRC) - Financial Services Law Simplification

On 11 September 2020, the Australian Law Reform Commission (ALRC) received Terms of Reference to undertake an inquiry into simplifying the legislative framework for corporations and financial service regulations. The review was aimed at streamlining Australian Financial Services Law, seeking to reduce its complexity and enhance adaptability, efficiency and navigability.

Between 2021 and 2023, the ALRC issued three Interim Reports:

- [Interim Report A](#), which examines the use of definitions in corporations and financial service legislation, was published on 30 November 2021 (an update was provided to the Board in March 2023 Board Meeting [Agenda Item 7](#));
- [Interim Report B](#), which examines the coherence of the regulatory design, hierarchy of laws and how the content of the regulation is structured, was published on 30 September 2022 (an update was provided to the Board at the 31 May 2023 Board Meeting [Agenda Item 10](#)); and
- [Interim Report C](#), which examines the provisions and the structure of Chapter 7 of the Corporations and how it can be reframed, was published on 22 June 2023.

On 18 January 2024, the [Final Report](#) was published in parliament. This report sets out all 58 recommendations made by the ALRC, including the 23 recommendations already released in the Interim Reports.

The final report lists five principal problems with the existing legislative framework:

- Excessive use of notional amendments;
- An incoherent legislative hierarchy;
- The creation of a legislative maze produced by proliferating powers and legislative instruments;
- Poorly designed primary and delegated legislation that obscures important messages; and
- Problems in law-making processes and legislative maintenance.

To address these problems, the ALRC proposes to restructure and consolidate the existing legislation framework for financial service regulation into a coherent and principled legislative model. This model would comprise three elements:

- the financial service law (the primary legislation containing the key regulatory provisions, such as core obligations, core prohibitions, offence provisions, rights, remedies and definitions);
- a scoping order (a single, consolidated legislative instrument that adjusts the regulatory scope and boundaries; it would replace the hundreds of regulations and ASIC legislative instruments currently in place); and
- rulebooks (Thematic and consolidated rulebooks will contain details of different aspects of the legislative framework, applicable in different circumstances).

The ALRC recommends that the Minister and ASIC have powers provided by the primary legislation to make scoping orders and rules as legislative instruments. ALRC also proposes that the definitions of 'financial product' and 'financial services' (recommendation 31) be simplified to a single definition used across all legislation.

The Final Report notes that to date, 13 recommendations from the interim reports have been implemented in full or in part (detailed in table 1.1 on page 40 of the final report).

The ALRC has also issued a [reform roadmap](#) that comprises six pillars to implement the reformed legislative framework. The pillars are Consumer Protection, Disclosure, Financial Advice, Other regulatory obligations and licensing, and Miscellaneous and Policy-evolving provisions.

The government is [considering](#) the ALRC report and recommendations. It has not indicated a time frame in which it will respond to the report.

Impact on APES 230 *Financial Planning Services*

As the Government is still developing the legislative changes required to implement their Delivering Better Financial Outcomes Package (which also addresses the recommendations from the QAR), Technical Staff will continue to monitor the developments in the financial planning industry. A high-level assessment of the recommendations from the ALRC Final Report and the changes identified in the Financial Outcomes Package has been performed by Technical Staff. There are three areas of APES 230 that the changes could impact:

a) Definition of 'Best Interests of the Client'

The definition of 'Best Interests of the Client' in APES 230 refers to the obligations as defined in Division 2 of Part 7.7 A of the *Corporations Act 2001*. The Government has stated that they will keep the Best Interest Duty for Financial Advice, but they will modernise it as part of implementing the Delivering Better Financial Outcomes Package. At the date of writing this report, they have not released the proposed legislation to modernise this duty within the Corporations Act.

b) Definition of 'Financial Planning Advice'

The definition of Financial Planning Advice in APES 230 outlines the type of advice and services that are within the scope of APES 230. The definition currently refers to '...advice and dealing in financial products as defined in section 766C of the *Corporations Act 2001*.'

The ALRC Final Report recommends having a single definition of 'financial product' and 'financial service' in the *Corporations Act 2001*, which should be used consistently across other legislation. Changes to these terms may impact the extant references and phrases used within the definition of 'financial planning advice.'

c) Reporting the Financial Planning Advice – paragraph 6.8

Under the proposed Government reforms, the Statement of Advice will be replaced with a principle-based advice record. The new record must address the scope, the advice, the reason for the advice and the cost of advice to the client or the benefit received by the adviser. Technical Staff noted the level of detail in the proposed advice record is significantly less than the specific requirements in paragraph 6.8 in APES 230, which requires Members in Public Practice to provide a written form report to the client for the financial planning advice provided.

Technical Staff will continue to monitor the developments noted in this paper to determine if any revisions will be required to APES 230.

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 effects 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. Further updates will be provided to the Board during future Board meetings.

Recommendations

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

Materials Presented

Agenda Item 8 (a) Review of Treasury Responses to QAR Recommendations

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