

October 2019



**Exposure Draft 04/19**  
**Revision of APES 230 *Financial Planning Services***

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# A. Explanatory Memorandum to Exposure Draft 04/19 Revision of APES 230 *Financial Planning Services*

## Introduction

In November 2018, APESB released the restructured APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code). The restructured Code features significant revisions which impacts the entire suite of APESB pronouncements. The pronouncement listed below has been revised to update cross-references to the Code, to ensure consistency of definitions and terminology and other matters.

The aim of this Explanatory Memorandum is to provide stakeholders with the background, development process and rationale for Exposure Draft 04/19 Revision of APES 230 *Financial Planning Services* (the Exposure Draft) issued in October 2019.

The Explanatory Memorandum has been prepared by Technical Staff of APESB and approved by the Board of Directors of APESB. The Explanatory Memorandum **does not** form part of the Exposure Draft and is not a substitute for reading it in full.

## Summary of APESB Pronouncement

This Exposure Draft comprises proposed amendments to the following pronouncement:

Pronouncement	Name of pronouncement
APES 230	<i>Financial Planning Services</i>

## Key proposed amendments

The marked-up version of APES 230 in the Exposure Draft (refer to **Appendix 1**) reflects the proposed changes for the following key matters:

- (i) Revisions to reflect the restructured Code;
- (ii) Matters noted through a review of the pronouncement by APESB; and
- (iii) Inclusion of references to Non-compliance with Laws and Regulations (NOCLAR).

The specific details of the proposed changes are set out in Part C of this Explanatory Memorandum.

APESB intends to separately issue a Consultation Paper in late 2019 to obtain views of stakeholders in respect of the impact on APES 230 from the:

- Government’s implementation of recommendations from the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*; and
- introduction of the FASEA *Financial Planners and Advisers Code of Ethics*.

Matters on the APESB’s Issues Register will be addressed in the forthcoming Consultation Paper.

### Interactive PDF features

APESB are incorporating updates to include interactive PDF features within all of its pronouncements.

The restructured Code PDF now includes the following features:

- Bookmark Tab section for Table of Contents;
- Dynamic links to Sections and paragraphs;
- Pop-up definitions upon mouse rollover for defined terms; and
- Links to external websites

APESB is proposing to include these features in the revised version of APES 230 in this Exposure Draft. To prepare for this, APESB Technical Staff have shaded all defined terms in blue in this Exposure Draft.

### Effective Date

The effective date for the revised pronouncement will be 1 January 2020 (to align with the effective date of the new restructured Code).

This is marked up in paragraph 1.2 of APES 230 proposing that the revised standard will be operative from 1 January 2020.

## B. Request for comments on Exposure Draft

### Commenting on this Exposure Draft

APESB invites stakeholders to provide comments on the proposed revisions to APES 230 identified in ED 04/19.

The proposals in this Exposure Draft may be modified in light of comments received before being issued in final form. **Comments are requested by 11 November 2019.**

Comments should be addressed to:

Chief Executive Officer  
Accounting Professional & Ethical Standards Board Limited  
Level 11, 99 William Street  
Melbourne, Victoria 3000  
Australia

APESB would prefer that respondents express a clear overall opinion on whether the proposed revisions to APES 230 (refer to the marked-up version of APES 230 in Appendix 1 of the Exposure Draft) are supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on any matter. APESB regards both critical and supportive comments as essential to a balanced view of the proposed pronouncement.

Respondents are asked to submit their comments electronically through the APESB website, using the link <http://www.apesb.org.au/apesb-exposure-drafts-open-for-comment>.

Please submit comments in both a PDF and Word file. All comments will be considered a matter of public record and will ultimately be posted on the website [www.apesb.org.au](http://www.apesb.org.au).

APESB prefers that comments are submitted via its website. However, if there are technical difficulties, comments can also be sent to [sub@apesb.org.au](mailto:sub@apesb.org.au) or mailed to the address noted above.

### Request for Specific Comments

APESB is seeking respondents' specific comments and feedback on whether the existing provisions in this standard require amendments due to the use of digital technology and artificial intelligence.

APESB is planning to release a Consultation Paper in late 2019, on potential reforms to APES 230 broader than the current amendments to align with the restructured Code. At this stage, APESB are requesting that respondents focus their comments and feedback on the proposals in this Exposure Draft.

### Obtaining a copy of this Exposure Draft

This Exposure Draft is available on the APESB website: [www.apesb.org.au](http://www.apesb.org.au).

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Melbourne Victoria 3000  
Australia

E-mail: [enquiries@apesb.org.au](mailto:enquiries@apesb.org.au)  
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## C. Revisions

### C.1 Key proposed amendments

The marked-up version of APES 230 in the Exposure Draft (refer to **Appendix 1**) reflects the proposed changes incorporated into the existing pronouncement and addresses the following key matters:

#### (i) **Revisions to reflect the restructured Code**

In November 2018, APESB released the restructured Code to align it with the restructure to the International Code undertaken by the International Ethics Standards Board for Accountants (IESBA).

APESB has undertaken a project to revise all of its current pronouncements to update any cross-references to the Code and ensure consistency of definitions and obligations across the Code and all APESB Pronouncements. Refer to **Section C.2** for a table which summarises the revisions to this pronouncement in this Exposure Draft in relation to the restructured Code.

#### (ii) **Matters noted through a review of the pronouncement by APESB**

In reviewing this pronouncement APESB noted the following matters to be addressed in this revision:

- a new paragraph setting out the objectives of APES 230;
- new definitions including for Australian Financial Services Licensee and Writing; and
- changing the requirement to obtain informed consent in Writing to charge and collect fees on a percentage of funds under management basis from biennial to annual.

**Section C.3** sets out a table which summarises the proposed revisions to APES 230 in Exposure Draft 04/19 not addressed in Section C.2.

## C.2 Table of proposed revisions to reflect the restructured Code

The table below provides a summary of the proposed revisions to APES 230 in this Exposure Draft to align the definitions and relevant cross-references to the restructured APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* issued in November 2018.

Revisions to reflect the restructured Code	Pronouncement
	APES 230
<b>Amendments to definitions to align with the restructured Code</b>	
Acceptable Level	✓
Code	✓
Firm	✓
Member	✓
Member in Business	✓
Member in Public Practice	✓
Professional Bodies	✓
Professional Independence*	✓
<b>New definitions added that align with the restructured Code</b>	
Professional Activity	✓
Professional Services	✓
<b>Update cross-references to the restructured Code</b>	
Paragraph 3.1	✓
Paragraph 3.2	✓
Paragraph 3.3	✓
Paragraph 3.4	✓
Paragraph 3.5	✓
Paragraph 3.7	✓
Paragraph 3.11	✓
Paragraph 3.17	✓
Paragraph 3.18	✓
<b>Amendments to align obligations with the restructured Code</b>	
Paragraph made consistent with restructured Code paragraph R1.4	1.6

\* The definition of Professional Independence in APES 230 has been amended to align with the definition of Independence contained in the restructured Code.

### C.3 Table of other proposed revisions to the Standard

The table below provides a summary of the proposed revisions to APES 230 in the Exposure Draft and the impact on the existing pronouncement. Note that this summary does not include the revisions noted in Section C.2 relating to the restructured Code.

Summary of proposed amendments	Pronouncement
	APES 230
Inclusion of new paragraph setting out the Objectives of the standard (paragraph 1.1)	✓
Effective date revised (paragraph 1.2)	✓
Inclusion of new scope and application paragraph to be consistent with other pronouncements and Due Process document (paragraph 1.10)	✓
New definition for Australian Financial Services Licensee derived from a similar definition in the <i>Corporations Act 2001</i>	✓
New definition of Writing (to be consistent with other pronouncements)	✓
Addition of reference to NOCLAR requirements (paragraph 7.5)	✓
Change of requirement for informed consent to be obtained annually (not biennially) (paragraph 8.2)	✓
Removal of transitional provisions (Section 12)	✓
<b>Minor Editorials</b>	
Paragraph 1.3	✓
Paragraph 1.5	✓
Paragraph 1.8	✓
Paragraph 1.9	✓
Section 2 – Introduction	✓
Definition – Australian Credit Licence (ACL)	✓
Definition – Australian Financial Services Licence (AFSL)	✓
Definition – Client	✓
Definition – Financial Planning Advice	✓
Definition – Financial Services and Credit Guide	✓
Paragraph 3.8	✓
Paragraph 3.9	✓
Paragraph 3.12	✓
Paragraph 3.13	✓
Paragraph 3.14	✓
Paragraph 3.15	✓
Paragraph 4.1	✓
Paragraph 5.2	✓
Paragraph 6.4	✓
Paragraph 6.8	✓
Paragraph 7.1	✓
Paragraph 7.2	✓

Summary of proposed amendments	Pronouncement
	APES 230
Paragraph 8.4	✓
Paragraph 9.2	✓
Paragraph 9.5	✓
Paragraph 10.1	✓
Paragraph 10.3	✓
Paragraph 11.1	✓

## Appendix 1

### APESB Standard in ED 04/19

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# APES 230 Financial Planning Services

[Supersedes APES 230 Financial Planning Services issued in April 2013] ~~Prepared and issued by Accounting Professional & Ethical Standards Board Limited~~

ISSUED: ~~April 2013~~ **XXXX 2019**

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~~**APES 230**~~  
~~**Financial Planning Services**~~  
 (Issued April 2013)

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*Conformity with International Pronouncements*

[Appendix 1: Summary of revisions to the previous APES 230 \(issued in April 2013\) \[Not included as the summary of revisions is included in the explanatory memorandum to ED 04/19\]](#)

## 1. Scope and application

- 1.1 The objectives of APES 230 *Financial Planning Services* are to specify a Member's professional and ethical obligations in respect of:
- fundamental responsibilities when the Member performs a Financial Planning Service for a Client or employer;
  - compliance with applicable Professional Independence requirements;
  - terms of the engagement;
  - the basis and reporting of Financial Planning Advice;
  - remuneration of the Member including professional Fees, Third Party Payments and Soft Dollar Benefits; and
  - documentation and quality control.
- 1.24 Accounting Professional & Ethical Standards Board Limited (APESB) ~~issues~~ has revised professional standard APES 230 *Financial Planning Services* (**the Standard**), which, ~~apart from the transitional provisions in paragraph 12,~~ is effective from ~~1 July 2014~~ 1 January 2020 and ~~supersedes APES 230 issued in April 2013.~~ This Standard supersedes APS 12 *Statement of Financial Advisory Services*. ~~Earlier adoption of this Standard is permitted.~~
- 1.32 APES 230 sets the standards for Members in the provision of quality and ethical Financial Planning Services. The mandatory requirements of this Standard are in **bold-type** ~~(black lettering)~~, preceded or followed by discussion or explanations in normal type ~~(grey lettering)~~. APES 230 should be read in conjunction with other professional duties of Members, and any legal obligations that may apply.
- 1.43 **Members in Australia shall follow the mandatory requirements of APES 230 when they provide Financial Planning Services.**
- 1.54 **Members ~~practising~~ outside of Australia shall follow the mandatory requirements of APES 230 to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.**
- 1.65 **Members shall ~~be familiar~~ comply with ~~relevant other applicable~~ Professional Standards and be familiar with relevant guidance notes when providing Professional Services Activities. All Members shall comply with the fundamental principles outlined in the Code.**
- 1.76 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.87 All references to Professional Standards, guidance notes and legislation are references to those provisions as amended from time to time.
- 1.98 In applying the requirements outlined in APES 230, Members should be guided not merely by the words but also by the spirit of ~~the~~ this Standard and the Code.
- 1.10 In this Standard, unless otherwise specified, words in the singular include the plural and vice versa, words of one gender include another gender, and words referring to persons include corporations or organisations, whether incorporated or not.

## 2. Definitions

[Defined terms are shown in the body of the Standard in title case.](#)

For the purpose of this Standard:

**Acceptable Level** means a level at which a [Member using the](#) reasonable and informed third party [test](#) would ~~be likely to conclude, weighing all the specific facts and circumstances available to that the~~ [Member](#) ~~at that time, that compliance~~ [complies](#) with the fundamental principles ~~is not compromised~~.

**Australian Credit Licence (ACL)** means a licence that authorises the licensee to engage in particular credit activities as defined in the *National Consumer Credit Protection Act 2009*.

**Australian Financial Services Licence (AFSL)** means a licence to provide financial services under Chapter 7 of the *Corporations Act 2001*.

[Australian Financial Services Licensee](#) means a person or entity who holds an [Australian Financial Services Licence \(AFSL\)](#).

**Best Interests of the Client** means the obligations as defined in Division 2 of Part 7.7A of the *Corporations Act 2001*, and for the purposes of this Standard apply to the provision of all [Financial Planning Services](#).

**Client** ~~for the purposes of this Standard~~ means a natural person (whether the person operates as a sole trader or through a partnership, corporation or trust which the person controls) to whom [or to which](#) [Financial Planning Services](#) are provided by a [Member in respect of engagements of either a recurring or demand nature](#).

**Code** means APES 110 *Code of Ethics for Professional Accountants* ([including Independence Standards](#)).

**Commissions** means all monetary amounts received by a [Member](#) or [Firm](#) other than from a [Client](#) in respect of the placement or retention of the [Client's](#) funds or purchases or sales of financial or risk products. Commissions includes trailing commissions and income and amounts received from an [Australian Financial Services Licensee](#), product provider or other party.

**Fee for Service** means a professional fee for a [Financial Planning Service](#) determined by taking into consideration factors such as the nature and complexity of the [Financial Planning Service](#), the scope and scale of the service provided, the level of experience and expertise of the [Member](#) and the [Member's](#) staff, the degree of responsibility applicable to the work, inherent risks associated with the service, and the time spent on the [Financial Planning Service](#).

Fee for Service does not include fees solely determined or based on a percentage of the value of assets or [Third Party Payments](#) or other forms of fees or remuneration that are calculated by reference to product sales or the volume or accumulation of funds under management.

**Financial Planning Advice** means advice in respect of a [Client's](#) personal financial affairs specifically related to wealth management, retirement planning, estate planning, risk management and related advice, including:

- (a) advice on financial products such as shares, managed funds, superannuation, master funds, wrap accounts, margin lending facilities and life insurance carried out pursuant to an [Australian Financial Services Licence \(AFSL\)](#);
- (b) advice and dealing in financial products as defined in section 766C of the *Corporations Act 2001*;
- (c) advice and services related to the procurement of loans and other borrowing arrangements, including credit activities provided pursuant to an [Australian Credit Licence \(ACL\)](#); and
- (d) other advice such as taxation, real estate and non-product related advice on financial strategies or structures provided as part of the advice under (a) – (c).

**Financial Planning Service** means a service where a **Member** provides **Financial Planning Advice** to a **Client**.

~~**Financial Services Guide** means a financial services guide as defined in the *Corporations Act 2001*.~~

**Financial Services and Credit Guide** means a **Financial Services Guide** combined with a credit guide in a single document as defined in the *Corporations Act 2001*.

**Financial Services Guide** means a financial services guide as defined in the *Corporations Act 2001*.

**Firm** means:

- (a) A sole practitioner, partnership, corporation or other entity of professional accountants;
- (b) An entity that controls such parties, through ownership, management or other means;
- (c) An entity controlled by such parties, through ownership, management or other means; or
- (d) An Auditor-General's office or department.

**Informed Consent** means a **Client's** voluntary decision to accept a **Financial Planning Service** from a **Member** that is given with the knowledge and understanding of the costs, benefits and risks involved including the potential consequences of any proposed transaction and without coercion or inappropriate pressure by the **Member**. Informed Consent requires the **Member** to fully inform the **Client** by providing all relevant information that bears upon the decision, including the monetary and non-monetary benefits to the **Member** and any third party provider. It requires the **Member** to carefully explain the information in a manner that is understandable to the **Client** bearing in mind the likely imbalance of knowledge between the **Member** and the **Client**. Informed Consent also requires the **Client** to be given sufficient time to form an opinion about the information and any proposed transaction.

**Member** means a **Member** of a **Professional Body** that has adopted this Standard as applicable to their membership, as defined by that **Professional Body**.

**Member in Business** means a **Member** ~~employed or engaged in an executive or non-executive capacity working~~ in ~~such~~ areas ~~such~~ as commerce, industry, service, the public sector, education, the not-for-profit sector, ~~or in~~ regulatory ~~bodies~~ or professional bodies, ~~or a Member contracted by such entities who might be an employee, contractor, partner, director (executive or non-executive), owner-manager or volunteer.~~

**Member in Public Practice** means a **Member**, irrespective of functional classification (~~e.g. for example,~~ audit, tax or consulting) in a **Firm** that provides **Professional Services**. ~~The~~**This** term is also used to refer to a **Firm** of **Members** in Public Practice and means a practice entity and a participant in that practice entity as defined by the applicable **Professional Body**.

**Professional Activity** means an activity requiring accountancy or related skills undertaken by a **Member**, including accounting, auditing, tax, management consulting, and financial management.

**Professional Bodies** means ~~the Institute of Chartered Accountants in Australia~~ Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants.

**Professional Independence** ~~means~~ comprises:

- (a) Independence of mind - the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional scepticism; and
- (b) Independence in appearance - the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, ~~weighing all the specific facts and circumstances,~~ that a **Firm's**, or an engagement team **Member's** ~~of the engagement team's~~, integrity, objectivity or professional scepticism has been compromised.

**Professional Services** means **Professional Activities** performed for **Clients**.

**Professional Standards** means all standards issued by the Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable [Professional Body](#).

**Soft Dollar Benefits** means all non-monetary benefits received by a [Member](#) from parties other than the [Client](#) in connection with a [Financial Planning Service](#). Soft Dollar Benefits includes:

- Free or subsidised services or equipment such as office space, computer hardware, or commercially available computer software; or
- Free or subsidised attendance (including travel and accommodation) at, or sponsorship of, conferences or functions of one or more days duration conducted by a third party, where the principle eligibility is based on or related to business volumes written or held.

Soft Dollar Benefits excludes free or subsidised professional development as defined in the *Corporations Act 2001*.

**Statement of Advice** means statement of advice as defined in the *Corporations Act 2001*.

**Third Party Payments** means all amounts received by a [Member](#) from parties other than the [Client](#) to whom a [Financial Planning Service](#) is provided as a result of providing that service. Third Party Payments includes [Commissions](#), production bonuses, remuneration based on sales volumes, remuneration benefits received for the sale of in-house financial products or other like payments from financial product providers. Third Party Payments excludes non-recurring fixed referral fees received by a [Member](#) as a result of referring a [Client](#) to another service/product provider provided that they are not [Commissions](#) and are disclosed to the [Client](#) by the [Member](#).

[Writing](#) means a mode of representing or reproducing words in a visible form and includes words in an electronic format capable of being converted to printed text.

### 3. Fundamental responsibilities of Members

- 3.1 A [Member](#) providing a [Financial Planning Service](#) shall comply with ~~Section 100 Introduction and Fundamental Principles~~ Part 1 Complying with the Code, Fundamental Principles and Conceptual Framework of the Code and relevant laws and regulations.

#### Public interest

- 3.2 ~~In acting in the public interest~~ accordance with Section 100 Complying with the Code of the Code, a [Member](#) shall observe and comply with the ~~Code~~ Member's public interest obligations when ~~the Member provides~~ ing a [Financial Planning Service](#).

#### Integrity

- 3.3 A [Member](#) providing a [Financial Planning Service](#) shall comply with ~~Subsection 110~~ 111 Integrity of the Code.

#### Objectivity and conflicts of interest

- 3.4 A [Member](#) providing a [Financial Planning Service](#) shall be objective in accordance with ~~Section 120~~ Subsection 112 Objectivity of the Code.
- 3.5 A [Member in Public Practice](#) shall comply with Section ~~220~~ 310 Conflicts of Interest ~~and Section 280 Objectivity—All Services~~ of the Code.

#### Best Interests of the Client

- 3.6 A [Member](#) providing a [Financial Planning Service](#) shall act in the [Best Interests of the Client](#).

## Professional competence and due care

- 3.7 A **Member** providing a **Financial Planning Service** shall maintain professional competence, take due care and act in a timely manner in the performance of the **Member's** work in accordance with **Subsection 130-113 Professional Competence and Due Care** of the **Code**.
- 3.8 Where a **Financial Planning Service** requires the consideration of matters that are outside the professional expertise of a **Member**, the **Member** shall seek expert assistance or advice from a suitably qualified third party, or decline to provide the service. Where the **Member** relies on the advice of a third party, the **Member** shall disclose in any reports, or other relevant communications, the name and qualifications of the third party and the areas in which third party advice has been obtained.
- 3.9 When planning to use the work of a suitably qualified third party, a **Member** shall assess the professional competence and objectivity of that third party, document the terms of engagement of the third party, and assess the appropriateness and reasonableness of the work performed and the fees charged.
- 3.10 In undertaking a **Financial Planning Service**, a **Member** shall consider any guidance issued by the **Professional Bodies** and applicable regulatory authorities.

## Confidentiality

- 3.11 ~~In accordance with Section 140 Confidentiality of the Code, a~~ **Member** who acquires confidential information in the course of a **Financial Planning Service** shall ~~not use that information for any purpose other than the proper performance of that service~~ **comply with Subsection 114 Confidentiality of the Code**.
- 3.12 Unless a **Member** has a legal, **regulatory or professional** obligation of disclosure, the **Member** shall not convey any information relating to a **Client's** affairs to a third party without the **Client's** permission.
- 3.13 For the purposes of paragraph 3.12, an **Australian Financial Service Licensee** or **Australian Credit Licensee** whom the **Member** represents is not considered to be a third party.
- 3.14 Where a **Client** has given a **Member** permission to disclose confidential information to a third party, it is preferable that this permission is in **w**riting. Where oral permission is obtained, a contemporaneous note should be made and kept on file by the **Member** recording the relevant details of the **Client's** approval.
- 3.15 Where a **Member** provides confidential information in accordance with a legal, **regulatory or professional** obligation of disclosure, the **Member** shall notify the **Client**, or relevant third party as soon as practicable, provided that there is no legal prohibition against such notification.
- 3.16 An example of confidential information that may in certain circumstances be required or authorised by law to be disclosed is the reporting of suspected money laundering activities to AUSTRAC in accordance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

## Professional appointments

- 3.17 A **Member in Public Practice** who is approached by a potential **Client** to undertake a **Financial Planning Service** shall comply with **Section 240-320 Professional Appointments** of the **Code**.

## Marketing

3.18 A **Member in Public Practice** who provides **Financial Planning Services** shall comply with ~~Subsection 250-Marketing-Professional-Services-~~115 Professional Behaviour of the Code.

## 4. Professional Independence

4.1 When engaged to provide a **Financial Planning Service**, a **Member** shall comply with **Professional Independence** as defined in this Standard and, where applicable, shall comply with the independence requirements contained in laws or regulations, such as the *Corporations Act 2001*.

4.2 Where a **Member** provides a **Financial Planning Service** that is restricted in scope, including where the **Financial Planning Service** is restricted to particular areas, financial products or providers, the **Member** shall disclose the extent of those restrictions and any resulting effect on the **Member's** objectivity and **Professional Independence**:

- (a) prior to undertaking the **Financial Planning Service**; and
- (b) at the time the **Financial Planning Service** is provided to the **Client**.

## 5. Terms of the Financial Planning Service

5.1 A **Member in Public Practice** shall document and communicate to the **Client** the terms of engagement to provide the **Financial Planning Service** in accordance with APES 305 *Terms of Engagement* and this Standard.

5.2 Before commencing a **Financial Planning Service**, a **Member** shall disclose ~~in a written form~~ to a **Client** or a prospective **Client** the following terms of engagement in Writing, and obtain the **Client's** ~~written~~ agreement in Writing to such terms:

- (a) the identity of the person or the entity responsible for providing the **Financial Planning Service**;
- (b) the nature and scope of **Financial Planning Services** to be provided or offered including any limitations of scope;
- (c) significant factors that affect or may affect the **Member's** ability to provide the **Financial Planning Service** to the **Client** on an objective and independent basis;
- (d) the details of the professional fees, including the basis on which the fees are determined and the services covered by the fees;
- (e) information about any actual, potential or perceived conflicts of interest that have the potential to affect the **Member's** ability to act in the **Best Interests of the Client**;
- (f) where the **Member** has adopted safeguards to eliminate or reduce to an **Acceptable Level** any identified conflicts of interest or other threats to the **Member's** ability to comply with the fundamental principles of the Code, information about the nature of those safeguards and an explanation of the reasons why the **Member** considers those safeguards to be effective;
- (g) the need for the **Member** to obtain the **Client's** ~~written~~ **Informed Consent in Writing**, where the **Member** is to be remunerated for a **Financial Planning Service** in accordance with paragraphs 8.2(b) or 9.2(b); and
- (h) information about the nature and extent of any interests, associations or relationships, including family, contractual or agency relationships, whether of a financial nature or otherwise, that have the potential to affect the **Member's** ability to act in the **Best Interests of the Client**.

## 6. The basis of preparing and reporting Financial Planning Advice

### Basis for the Financial Planning Advice

- 6.1 A **Member** providing **Financial Planning Advice** shall establish the basis for the **Financial Planning Advice** to be provided with reference to:
- (a) information provided by the **Client** or agreed by the **Client** where otherwise sourced; and
  - (b) the **Member's** evaluation of various strategies and courses of action that could reasonably be expected to meet the **Client's** objectives, financial situation and needs, including the relative effectiveness of the various strategies and courses of action.
- 6.2 A **Member** providing **Financial Planning Advice** shall analyse and evaluate the **Client's** relevant circumstances existing at the time of providing the advice and take reasonable steps to ensure that the **Financial Planning Advice** takes into consideration:
- (a) the agreed scope of the **Financial Planning Advice** including any limitations of scope;
  - (b) the **Client's** objectives, financial situation and needs, and other relevant circumstances; and
  - (c) significant assumptions used to develop the **Financial Planning Advice**.
- 6.3 A **Member** shall gather sufficient appropriate evidence by such means as inspection, inquiry, computation and analysis to establish a reasonable basis for **Financial Planning Advice**. When determining the extent and quality of evidence necessary, the **Member** shall exercise professional judgment, considering the nature of the **Financial Planning Advice** and the **Member's** understanding of the **Client's** objectives, financial situation and needs, and other relevant circumstances.
- 6.4 A **Member** who is providing **Financial Planning Advice** shall inform the **Client** of all significant assumptions and their sensitivities that are reasonably expected to impact upon the **Financial Planning Advice**. The **Member** shall agree with the **Client**, to the extent practicable, all significant assumptions and their sensitivities that impact upon the advice taking into consideration the **Client's** relevant circumstances. The **Member** shall document the significant assumptions used to prepare the advice.
- 6.5 Where a **Member** who is providing **Financial Planning Advice** uses estimates, forecasts or projections in the **Financial Planning Advice**, the **Member** shall ensure that those estimates, forecasts or projections are presented and communicated in a manner that avoids the implication of greater certainty than in fact exists.
- 6.6 A **Member** shall not provide **Financial Planning Advice** if the **Member** finds that information on which the **Financial Planning Advice** is to be based contains false or misleading information or omits material information.
- 6.7 If a **Member** becomes aware that **Financial Planning Advice** provided is based on or is likely to have been based on information that was materially false or misleading at the time the advice was given, the **Member** should take reasonable steps to notify the **Client** and to revise the advice. Factors to consider in determining appropriate steps include:
- the ability to locate the **Client**;
  - whether the **Client** has followed the **Member's** advice;
  - whether any financial products acquired in accordance with the advice have been sold or lapsed; and
  - the length of time between when the original advice was given and when the **Member** became aware of the deficiency in the information.

## Reporting the Financial Planning Advice

6.8 Subject to the terms of engagement and the scope of work, a **Member in Public Practice** who provides **Financial Planning Advice** shall report ~~in a written form~~ to the **Client in Writing**:

- (a) the name of the party engaging the **Member**;
- (b) the date of the report;
- (c) the purpose of the **Financial Planning Advice**;
- (d) the name and qualifications of the **Member(s)** responsible for the **Financial Planning Advice**;
- (e) the scope of the **Financial Planning Advice**, including any limitations or restrictions;
- (f) the basis of the **Financial Planning Advice**, including all significant assumptions on which the **Financial Planning Advice** is based;
- (g) the specific information on which the **Member** has relied and the extent to which it has been reviewed by the **Member**;
- (h) the reasons why the **Financial Planning Advice** is considered to be in the **Best Interests of the Client**;
- (i) the amount of the fee received or receivable by the **Member**, either from the **Client** or a third party, for the **Financial Planning Advice**; and
- (j) that the **Financial Planning Advice** was provided in accordance with this Standard.

6.9 A **Member in Business** who provides **Financial Planning Advice** should follow the reporting requirements in paragraph 6.8 of this Standard to the extent practicable.

## 7. Client's information, monies and other property

7.1 A **Member in Public Practice** who holds, receives or disburses **Client** monies, or operates a **Client's** bank account(s) shall comply with APES 310 ~~Dealing with Client Monies~~.

7.2 A **Member in Business** who holds, receives or disburses **Client** monies, or operates a **Client's** bank account(s) should comply with Part A of APES 310 ~~Dealing with Client Monies~~ to the extent practicable.

7.3 A **Member** shall take reasonable steps to protect the security of a **Client's** information and property that is within the **Member's** control in accordance with applicable law, regulations and this Standard.

7.4 A **Member** shall return a **Client's** property, including records, to the **Client** upon request, or in accordance with the terms of the **Financial Planning Service**.

7.5 A Member who encounters or becomes aware of instances of non-compliance or suspected non-compliance with laws and regulations when providing Financial Planning Services shall comply with Section 260 Responding to Non-Compliance with Laws and Regulations (for Members in Business) or Section 360 Responding to Non-Compliance with Laws and Regulations (for Members in Public Practice) of the Code.

## 8. Professional fees

- 8.1 Charging a **Client** a professional fee based solely on the value of the **Client's** assets or funds under management (or changes in such values) creates the threat of self-interest which impacts on the **Member's** ability to comply with the following fundamental principles of the **Code**:
- Integrity;
  - Objectivity; and
  - Professional competence and due care.
- 8.2 Where a **Member in Public Practice** provides a **Financial Planning Service** to a **Client**, the **Member** shall eliminate or reduce to an **Acceptable Level** the threats to the fundamental principles of the **Code** described in paragraph 8.1 by either:
- (a) the **Member** charging a professional fee on a **Fee for Service** basis; or
- (b) where the **Member** charges a professional fee solely determined or based on a percentage of the value of the **Client's** assets or funds under management<sup>1</sup>, the **Member**;
- (i) obtaining, prior to the commencement of the **Financial Planning Service**, ~~written~~ **Informed Consent in Writing** from the **Client** to charge and collect the professional fee on a percentage basis;
- (ii) disclosing on an annual basis to the **Client** the amount collected for the **Financial Planning Service** and providing an explanation for any significant variation from previously advised fees; and
- (iii) obtaining thereafter on ~~at least a biennial~~ **an annual** basis ~~written~~ consent **in Writing** from the **Client** to continue to charge and collect the professional fee on a percentage basis.
- 8.3 Nothing in paragraph 8.2(a) prevents a **Member in Public Practice** who charges on a **Fee for Service** basis for a **Financial Planning Service** from considering the value of a **Client's** assets or funds under management as one of the factors in determining a professional fee. Further a **Member** may communicate and collect the professional fee as a percentage of the value of the **Client's** assets or funds under management at the commencement of each engagement period, provided that the amount of the fee determined on a **Fee for Service** basis is clearly shown in the terms of engagement alongside that percentage and the amount of the fee does not change during the engagement period or such other period as agreed by the **Client**.
- 8.4 If a **Member in Public Practice** proposes to make a material change to the basis upon which the **Member** charges professional fees, the **Member** shall notify the **Client** and obtain the **Client's** ~~written~~ consent **in Writing** to the amended terms in accordance with **APES 305 Terms of Engagement**.
- 8.5 A **Member in Business** who undertakes a **Financial Planning Service** should follow the requirements and guidance of paragraphs 8.1 to 8.3 of this Standard to the extent practicable.

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1 Refer to Section 964D and 964E of the *Corporations Act 2001* which prohibits **Australian Financial Services Licensees** and authorised representatives of **Australian Financial Services Licensees** from charging an asset based fee on geared funds used or to be used to acquire financial products by or on behalf of the **eClient** to which the advice relates.

## 9. Third Party Payments

- 9.1 The receipt by a **Member in Public Practice** of **Third Party Payments** for a **Financial Planning Service** creates threats of self-interest and/or advocacy which impact on the **Member's** ability to comply with the following fundamental principles of the **Code**:
- Integrity;
  - Objectivity; and
  - Professional competence and due care.
- 9.2 Where a **Member in Public Practice** provides a **Financial Planning Service** to a **Client**, the **Member** shall eliminate or reduce to an **Acceptable Level** the threats to the fundamental principles of the **Code** described in paragraph 9.1 by either:
- (a) the **Member** charging a professional fee on a **Fee for Service** basis; or
  - (b) where the **Member** is to be remunerated by **Third Party Payments**<sup>2</sup>, the **Member**:
    - (i) obtaining, prior to the commencement of the **Financial Planning Service**, ~~written~~ **Informed Consent in Writing** from the **Client** for the receipt of these **Third Party Payments**;
    - (ii) disclosing to the **Client** three comparative quotes, where available, in respect of **Financial Planning Advice** on new contracts for life insurance and other risk products and the procurement of new loans;
    - (iii) disclosing on an annual basis to the **Client** the amount or estimated amount of **Third Party Payments** to be received for the **Financial Planning Service**;
    - (iv) disclosing on an annual basis to the **Client** the amount of the **Third Party Payments** received for the **Financial Planning Service**; and
    - (v) where applicable, disclosing to the **Client** the impact of any proposed changes to existing life insurance, other risk contracts and loans including the impact on **Third Party Payments** received or receivable by the **Member** as a result of recommending changes to these contracts and loans.
- 9.3 Where a **Member in Public Practice** provides a **Financial Planning Service** in respect of life insurance, other risk contracts and the procurement of loans and is to be remunerated on a **Fee for Service** basis in accordance with paragraph 9.2(a), the **Member** shall fully rebate to the **Client** any **Third Party Payments** received as soon as practicable. Where a **Third Party Payment** is not related specifically to an individual **Client**, the **Member** shall apportion the amount amongst all relevant **Clients** in a fair and reasonable manner.
- 9.4 A **Member in Public Practice** is not prevented from continuing to accept **Third Party Payments** (commonly referred to as trailing income) for **Financial Planning Services** in respect of life insurance, other risk contracts and the procurement of loans which are entered into prior to 1 July 2014 provided that the **Member** does not subsequently provide any further **Financial Planning Services** in respect of those contracts and loans.
- 9.5 With the **Client's** knowledge and agreement, a **Member in Public Practice** may accept a payment of all or part of the professional fee for **Financial Planning Services** provided to the **Client** from a party associated with the **Client**. Such parties may include family members and associated entities.
- 9.6 A **Member in Business** who undertakes a **Financial Planning Service** should follow the requirements and guidance of paragraphs 9.2 to 9.5 to the extent practicable.

2 Refer to Section 963B(1)(b) of the *Corporations Act 2001* which prohibits **Australian Financial Services Licensees** from accepting conflicted remuneration for life risk insurance products that are: (a) a group life policy for members of a superannuation entity; or (b) a life policy for a member of a default superannuation fund.

## 10. Soft Dollar Benefits

- 10.1 The receipt by a **Member in Public Practice** of **Soft Dollar Benefits** in respect of **a Financial Planning Service** creates threats of self-interest and/or advocacy which impact on the **Member's** ability to comply with the following fundamental principles of the **Code**:
- Integrity;
  - Objectivity; and
  - Professional competence and due care.
- 10.2 **Except as provided for in paragraph 10.3, a Member in Public Practice shall not accept Soft Dollar Benefits in relation to a Financial Planning Service provided by a Member.**
- 10.3 A **Member in Public Practice** may accept a **Soft Dollar Benefit** which is trivial and insignificant, provided the **Member**:
- (a) records it in a register within 10 business days of receipt;
  - (b) maintains the records of the **Soft Dollar Benefit** for 5 years after receipt;
  - (c) makes the register available for inspection by the **Member's Financial Planning Service Clients** and the **Member's Professional Body** within 2 business days of request or as required by regulatory authorities; and
  - (d) includes a specific reference to the availability of these records in the appropriate disclosure document provided to the **Client**.
- 10.4 A **Soft Dollar Benefit** is trivial and insignificant if it is for gifts or other incentives as defined in Division 2 of Part 7.7A of the *Corporations Act 2001* to a value of not more than \$300.

## 11. Documentation and quality control

- 11.1 A **Member** shall prepare working papers in accordance with this Standard that document the work performed, including aspects of the **Financial Planning Services** that have been provided in **wWriting**. The documentation prepared by the **Member** shall:
- (a) provide a sufficient and appropriate record of the procedures performed for the **Financial Planning Services**;
  - (b) evidence that the work undertaken provides a reasonable basis for **the Financial Planning Advice**, including any recommendations accompanying the **Financial Planning Advice**;
  - (c) demonstrate that the **Financial Planning Services** were carried out in accordance with this Standard and other applicable **Professional Standards**, and ethical, legal and regulatory requirements; and
  - (d) evidence all relevant information concerning the **Member's** professional relationship with the **Client**, including:
    - (i) sufficient information to evidence that the **Member** has acted in the **Best Interests of the Client**; and
    - (ii) information about how the **Member** has disclosed and addressed any threats or conflicts of interest arising in the course of the **Client** relationship or the **Financial Planning Services**.

## **12. Transitional provisions**

~~12.1 The requirements of paragraphs and in respect of professional fees and Third Party Payments are effective from 1 July 2015.~~

### ***Conformity with International Pronouncements***

The International Ethics Standard Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES 230.