

APES 230 Financial Planning Services

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Accounting Professional & Ethical Standards Board Limited

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APES 230
Financial Planning Services

(Issued April 2013)

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1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues APES 230 *Financial Planning Services* (**the Standard**), which, apart from the transitional provisions in paragraph 12, is effective from 1 July 2014. This Standard supersedes APS 12 *Statement of Financial Advisory Services*. Earlier adoption of this Standard is permitted.
- 1.2 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.
- 1.3 **Members in Australia shall follow the mandatory requirements of APES 230 when they provide Financial Planning Services.**
- 1.4 **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.**
- 1.5 **Members shall be familiar with relevant Professional Standards and guidance notes when providing professional services. All Members shall comply with the fundamental principles outlined in the Code.**
- 1.6 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.7 All references to Professional Standards are references to those provisions as amended from time to time.
- 1.8 In applying the requirements outlined in APES 230, Members should be guided not merely by the words but also by the spirit of the Standard and the Code.

2. Definitions

For the purpose of this Standard:

Acceptable Level means a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the Member at that time, that compliance with the fundamental principles is not compromised.

Australian Credit Licence 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 means a licence to provide financial services under Chapter 7 of the *Corporations Act 2001*.

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 Financial Planning Services are provided by a Member.

Code means APES 110 *Code of Ethics for Professional Accountants*.

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;
- 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; 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*.

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 in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a Member contracted by such entities.

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

Professional Bodies means the Institute of Chartered Accountants in Australia, CPA Australia and the Institute of Public Accountants.

Professional Independence means:

- (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 a Member of the engagement team's, integrity, objectivity or professional scepticism has been compromised.

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.

3. Fundamental responsibilities of Members

3.1 A Member providing a Financial Planning Service shall comply with Section 100 Introduction and Fundamental Principles of the Code and relevant law.

Public interest

3.2 In acting in the public interest a Member shall observe and comply with the Code when the Member provides a Financial Planning Service.

Integrity

3.3 A Member providing a Financial Planning Service shall comply with Section 110 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 Objectivity of the Code.

3.5 A Member in Public Practice shall comply with Section 220 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 Section 130 *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.**
- 3.12 **Unless a Member has a legal 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 writing. 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 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 (Cth)*.

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 210 *Professional Appointment* of the Code.**

Marketing

- 3.18** A Member in Public Practice who provides Financial Planning Services shall comply with Section 250 *Marketing Professional Services* 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, and obtain the Client's written agreement 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, 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:
- (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.

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 management¹, the Member;
 - (i) obtaining, prior to the commencement of the Financial Planning Service, written Informed Consent 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 basis written consent 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 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.

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.

¹Refer 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 client to which the advice relates.

- 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 Payments², the Member;
 - (i)** obtaining, prior to the commencement of the Financial Planning Service, written Informed Consent 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 Service 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.

10. Soft Dollar Benefits

- 10.1** The receipt by a Member in Public Practice of Soft Dollar Benefits in respect of 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.

²Refer 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.

- 10.3 A Member in Public Practice may accept a Soft Dollar Benefit which is trivial and insignificant, provided the Member:
- records it in a register within 10 business days of receipt;
 - maintains the records of the Soft Dollar Benefit for 5 years after receipt;
 - 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
 - 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 writing. 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 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 8 and 9 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.