

**Constituents' Submissions  
 Consultation Paper: APS 12  
 General Comments**

*Note : Specific comments are addressed in a separate table.*

Respondent	Respondents' Comments	APESB Staff Comments
Mark Shum	<p>It is noted that the present APS 12 do not provide members with guidelines in the conduct and provision of financial advisory (planning) services.</p> <p>A financial planning engagement involves a dynamic process whereby the professional accountant (hereafter "Member") develops appropriate strategies to assist the client to achieve his or her objectives, needs and priorities. The recommended strategies may include product recommendation which may vary according to the accountant's competence, experience and legal authorisation. However, it should be noted that there are certain processes that must be undertaken by the accountant before proper recommendations could be given. For example, APS 12 requires members, consistent with other accounting standards, to provide the client with an engagement document which includes the disclosure of conflicts and remuneration models.</p> <p>It is also important for the Board, as part of its APES 335 development process, to include standards on the financial planning process which require members to actively collect client information, analyse the collected client information and develop strategies that are appropriate and suitable to the client's objectives, needs and priorities, underpinned by adequate research by members with relevant technical competencies. This suggestion is consistent with item (b) of paragraph 1.3 of the Invitation to Comment document (page 5) as it proposes to set out and propose a standard for professional best practice for members in the</p>	<p>APS 12 is addressed at Financial Advisory Services.</p> <p>Respondent recommends addressing the different aspects of the professional work undertaken by the member to be addressed in the proposed standard. However, some of the areas may not be appropriate in a professional standard as they may be of a technical nature.</p>

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	<p>provision of quality and ethical financial advisory services to clients and employers.</p> <p><i>Public Interest and Fiduciary Duties</i></p> <p>The APESB in the present consultation assumes that Members must act in the public interest in all financial planning engagements. In addition, Section 3.2 of the consultation paper appears to presuppose that all Member-client relationship is of a fiduciary nature and therefore the Member is required to act in the best interests of his or her client. I disagree with the above prepositions. Firstly, it must not be assumed that every client engagement is of a fiduciary nature. For example, if a Member had no previous professional relationship with the client and the Member was merely engaged to undertake an execution-only service, this relationship should not be deemed to be of a fiduciary nature. Otherwise, the Member would be professionally required to make enquiries into the client's circumstances before acting on the instructions in order to satisfy his ethical and legal obligations of being a fiduciary of the client. This may not be in the interests of the client as the Member may have to charge for the enquiries and if the transaction is time of the essence, any delays may not achieve the client's intended benefit. It is submitted that the APESB carefully consider its position prior to releasing any further statements or guidance on this issue.</p> <p>Secondly, the notions of public interest and best interest are very different by its nature and cannot co-exist. Adoption of such principles presents a situation whereby Members will be in a position of conflict which cannot be ethically addressed and/or not in the client's interests.</p> <p>AUST100.1.1 of APES 110 describes public interest as "the collective well-being of the community of people and institutions that the Members</p>	<p>The requirement to act in the public interest for members is established by APES 110.</p> <p>The Consultation paper did not presuppose that all engagements are of fiduciary nature and was more in the nature of raising the issue for consultation and debate. The Consultation paper also raised the issue of different types of financial advisory service engagements. These two issues are discussed further in the specific comments table.</p>

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	<p>serve. The accountancy profession's public consists of Clients, credit providers, governments, employers, employees, investors, the business and financial community, and others who rely on the objectivity and integrity of Members to assist in maintaining the orderly functioning of commerce." Effectively, this statement requires the Member, in the provision of personal financial planning services, to consider the effects on external stakeholders prior to executing a transaction and/or making recommendations for the client. Personal financial planning is a unique professional relationship between the Member and the client and is fundamentally different to scenarios where the Member is required to prepare financial statements (in accordance with the Australian Accounting Standards) or undertake an audit engagement (in accordance with the Australian Auditing Standards). Users of financial statements or audited financial statements, in particular, when a corporation is required to publish annual financial statements, are members of the public and places substantial reliance on such documents. In these situations, Members' professionalism in preparing financial statements and undertaking audit engagements is important to assist in maintaining the orderly functioning of commerce.</p> <p>On the other hand, whilst APESB suggests that Members who provide financial planning services have an obligation to increase community confidence in financial advice and financial markets, it is unfair to place the onus on the Member to increase consumer confidence. Product manufacturers and fund managers are one of the major stakeholders in the financial planning industry by providing financial products for sale, but these stakeholders are not required to act, apart from being compliant with the law, in the public interest or the client's best interest. The difference in ethical and professional duties places an unfair burden on Members. It is submitted that requiring Members to act in the client's best interest is</p>	<p>As the recent Global Financial Crisis has shown with examples such as Storm Financial and Opes prime (and Westpoint) in Australia and numerous others worldwide, the relevant parties involved in selling these products, at the time they were selling the products to the clients were probably in compliant with the law. However, as the situation has become abundantly clear they have clearly not acted in the best interest of the client and in certain instances have misled the investing public.</p> <p>That is why the public interest test needs to be balanced with the client interest, as well as, potential conflicts that are created when financial advisers are remunerated under remuneration structures that create self interest.</p>

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	<p>different to acting in the public interest. Given the myriad number of products offered in the financial markets, best interest would require the Member to actively review alternative strategies, products and classes of products and provide an optimal solution to the client. It would be unfair to the Member, particularly if he or she is legally restricted to advise on certain products or a class of products to provide the client with advice in the client's best interest. A literal reading of the term best interest means that Members cannot accept any financial planning engagement because they do not know or have the expertise to advise on every class of product that produces the best financial result for the client. It is impossible for the Member to conduct research on all solutions prior to arriving at an optimal recommendation in the client's favour.</p> <p>In essence, in the context of a financial planning engagement, Members should neither be subject to the APES 110 public interest test nor the client's best interest test as they do not deliver the intended result for clients. A Member must act in the client's interest and place such interest before that of the Member.</p> <p>I note with interest that the Financial Planning Association, as the professional body for financial planners, has spent considerable time and global consultations on this very issue and arrived at a "client first" position rather than "public interest" or "best interest" for this very reason. I encourage APESB to carefully consider this issue prior to issuing APES 335 and guidance on this dynamic area of professional services.</p>	<p>All members must comply with APES 110 by virtue of being a member of one of the professional accounting bodies.</p> <p>APESB will consider this issue when developing the proposed standard.</p>
Deloitte	<p>We believe that given the uncertainty caused by the current financial climate, it is important to boost public confidence by ensuring that expectations regarding the professional and ethical conduct of members in the provision of financial advisory services are in accordance with the</p>	<p>Introductory and supportive comment.</p>

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	<p>public interest, transparent and well understood.</p> <p>We believe it is equally important that the requirements of the proposed APES 335 be consistent with other professional and ethical standards and not create additional or contradictory obligations for members to those in existing laws and regulations.</p> <p>We also urge the APESB to place particular emphasis on ensuring that the terms to be used in the proposed APES 335, such as “financial advisory services” and “client”, are clearly defined so that the scope and application of the standard is understood. For example, APS 12 defines a ‘client’ as an <i>‘individual, firm, entity or organisation to which financial advisory services are provided on a recurrent or an on demand basis’</i>. However, the “CP” does not make it clear whether the proposed APES 335 will adopt the APS 12 definition.</p>	
Professional Bodies	<p>The joint accounting bodies believe that the original principles surrounding the development of APS 12 continue to be the basis for the development of APES 335. APS 12 was developed to provide a framework for accountants operating in the financial advisory services sector. The provision of these services is becoming increasingly important to professional accountants and to their clients. It should be noted that the development of APS 12 was not to be limited to only licensed members of the professional accounting bodies as set out in paragraph 1.3 “ APS 12 covers the professional aspects of financial advice undertaken by a member, whether they are an AFS licensee or a representative in the provision of financial services under the Corporations Act (2001), or give financial advice which is not subject to licensing requirements.”</p> <p>The objective of APS 12 and what continues to be the basis for the development of APES 335 is to provide guidance and assistance to</p>	Introductory and supportive comment.

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	<p>accountants operating in the financial advisory services sector. In particular how to incorporate the requirements of the financial services regulations into an accounting practice – and how these requirements can complement or supplement the standards that exist for professional accountants. The review and development of APES 335 must take into consideration that the financial services sector is highly regulated and is constantly reviewed by government, ASIC, APRA, ATO and other associations – APES 335 must complement and have a practical approach rather than conflict with these regulations.</p> <p>The accounting profession strongly supports that this standard should continue to be principal based rather than prescriptive in its approach.</p>	<p>Need to consider the existing regulations in the development of the proposed standard.</p>
<p>Grant Thornton</p>	<p>Grant Thornton Australia Limited (Grant Thornton) appreciates the opportunity to comment on the Accounting Professional and Ethical Standards Board's (APESB) Consultation Paper: Review of Miscellaneous Professional Statement APES 12: Statement of Financial Advisory Service Standards.</p> <p>Grant Thornton's response reflects our position as wealth and investment advisers to our clients.</p> <p>Grant Thornton supports the proposal of the APESB to update APS 12 into APES 335 Financial Advisory Services. Our response to the Questions raised in the Consultation Paper is attached.</p>	<p>Introductory and supportive comment.</p>
<p>GLW Analysis</p>	<p>Thank you for the opportunity to submit some comments and suggestions on the APS 12 Review. The following comments are made in accordance with the Consultation Questions listed in the Invitation to Comment.</p>	<p>Introductory comment.</p>

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*Staff Instructions:*

- Comments of a “general” nature should be dealt with first, followed by paragraph specific comments.
- Respondents' comments must be copied verbatim into this table.
- Comments should be dealt with in paragraph order, not respondent order.
- Use acronyms only for respondents. Update the attached table with details of additional respondents.

## RESPONDENTS

Professional bodies	CPA Australia, ICAA, NIA
GT	Grant Thornton
MS	Mark Shum
GLW	GLW Analysis Services Pty Ltd
DTT	Deloitte Touche Tohmatsu