



Fee wars

With eyes firmly fixed on the public interest, the accounting profession is moving to set the gold standard in financial planning. Simon Hoyle explains why APES 230 matters to all financial planners.

While the financial planning world waits breathlessly for the final form of the *Future of Financial Advice* (FoFA) legislation, another group of interested observers is also waiting, but for different reasons.

The Accounting Professional and Ethical Standards Board (APESB) wants to see the final form of the FoFA bills before releasing its own financial planning standard for accountants, APES 230.

That's not because APESB wants to borrow from FoFA – far from it. It's simply so that it uses consistent language to set out its standard, to avoid any confusion with FoFA.

FoFA and APES 230 are, in some respects, consistent. Each aims to eliminate both the perception and the reality of conflicts of interest for their respective constituents. But APES 230 goes one, crucial step further than FoFA.

While FoFA will allow commissions to be received by financial planners who sell some forms of insurance, APES 230 bans all commissions. And while FoFA will allow financial planners to charge a fee based on funds under management, advice or administration, under APES 230 such remuneration is explicitly banned. (See Box 1.)

The accounting standard matters, not only to accountants but also to the broader financial planning industry. It is a standard that may allow accountants to boast of "conflict-free" financial planning services and give them a crucial edge in a market that is only becoming more competitive.

But that view is not universal. Mark Rantall, chief executive officer of the Financial Planning Association of Australia

(FPA), says it is unlikely that APES 230 will be "a significant differentiator between accountants who are financial planners, and financial planners who do not come out of an accounting background".

"What is important is that financial planners, whether they are accountants or not, adhere to a high level of professional conduct and that they adhere to standards that at their heart put clients' interests ahead of their own interests," Rantall says.

Rantall says the key difference between standards – namely, the outlawing of percentage-based fees under APES 230 – should be assessed in light of its impact on consumers.

"My sense around whether you have a percentage-based fee or a flat-dollar fee is that it's a pricing decision, and it has little impact on consumer protection," he says.

Rantall says the main thing is that all fees are transparent; that there is no commission embedded in product; and that clients can exert total control over the payment of fees – including stopping payment any time they want.

Final form

The APESB has listened to arguments both for and against several aspects of the exposure draft, and the chairman of the board, Kate Spargo, says the board has now settled on the final form of the standard.

Groups who lobbied in the hope of having the ban on asset-based fees overturned seem likely to be bitterly disappointed. If their own arguments are to be believed, they face going out of business.

But Spargo says APESB ultimately does not accept the argument that banning such payments will cause the demise of accounting-based financial planning practices whose remuneration structures rely on aggregating client funds.

Whenever a draft ruling is challenged, Spargo says the board does "look at it in a broad way, and we try to test how real and how significant the concerns are".

"We had people who came and said, we've had a practice that we've converted to purely fee-for-service - in other words, we do not base it on volumes or commissions or whatever - and we've been working that way for a long time, quite profitably; and I'm sure some of these practices are very profitable, and so on the issue of, was it going to kill off the accountants' practice if they were not allowed to charge by volume of assets under management, we concluded that the answer was probably no."

Spargo says basing fees on "a mechanical formula like that" encourages financial planners to sell more product.

"It might be good product, but it does encourage them to sell more product - which may or may not be appropriate; it just provides a conflict that we feel is better eliminated," she says.

"[We] came to the conclusion that the way we want to structure it was fine."

Defining fee for service

Spargo says it's wrong to assume that because APESB believes banning asset-based fees is appropriate that the only alternative fee setting approach is an hourly rate.

"You [only] have to look at the way we've defined 'fee for service' to appreciate that it doesn't necessarily mean that at all. We are not trying to stop accountants from making [decisions on a] commercial matter," she says

"Any professional deserves to be paid, and to be paid appropriately, but for any profession - be it accountant or lawyer or otherwise - there's a question of what's an appropriate charge.

"We were trying to eliminate methods of calculating fees that related to conflicts, because we think that's a risk. There are not sufficient safeguards you can put in place to avoid - or at least be seen to avoid - the potential to use that inappropriately."

Spargo says the accounting profession's standard-setting process recognises that conflicts may be real or perceived, and both should be avoided. It does not matter if there's no

APES 230 DEFINES "FEES":

"'Fee for service' means fees determined by taking into consideration factors such as the complexity of the financial advisory service, the required skills and knowledge, the level of training and experience of the member and the member's staff, the degree of responsibility applicable to the work, such as risk, and the time spent on the financial advisory service.

"Fee for service does not include commissions, percentage based asset fees, production bonuses, or other forms of fees or remuneration that are calculated by reference to product sales or the accumulation of funds under management, whether paid by the client or a third party such as a product manufacturer."

conflict in reality; if a behaviour or a structure looks conflicted "you just have to bite the bullet and not do it", she says.

"I believe that is the price of being professional," Spargo says.

"There's enormous value in being a professional: the interest; the prestige; the fees; all the good stuff that goes with being a professional, be it a lawyer, accountant, engineer, company director, and so on.

"But you don't get it for nothing. There is a consequent price. And that is, you've got to behave in particular ways so that you can maintain professional standing.

"And part of it is sometimes having to give something up because you've got to put your own interests behind those of, in my case, a company; or in the case of a client, you've got to put the client's interest ahead of yours; and sometimes you can't do exactly what you would like to do.

"I don't think you can behave exactly as you please, including a whole lot of self-interest, and also maintain a sound professional standing.

"At the end of the day, there's a commercial value to being a professional, with strong professionalism, and I think professionals need to remember that. The reason there are standards and the reason there are professional bodies, and annoying rules sometimes, is because it serves the profession well."

Independent standards

APESB can take the stance on setting standards that it does because it is constituted as an independent entity. At no stage are the commercial interests of the professional associations' members allowed to compromise the principles that the APESB follows in setting the profession's standards.

The FPA has developed a code of ethics to guide its members' behaviour, and in some respects the FPA code exceeds the requirements of FoFA. But it falls short of APES 230 in respect of abolishing conflicted remuneration; and in any case, the FPA code is binding only on FPA members. Since there is currently no compulsion for anyone who uses the term "financial planner" to belong to the FPA, the minimum standard for many financial planners will be FoFA alone.

"We've held off [on issuing APES 230] until FoFA reports, just so that, for instance, they may use different terminology,

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or something where there's no point in us just creating confusion," Spargo says.

"We decided pretty much in principle at our meeting late last year where we're going, we [just] have not put it out finally.

"I assume ours will be different in part - the parts that are really about principle - but we are just waiting off in case there are things, when we look at it, [we decide] we can word it that way, or whatever - with no detraction from ours, just to make sure we're trying to keep it as harmonious as possible."

Spargo says the APESB has watched the development of FoFA with interest.

"There's a couple of differences [between FoFA and APES

or whatever, for many years, who are not shy about saying they are very lucrative practices.

"It just didn't seem to be an issue that was [a] deal breaker."

Before accountants and financial planners even get their heads around APES 230, there's the issue of the accountants' exemption to deal with.

This exemption is what allows accountants to advise on setting up and terminating self-managed super funds (SMS-Fs). It is to be abolished under FoFA, and replaced with something that has yet to be announced.

(At the time of writing it was more than three weeks since the Minister for Financial Services and Superannuation, Bill Shorten, said there would be an announcement within two weeks.)

Accommodating accountants

Nick Hilton, national manager of MLC Accountant Solutions, says the company has moved to accommodate accountants under its existing licence, regardless of what eventually replaces the exemption.

"We are accommodating them under our existing licences; we have not developed a separate licensee, but we've developed a separate proposition for accountants, which is specific for them," Hilton says.

"And the reason for that is that obviously they have different needs, and their needs are largely driven by, in the first instance, by wanting to solve this problem associated with the removal of the exemption; and therefore one of the propositions we've developed is very much centred around that.

"It will allow them to do whatever they can do under the exemption."

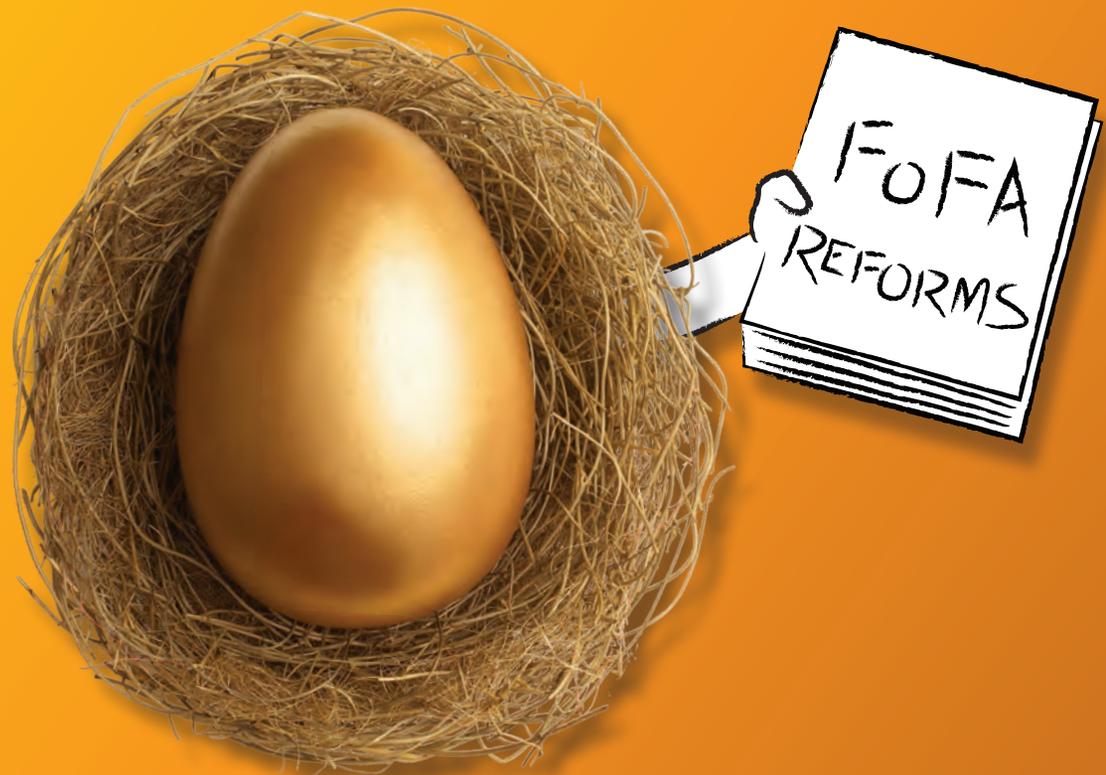
The development of APES 230 is a separate issue, Hilton says, and will apply to accountants who want to do more than

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230], and...while a couple of accounting firms said this was the end of their practice, in effect, there was so much other evidence to show that you do not have to charge on volume, that you can actually set a fee that's probably exactly the same if you want to, virtually.

"It's not as though we're trying to kill their business. There's some people who have been practising on a straight fee for service, in the sense that they are not attaching it to volumes

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SETTING THE STANDARD

The APESB has been in existence since mid-2006. The chairman of APESB, Kate Spargo, says it was set up originally by the Institute of Chartered Accountants and CPA Australia, and the Institute of Public Accountants "joined in a bit later".

"The standard-setting process prior to the establishment of the APESB had been done through the professional bodies," Spargo says.

"They decided to set up a body that would be more independent," she says. "I came in as an independent chairman. I'm not of the accounting profession; I'm a lawyer and I work as an independent director on a number of other company boards - I'm on UGL and Sonic Healthcare - so I came in as an independent chairman with no agendas."

Spargo says APESB has since its inception reviewed almost every standard in existence - and the last one covers financial planning.

"Probably the trickiest one has been this financial planning one," she says.

"There is a current standard. We take what is existing and we might completely revise whatever it is, or we might not revise it much at all.

"We make our own judgment as to whether we think it's needed and how it should be done; but we are guided by what's actually a useful thing to do.

"Our mandate is to act in the public interest, not in the interest of the accounting profession."

just advise on setting up SMSFs.

"APES 230 is still in draft, as far as I understand, and has yet to be implemented, but from our point of view we're conscious of how we'll go about implementing it, when and if it does come in, and in what form.

"There are, under what's been proposed so far, a couple of differences, the most significant being the asset-based pricing issue. From our point of view, we would look to deal with that by having appropriate licensee standards that reflect accountants that operate under our accounting proposition."

Hilton says the replacement of the accountants' exemption and the concurrent development of APES 230 is likely to encourage more accountants into the financial planning sphere.

"It might work as a bit of a catalyst for accountants to want to go beyond just dealing with SMSFs," he says.

"We don't think the majority of accountants will do that; but we do think some who have been contemplating it in the past might go down the path of moving into full advice.

"And for practical reasons: for example, if what replaces the removal of the accountants' exemption requires study, where they've got to go back and do a couple of units of the DFS [Diploma of Financial Services], then we expect some of them will say, 'Look, if we've got to do two, we might as well do four', and then move into advice.

Hilton says MLC has two solutions for accountants. One replaces the exemption, priced at about \$5500 per individual

per year, including GST and including professional indemnity (PI) insurance. The second is a "full proposition, which is very much more a traditional authority that a planner would get".

He says the full solution is priced starting at \$25,000 including GST, including PI insurance and "including access to technology solutions, like financial planning software, and research, and all those kinds of things".

"We are in the process of developing a mid-level licensing solution, which would provide accountants with an opportunity to provide more strategic advice, rather than non-product-related advice."

Accountants are different

AMP has moved to cater to accountants, too, but has set up a new licensee, SMSF Advice, to do it. Despite the name, SMSF Advice can cater to accountants who want to offer full-blown, holistic advice services, not just replace the accountants' exemption to allow them to continue to work with SMSFs.

"The reason they want to have a special licensee is because accountants are different," says Kath Bowler, national development manager of SMSF Advice.

"In many cases, accountants are running accounting and financial planning in their business.

"You're running two businesses in one. You need to make the whole business profitable, not just the financial planning part of the business, taking that holistic view of the business. With accountants, there's going to be a different slant on tax work, and on the strategic side of things."

Bowler says accountants have "demand from their clients for financial planning services".

"They need to focus on how their practice is going to address that," she says.

"Financial planning is a full-time job in itself, so we have options that acknowledge that."

Bowler says there are three levels of accountant solution: basic, strategic and comprehensive. Like MLC, SMSF Advice's basic solution is designed to satisfy whatever replaces the accountants' exemption. Bowler says it costs \$3500 a year, per individual.

The strategic option is for accountants who want to offer more than advice on setting up or terminating SMSFs and include strategic advice, but do not want to go as far as specific product advice. And the comprehensive solution is designed for accountants who want to give full-service financial planning, fully in compliance with APES 230. Bowler says SMSF Advice also is working on "a referral program for accountants".

"There's a lot of support for financial planners on how to build a referral network," she says. "We want to develop support for accountants." ■

