

# Pronouncement 11 Providing Financial Advice

## 1. Preamble

1.1 The Board of Directors of the Institute of Public Accountants issues Pronouncement 11- *Providing Financial Advice* (“the Pronouncement”).

The following Pronouncement is issued pursuant to Sub-Clause 53(a) of the Constitution of the Institute of Public Accountants. In accordance with By-law 2.1.3(e), Members of the Institute of Public Accountants are obligated to abide by this Pronouncement.

1.2 The Pronouncement is effective 1 July 2014, early adoption is permitted.

1.3 The provision of financial advice to clients by accountants is an increasingly important service. It is imperative that the accountant act with the highest level of integrity and in accordance with all applicable laws. While the Pronouncement does not override legal requirements it is intended to raise standards above the minimum requirements of the law.

## 2. Scope and Application

2.1 The Pronouncement sets the standard for Members in the provision of Financial Advice. The Pronouncement must be read and applied in conjunction with other applicable professional and legal obligations.

2.2 Members in Public Practice as Principals shall follow all the mandatory requirements of the Pronouncement when they provide Financial Advice to clients.

2.3 In applying the Pronouncement, Principals and Members Working in Public Practice should be guided not merely by the words of the Pronouncement but also its spirit.

## 3. Definitions

**Client** means a natural person (whether acting as an individual or as a sole trader or through a partnership, corporation or trust which the person controls) to whom Financial Advice services are provided by Principals and Members Working in Public Practice.

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

**Financial Advice** means advice and services relevant to a Client’s financial affairs specifically related to the accumulation of wealth and financial assets such as wealth management, estate planning, retirement planning, risk management and related advice, including but not limited to:

- a) Advice in relation to financial products and class of products as defined by the *Corporations Act 2001* (such as shares, managed funds, superannuation and life insurance);
- b) Advice in relation to investment products not covered by the *Corporation Act 2001* such as investment property advice; and

- c) General non-product financial advice provided to a client

**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; or
- c) An entity controlled by such parties through ownership, management or other means.

**Member** means a Member in Public Practice (as Principal) and/or a Member Working in a Public Practice (as a non-Principal).

**Member in Public Practice** means a Member, irrespective of title or functional classification, who is a Principal of a Firm that provides Professional Services to the public; and who either by themselves or in conjunction with others, exercises control over the management of the Firm whether as a Sole Practitioner, Partner, or Director.

**Member Working in a Public Practice** means a Member employed in a Firm who is not a Principal of a Firm but who provides Professional Services to the public.

**Professional Services** means accounting and related services as defined by the Constitution of the Institute of Public Accountants.

#### **4. Fundamental responsibilities of Members**

4.1 A Member providing Financial Advice must abide by section 100 of the Code, as well as any legal requirements.

This means a Member must

- a) Act with integrity (be straightforward and honest);
- b) Act with objectivity (not allow bias, conflict of interest or undue influence to override professional judgement);
- c) Maintain professional competence and due care;
- d) Maintain client confidentiality to the extent permissible by the law;
- e) Act with utmost professional behaviour.

4.2 A Member must act in the Best Interest of their Client such that:

- a) The interest of the Client must override all other interests including the Member's own interest and those of close associates;
- b) The Financial Advice is at all time designed to improve the financial wellbeing and/or knowledge of the Client; and
- c) All necessary steps are taken to provide the best advice that suits the Client's needs.

## 5. Terms of Engagement and Disclosure

- 5.1 A Member in Public Practice must document and communicate with the Client the terms of the engagement to provide the Financial Advice. This document shall be in accordance with APES 305 *Terms of Engagement* as well as any specific requirements set out in the Pronouncement.
- 5.2 Before providing Financial Advice, a Member in Public Practice shall disclose in writing to a Client or prospective client the following:
- a) The identity of the person or entity accountable for providing the Financial Advice (including the Australian Financial Services License number);
  - b) The nature, scope and other relevant matters relating to the Financial Advice to be provided or offered, including any limitations in scope;
  - c) Any significant factors that affect or may affect the ability to provide Financial Advice in an objective and independent manner;
  - d) A description of how professional fees are calculated;
  - e) Information about any actual, potential or perceived conflicts of interest that may affect the Member's ability to act in the Best Interest of the Client;
  - f) Information about the nature of any safeguards adopted to eliminate or reduce to an acceptable level any conflicts of interest identified and how those safeguards are effective;
  - g) Information about the nature and extent of any interests, associations or relationships that have the potential to affect the Member's ability to act in the Client's Best Interest;
  - h) Provisions for terminating the Client engagement; and
  - i) Information about procedures for dealing with Client complaints.
- 5.3 The engagement document must stipulate the period for which the engagement is to last.
- 5.4 The engagement document must be updated when there are significant changes to the scope of the relationship or at least every four years.
- 5.5 A Member Working in a Public Practice is to follow the above to the extent practicable.
- 5.6 A Financial Services Guide provided by a Member to a Client under appropriate authority of an Australian Financial Services Licensee shall be considered adequate for the purposes of this Pronouncement.
- 5.7 A Member shall maintain adequate professional indemnity insurance as required by relevant legislation or the Institute of Public Accountants (if higher); and shall also comply with all other legislative requirements relating to consumer protection.

## 6. Steps to take to act in the Best Interest of a Client

- 6.1 To ensure that Members act in the best interest of a client, the Member must:
- a) Identify the objectives, financial situation and needs of the Client as disclosed by the Client;
  - b) Identify the subject matter of the advice and the circumstances relevant to the advice being sought;
  - c) Ensure that in the event that initial information is insufficient or inconsistent, further information is sought from the Client;

- d) Determine whether they have the skills and experience to provide quality Financial Advice to meet the Client's needs, and if not decline the appointment or seek assistance from another professional having the necessary skills and experience;
  - e) Where it is reasonable to recommend a financial product; conduct appropriate investigations into the proposed financial products and determine which amongst the possible alternatives best suits the needs and requirements of the Client;
  - f) Fully inform the Client in circumstances where it is unreasonable to recommend a financial product because other non-financial product recommendations are in the Client's best interest;
  - g) Base all judgements on the Client's needs and requirements; and
  - h) Take all necessary steps to ensure the advice is in the Client's best interest.
- 6.2 Members must document how they have followed the steps necessary to provide advice that is in the best interest of the Client.
- 6.3 Any departure from these steps must be documented; together with reasons for the departure.
- 6.4 The Member may limit the scale of the advice provided on the direction of the Client and where to do so is in the best interest of the Client. Any limitation to the scale of the advice should be documented and agreed to in writing by the Client.
- 6.5 A Member must determine the Client's needs, objectives and priorities, including all relevant personal circumstances; in order to determine the appropriate scope of the Financial Advice.
- 6.6 A Member must gather sufficient information, both qualitative and quantitative, from the Client in order to form the basis for any recommendations.
- 6.7 A Member is to identify the most effective Financial Advice strategies to meet the Client's needs and objectives.
- 6.8 A Member is to evaluate different strategies in order to determine the strategy that most aligns with the Client's needs and objectives and which is in the Client's best interest. If necessary the Member should contact the Client to assist in determining the best outcome.
- 6.9 A Member is to present their recommendations and rationale to the Client in a way that allows the Client to make an informed decision.
- 6.10 A Member in Public Practice is not to provide Financial Advice if the Member finds that information on which the Financial Advice is based contains false or misleading information or omits material information.

## **7. Documenting the Financial Advice**

- 7.1 Subject to the terms of engagement and the scope of the work, a Member in Public Practice who is providing Financial Advice shall present a written report to the Client that includes:
- a) The name of the party engaging the Member;
  - b) The date of the report;
  - c) The purpose of the Financial Advice;
  - d) The name and qualifications of the Member(s) responsible for the Financial Advice;
  - e) The scope of the Financial Advice, including any limitations or restrictions;

- f) The basis of the Financial Advice, including all significant assumptions on which the Financial 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 Advice is considered appropriate for the Client's financial needs, objectives and priorities taking into consideration the Client's relevant circumstances; and
  - i) That the Financial Advice was conducted in accordance with the Pronouncement.
- 7.2 When providing a Financial Advice recommendation the Member in Public Practice must document the recommendation and relevant considerations as being in the Client's Best Interest.
- 7.3 Where the Member in Public Practice uses estimates, forecasts or projections in the provision of Financial Advice, they shall ensure that those estimates, forecasts or projections are presented and communicated in a manner that avoids the implication of greater certainty than actually exists.
- 7.5 Members Working in a Public Practice should follow the above reporting requirements to the extent practicable.

## **8. Client Monies**

- 8.1 A Member in Public Practice who holds, receives or disburses Client monies, or operates a Client's bank account(s) must comply with APES 310 *Dealing with Client Monies*.
- 8.2 A Member Working in a Public Practice is to comply with APES 310 *Dealing with Client Monies* to the extent practicable.

## **9. Client information and property**

- 9.1 A Member shall take all necessary steps to protect and keep confidential Client information and property in accordance with the law, regulations and the Pronouncement.
- 9.2 A Member shall return a Client's property, including records, to the Client upon request, or in accordance with the terms of engagement.

## **10. Professional fees**

- 10.1 A Member in Public Practice charging fees for the provision of Financial Advice should ensure that the fees reflect:
- a) The complexity of the Financial Advice provided
  - b) The amount of time taken to provide the Financial Advice
  - c) The personnel used to provide the Financial Advice
  - d) Reasonable cost for overheads and ancillaries
  - e) Reimbursement for actual and reasonable anticipated costs.
- 10.2 A Member Working in a Public Practice is to follow the above in relation to the charging of professional fees to the extent practicable.

- 10.3 The professional fees charged should not compromise the independence or the fundamental responsibilities of Members.
- 10.4 Where independence or the fundamental responsibilities of Members are compromised; appropriate safeguards must be adopted to eliminate or reduce any threats to an acceptable level. If safeguards can not so reduce these threats; alternate fee mechanisms must be adopted.
- 10.5 In determining appropriate fee structures Members should apply the relevant provisions of the *Corporations Act 2001* and related legislation, regulations and regulatory guidance.

## **11. Documentation and Quality Control**

- 11.1 A Member shall prepare the working papers necessary to meet the requirements of the Pronouncement; and to ensure adequate documentation of the work performed.
- 11.2 The documentation prepared by the Member shall provide:
- (a) a sufficient and appropriate record of the procedures followed in providing the Financial Advice;
  - (b) evidence that the work undertaken constitutes a reasonable basis for Financial Advice, including any recommendations provided as part of the Financial Advice;
  - (c) evidence that the Financial Advice was carried out in accordance with the Pronouncement and other applicable Professional Standards, and ethical, legal, legislative and regulatory requirements; and
  - (d) evidence of all relevant information concerning the Member's professional relationship with the Client, including:
    - (i) sufficient information to substantiate 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 Advice.