

22 May 2018

The Chairman  
Accounting Professional & Ethical Standards Board Limited  
Level 7, 600 Bourke Street  
MELBOURNE VIC 3000

**Online Submission via:** [www.apesb.org.au](http://www.apesb.org.au)

Dear Ms Roxon

**Submission on Exposure Draft 01/18 - Proposed Standard: APES 220 Taxation Services (“the ED”)**

Thank you for providing us with the opportunity to comment on the Accounting Professional & Ethical Standards Board’s (APESB) proposed changes to APES 220 Taxation Services (APES 220). Chartered Accountants ANZ (CA ANZ) is supportive of the proposed revised Standard as a whole.

We have the following specific recommendations to make with regards to the ED.

**1 Introduction of Independence Requirements**

CA ANZ members are required to comply with APES 110 Code of Ethics for Professional Accountants (APES 110). The APESB identified a need to include a specific reference to independence in APES 220. We concur that inclusion of specific references to APES 110 in other APESB pronouncements assists reinforce the fundamental principles in APES 110.

However, we are concerned that the manner in which the APESB has sought to include the independence requirements has the potential to create different and potentially more onerous independence requirements on practitioners. For example the definition of an assurance engagement included in the ED is.

*Assurance Engagement means an Engagement in which a Member in Public Practice aims to obtain sufficient appropriate evidence in order to express a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the subject matter information (that is, the outcome of the measurement or evaluation of an underlying subject matter against criteria).*

*This includes an Engagement in accordance with the Framework for Assurance Engagements issued by the AUASB or in accordance with specific relevant standards, such as International Standards on Auditing, for Assurance Engagements.*

I compare this to the definition of an Assurance engagement issued by the Auditing and Assurance Standards Board.

*Assurance engagement means an engagement in which an assurance practitioner expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.*

Whilst the definitions are similar they should be identical. For example your usage of Member in Public Practice as compared to the AUASB's usage of Assurance Practitioner. An Assurance Practitioner is a subset of the group Member in Public Practice therefore as currently drafted this increases the scope of APES 110 paragraphs 290 and 291. Similarly your proposed second paragraph commences with "This includes". The impact of this could be to extend the definition of an assurance engagement to engagements that are not being conducted in accordance with established assurance frameworks.

We recommend that you consider the following revisions;

1. Amend the definition of assurance engagement to mirror the AUASB definition,
2. Include the following definition for an Assurance Practitioner:

*Assurance practitioner means a person or an organisation, whether in public practice, industry, commerce or the public sector, providing assurance services.*

and

3. Amend paragraph 3.7 and 3.8 and direct members in public practice to section 290 and 291 of APES 110 in the following way,

3.6 *When engaged to perform a Taxation Service to a Client ~~which requires Independence~~, a Member in Public Practice shall comply with Independence as defined in this Standard*

3.7 *~~When aA Member in Public Practice is providing Taxation Services and the Member in Public Practice's Firm is also engaged to conduct an Assurance Engagement for the same Client the Member shall consider whether an Engagement, or a specific element of an Engagement, is an Assurance Engagement under the Framework for Assurance Engagements issued by the AUASB.~~*

3.8 *~~Where the Engagement is an Assurance Engagement, the Member in Public Practice shall comply with Section 290 Independence – Audit and Review Engagements or Section 291 Independence – Other Assurance Engagements of the Code, as applicable.~~*

3.7 *Clean When a Member in Public Practice is providing Taxation Services and the Member in Public Practice's Firm is also engaged to conduct an Assurance Engagement for the same Client, the Member shall comply with Section 290 Independence – Audit and Review Engagements or Section 291 Independence – Other Assurance Engagements of the Code, as applicable.*

We recommend removing the phrase "which requires Independence" as a member is always required to comply with the independence requirements you have included in the definition.

## 2 Incorporation of APES 110 Requirements

Section 3 of APES 220 includes requirements linking back to the fundamental principles in APES 110. The extant paragraphs do not use exactly the same phrases and terms as APES 110. This could make the standards more difficult to apply and may extend the requirements of APES 110, which I don't believe is the APESB's intention.

An example of this is at paragraph 3.2 where reference is made to a member having to “*observe and comply with their public interest obligations*”. I compare this to APES 110 at paragraph 100.1 that refers to a members “*responsibility to act in the public interest*”. APES 110 paragraph 100.1 then includes the following sentence, “*In acting in the public interest, a Member shall observe and comply with this Code*”. The specific obligation is to observe and comply with the Code not with public interest obligations. Other examples exist in paragraphs 3.3, 3.4, 3.9 and 3.14. We recommend that the APESB review these paragraphs to use the exact wording of APES 110.

A similar matter is apparent in the drafting of the proposed new paragraph 7.8 of APES 220 which is reproduced below. I have included the relevant paragraph of APES 110 and a proposed amended paragraph 7.8 using the same verbs as APES 110. If the below change is adopted by the APESB the APES 110 definition of NOCLAR should be included in APES 220.

- 7.8 *A Member shall comply with Section 225 Responding to Non-Compliance with Laws and Regulations (for Members in Public Practice) or Section 360 Responding to Non Compliance with Laws and Regulations (for Members in Business) of the Code if they are aware of or suspect the Client or Employer has not complied with applicable laws and regulations.*
- 225.1 *A Member in Public Practice may encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a Professional Service to a client.*
- 7.8 *If a Member in Public Practice encounters or is made aware of*  
CA ANZ *NOCLAR or suspected NOCLAR in the course of providing a Taxation Services the Member shall comply with Section 225....*

## 3 Other Matters

At paragraph 1.9 you state, “*Members should be guided not merely by the words but also by the spirit of the Standard and the Code.*” Members’ compliance with the standards is assessed by others including quality reviewers, other professional accountants and at times the Courts. It would be extremely difficult for a member to know what the “*spirit of the Standard and the Code*” is. We recommend that the APESB consider removing or re-wording this paragraph so that members are able to establish their compliance with the paragraph.

At paragraph 3.17 members are reminded to obtain an understanding of relevant foreign laws and regulations. Not all engagements will require members to assess their knowledge of foreign laws. This paragraph should be amended to include some form of limiter such as commencing the paragraph with the phrase “*If applicable to the engagement, a Member...*”

3.

At paragraph 3.5 in the first sentence you refer to tribunals but in later sentences courts or tribunals. We recommend that the APESB amend this so that the paragraph is consistent. In the course of conducting our review we also identified that the standard is silent on how a member should manage a potential conflict of interest if they are asked to represent a client before a court or tribunal in respect of advice they previously provided to a client.

We have identified what appears to be an inconsistency between paragraphs 3.10 and 8.4. Paragraph 3.10 directs a member to seek the prior knowledge and consent of third parties prior to providing their opinions or advice to a Revenue Authority, whilst paragraph 8.4 says a member shall not disclose the relevant opinion or name of a third party without that third party's consent. We recommend that the APESB consider aligning these paragraphs. The ability to use or share a third party's work is ordinarily dealt with as part of the client or the member's contract with the third party. These paragraphs do not include consideration of this.

At paragraph 5.5(a) you have included the phrase "Those Charged with Governance" but do not include a definition for this term in paragraph 2. We recommend that you include the definition of "Those Charged with Governance" from APES 110 in section 2.

Paragraphs 5.5 is intended to provide a member with guidance of steps to take when they encounter a scheme or arrangement that MAY be a scheme or arrangement of the type referred to in paragraph 5.4 in order to assist them determine whether it is or is not a scheme or arrangement of the type referred to in paragraph 5.4. 5.4 (a) and (b) are investigative steps a member should take to assess the scheme or arrangement. However, 5.4 (c) is an action a member should take **after** they have made a determination. The opening section of 5.4 does not reflect these different decision points. A proposed redrafting could be to move 5.4 (c) to a new paragraph and reword as follows;

*If, after a Member has sought additional information, a Member considers that a tax scheme or arrangement is not of the type set out in paragraph 5.4 the Member should consider documenting the key considerations for this conclusion.*

Information about Chartered Accountants Australia and New Zealand can be found in Appendix A to this letter. If you have any questions regarding this submission, please contact me on (02) 9290 5535 or [kristen.wydell@charteredaccountantsanz.com](mailto:kristen.wydell@charteredaccountantsanz.com)

Yours sincerely



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### About us

Chartered Accountants Australia and New Zealand is a professional body comprised of over 117,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation accounting professionals across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.