

Review of Submissions – Specific Comments Table
Exposure Draft 01/18: APES 220 *Taxation Services*

Note: General comments relating to APES 220 are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
1	1.9	CA ANZ	<p>3 Other Matters</p> <p>At paragraph 1.9 you state, “<i>Members should be guided not merely by the words but also by the spirit of the Standard and the Code.</i>” 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 “<i>spirit of the Standard and the Code</i>” 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.</p>
2	Section 2 Definitions	CA ANZ	<p>1 Introduction of Independence Requirements</p> <p>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.</p> <p>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.</p> <p style="padding-left: 40px;"><i>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).</i></p> <p style="padding-left: 40px;"><i>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></p> <p>I compare this to the definition of an Assurance engagement issued by the Auditing and Assurance Standards Board.</p> <p style="padding-left: 40px;"><i>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.</i></p>

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
			<p>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.</p> <p>We recommend that you consider the following revisions;</p> <ol style="list-style-type: none"> 1. Amend the definition of assurance engagement to mirror the AUASB definition, 2. Include the following definition for an Assurance Practitioner: <p style="padding-left: 40px;"><i>Assurance practitioner means a person or an organisation, whether in public practice, industry, commerce or the public sector, providing assurance services.</i></p> <p style="padding-left: 40px;">and</p>
3	Section 2 Definitions	Deloitte	<p>Definition of Assurance Engagement</p> <p>It is not in our view necessary to define the term "Assurance Engagement" in the Proposed Standard. The definition of Assurance Engagement should reflect the definition under the <i>Framework for Assurance Engagements</i> (the Framework).</p> <p>As previously discussed with the APESB, duplication and inconsistency of the definition of Assurance Engagement, rather than a reference to the Framework may lead to confusion. This becomes particularly problematic as standards are updated over time.</p>
4	3.2, 3.3, 3.4, 3.9 and 3.14	CA ANZ	<p>2 Incorporation of APES 110 Requirements</p> <p>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.</p> <p>An example of this is at paragraph 3.2 where reference is made to a member having to "<i>observe and comply with their public interest obligations</i>". I compare this to APES 110 at paragraph 100.1 that refers to a members "<i>responsibility to act in the public interest</i>". APES 110 paragraph 100.1 then includes the following sentence, "<i>In acting in the public interest, a Member shall observe and comply with this Code</i>". 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.</p>

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
5	3.5	CA ANZ	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.
6	3.6	PwC	<p>2. Absence of recognition of safeguards</p> <p>As noted above the current paragraph 3.6 creates ambiguities as to the obligations on the member; in particular no reference is made to the safeguards contained in 110.</p> <p>APES 110 sets out a detailed framework of threats and safeguards which can apply when providing Taxation Services and gives guidance to members on how to manage independence. This framework is absent from the Exposure Draft and hence there is no clear guidance in the Exposure Draft on how to manage independence in practice nor any cross-reference to the detailed guidance in APES 110. Hence this has the risk of being interpreted as a binary application without the benefit of the context of the analysis and considerations available to members in APES 110.</p> <p>It is for this reason that we have recommended above that APES 220 should merely refer Members to APES 110 rather than attempting to create its own definition of independence.</p>
7	3.6	PwC	<p>3. Overlap with TASA</p> <p>The current paragraph 3.6 in the context of the obligations of TASA are now in a juxtaposition and no longer aligned.</p> <p>We note that Members in Public Practice that provide Taxation Services will also be governed by the TASA and thus be subject to the Code. The Code sets down principles in 5 different categories - one of which is independence. The independence category is then broken down into the following principles:</p> <ul style="list-style-type: none"> • to act lawfully in the best interests of a client; and • to have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities undertaken in the capacity of a registered tax agent. <p>Members in Public Practice are therefore already subject to requirements to be independent when providing Taxation Services. Consequently the proposed paragraph 3.6 would not be aligned with TASA and the Code. This could lead to ambiguities and a risk of misapplication of the proposed obligations by members. In our opinion, this is a further reason to make the changes to paragraph 3.6 outlined above.</p>

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
8	3.6 – 3.8	PwC	<p>Our detailed comments in respect of the proposed amendments contained in 3.6 to 3.8 of the exposure draft are as follows:</p> <p>1. Lack of Clarity</p> <p>Our initial observation is that there is a distinct lack of clarity as to the objective of the amendments contained in 3.6 to 3.8. The intention of the APESB in including these proposed paragraphs is not apparent particularly given the requirements around Independence are well documented in other existing Standards. The outcome is unclear and creates ambiguities, distortion and potential misapplication of the proposed obligations by members.</p> <p>An example of this uncertainty is that paragraph 3.6 requires a member to comply with Independence <i>“when engaged to perform a Taxation Service to a Client <u>which requires Independence</u>”</i> (our emphasis). This is circular and there is nowhere in the Exposure Draft which provides clarification as to which engagements or clients require independence.</p> <p>We assume that the requirement for independence is not intended to extend beyond the existing application in APES 110 which requires the member to be independent in respect of assurance engagements. However, this does not appear to be clear from the wording in the exposure draft. If our assumption is correct and the intention in paragraph 3.6 is merely to remind the reader that they have obligations in respect of independence pursuant to APES 110, this should be so stated by reference and we recommend that the paragraph be replaced with the words <i>“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, Members are reminded of the requirement for independence in respect of the Assurance Engagement (which is set out in detail APES 110)”</i>. This amendment would make the definition of independence in Section 2 redundant and therefore this definition could be removed. To further reduce any uncertainty we would also recommend changing the name of the independence sections to <i>“Audit / Assurance independence”</i> rather than <i>“Professional Independence”</i>.</p> <p>As currently drafted we believe there is a risk that this could be seen to extend the independence requirements to engagements other than Audit or Assurance. We would strongly reject such an extension for the following reasons:</p> <ul style="list-style-type: none"> • There is no legislative or regulatory requirement that tax practitioners be subject to the same level of independence restrictions that apply to assurance practitioners. • In performing taxation services members in public practice are generally acting solely for their client. This can be contrasted with assurance engagements where the work performed is designed to enhance the degree of confidence of a number of intended users. Therefore it is not appropriate to apply the same standards of independence to tax engagements as apply to assurance engagements. <p>For these reasons we believe the independence obligations should not be extended and that paragraph 3.6 should be amended as outlined above to make it clear that it is just a reminder to tax practitioners of the independence obligations under APES 110.</p>

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
9	3.6 – 3.8	PwC	<p>5. Misleading impression that tax services are prohibited</p> <p>As stated, paragraphs 3.6 -3.8 create a misleading impression that tax services are prohibited unless the auditor independence rules are applied and cleared. This is clearly a distortion and would have the unfortunate consequence of rendering the entire section on Independence irrelevant.</p>
10	3.6 – 3.8	CA ANZ	<p>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,</p> <p>3.6 <i>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</i></p> <p>3.7 <i><u>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 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.</u></i></p> <p>3.8 <i>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.</i></p> <p>3.7 <i>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.</i></p> <p>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.</p>
11	3.6 – 3.8	Deloitte	<p>Professional Independence</p> <p>It is unclear what taxation services the APESB is intending to capture with the proposed changes in paragraphs 3.6 to 3.8 (inclusive). As previously raised with the APESB, whilst objectivity is a fundamental principle of the Code, the requirements of independence in APES 110 Section 290 and Section 291 do not, and should not in our view, apply to tax services outside of an audit or assurance engagement.</p> <p>Based on current drafting, the Assurance Engagement referred to in paragraph 3.7 is not the same Assurance Engagement referred to in paragraph 3.8. Reference to the defined term in paragraph 3.8 broadens the scope of tax services that might otherwise be considered an Assurance Engagement beyond that contemplated under the Framework. Further, in the absence of commentary that explains the purpose of referring to different definitions of Assurance Engagement, it would be helpful to understand the context for this proposed drafting.</p>

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
12	3.7 – 3.8	PwC	<p>4. Para 3.7 and 3.8 unnecessary</p> <p>With regard to paragraphs 3.7 and 3.8 the requirement to comply with Independence requirements when undertaking Assurance engagements is already well known. It seems unnecessary to reinforce this requirement in a standard dealing with Taxation Services when the Framework for Assurance Engagements issued by the AUASB make it clear that tax consulting and tax compliance engagements will not generally constitute an assurance engagement. The vast majority of tax engagements are carried out solely for the use and benefit of the client. If it is considered by the APESB that there are Tax Services commonly provided by Members which do constitute Assurance engagements then it would be useful to provide some guidance and examples of these services. If this is not the case then it is considered that these paragraphs are unnecessary.</p>
13	3.9	Deloitte	<p>Confidentiality</p> <p>In our view paragraph 3.9 expands on the requirements set out in section 140.1(b) of the Code. This is in contradiction to the approach taken in the recently released APES 310 updates.</p> <p>We recommend that the approach in the Proposed Standard be simplified by making reference to Section 140.1(b) of the Code. This will reflect a more consistent approach across all standards, and future proof the definition against changes to the Code.</p>
14	3.12 and 8.4	CA ANZ	<p>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.</p>
15	3.17	CA ANZ	<p>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..."</p>

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
16	3.17	CPAA	<p>Paragraph 3.17 of ED 01/18</p> <p>Para. 3.17 of ED 01/18 currently reads as follows: 'A Member should obtain an understanding of relevant foreign laws and regulations sufficient to enable the provision of competent Taxation Services. Where the Member does not have the necessary knowledge of the foreign laws and regulations, they should engage the services of an expert to ensure the Professional Activities are performed to the required standard.'</p> <p>CPA Australia suggests that the reference to 'foreign' which appears twice should be removed – as this is already inherently -although not explicitly- covered in paras 3.14-3.16 inclusive.</p>
17	5.5	CA ANZ	<p>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;</p> <p><i>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.</i></p>
18	5.5	CPAA	<p>Paragraph 5.5 of ED 01/18</p> <p>We are supportive of the inclusion of guidance paragraph 5.5. However, we suggest that the reference to 'a professional body' be removed from 5.5(a). CPA Australia submits that it may be beyond a professional member organisation's remit to authoritatively make statements of the efficacy of tax schemes. For example, when similar queries have arisen in the past, CPA Australia has encouraged the member to seek independent expert advice as well as considering consulting with the Australian Taxation Office (ATO). We also note that the ATO concur with this approach, encouraging advisers to seek their counsel with respect to schemes or arrangements under Taxation Law.</p> <p>Accordingly, we suggest the paragraph be edited as follows:</p> <p>If a Member is uncertain that a tax scheme or arrangement is of the type set out in paragraph 5.4, the Member should consider:</p> <ul style="list-style-type: none"> (a) consulting with the Client or Employer, Those Charge with Governance, as applicable; (b) if necessary, consulting with in-house legal counsel or obtaining independent legal advice; (c) if necessary and with the Client or Employer's consent, consulting with the applicable Revenue Authority; and (d) documenting the key considerations in determining whether the tax scheme or arrangement is not of the type set out in paragraph 5.4.

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
19	5.5(a)	CA ANZ	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.
20	7.8	CA ANZ	<p>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.</p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>7.8 If a Member in Public Practice encounters or is made aware of NOCLAR or suspected NOCLAR in the CA ANZ course of providing a Taxation Services the Member shall comply with Section 225...</i></p>
21	7.8	CPAA	<p>Paragraph 7.8 of ED 01/18</p> <p>We acknowledge as the inclusion of the requirements in paragraph 7.8 to address responding to non-compliance with laws and regulations (NOCLAR) which harmonise with APES 110 section 225 on NOCLAR for members in public practice.</p>

RESPONDENTS

1	CA ANZ	Chartered Accountants Australia and New Zealand
2	CPAA	CPA Australia
3	Deloitte	Deloitte Touche Tohmatsu
4	PwC	PricewaterhouseCoopers