Review of Submissions – Specific Comments Table
Exposure Drafts 02/18 and 03/18 relating to proposed revisions to APES 110 *Code of Ethics for Professional Accountants*

Note: General comments relating to APES 110 are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
1	Glossary	CA ANZ	**Text from the ED** Assurance Engagement *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.* *(For guidance on Assurance Engagements, see the Framework for Assurance Engagements issued by the AUASB. The Framework for Assurance Engagements describes the elements and objectives of an Assurance Engagement and identifies engagements to which Australian Auditing 14 Standards (ASAs), Standards on Review Engagements (ASREs) and Standards on Assurance Engagements (ASAEs) apply.)* **Comments** The definition of Assurance Engagement varies from the definition used by both the AUASB and IESBA (note text highlighted in yellow). IESBA definition An engagement in which a professional accountant in public practice 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. AUASB definition 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. For consistent application the same definition should be used.
2	Glossary	Deloitte	We have the following comments in this respect: • <u>Definition of Assurance Engagement</u>: The APESB has included a definition of Assurance Engagement that is different to the definition in the International Code, and different to the definition in the AuASB Glossary. The assurance framework is an international framework and, in Australia, falls within the purview of the AuASB. The definition of Assurance Engagement in the Australian Code should be the same as the definition used by the AuASB for clarity, consistency and the avoidance of unintended consequences. This is highlighted by the fact the Code refers the reader back to the AuASB Framework for Assurance Engagements in paragraph AUST 900.11.1

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3	AUST 114.1 A1.1	CA ANZ	**Text from the ED** The circumstances described in paragraph 114.1 A1 do not take into account Australian legal and regulatory requirements, such as the Privacy Act 1988 (Cth) and mandatory reporting of data breaches. A Member considering disclosing confidential information about a client or employer without their consent is strongly advised to first obtain legal advice. **Comments** This paragraph replicates para AUST 140.7.1. in the extant Code. We do not feel that the inclusion of this paragraph substantively improves the clarity for users. Further, by listing only the Privacy Act 1988 (Cth) a user may think only of that legislation. Also the inclusion of the phrase "strongly advised to first obtain" is in our opinion too strongly worded for application materials. If the Board determined there is a compelling reason to include this paragraph we would recommend the Board consider amending the wording to "may consider first obtaining".
4	**AUST R220.4.1**	CA ANZ	**Text from the ED** **Where a Member in Business referred to in paragraph R220.4 is not satisfied that the Financial Statements of an employing organisation are presented in accordance with applicable Australian Accounting Standards, the Member shall:** **a) in all cases, notify Those Charged with Governance and document the communication; and** **b) qualify any declarations given by the Member in compliance with legislative and regulatory requirements or the organisation's reporting requirements.** **Comments** This para is consistent with extant para AUST 320.2.1. Paras R220.5 - 220.11.A3 provide a practitioner with steps to take in the circumstances. We note that the proposed paragraph is more specific but are not aware of a compelling need for the additional requirement in the Code.
5	Sections 250 and 340	CPAA	CPA Australia is generally supportive of the proposed amendments to Inducements. The Exposure Draft, however, is silent on Members' responsibilities with respective to the cumulative effect of inducements over time which may appear trivial or inconsequential in isolation. CPA Australia recommends that the Proposed Standard include guidance for members where a trivial or inconsequential benefit accumulates over time.
6	Sections 250 and 340	EY	We suggest that unless an inducement is clearly trivial or inconsequential, the requirements and application material contained in the conceptual framework should apply in assessing whether there is an actual or perceived intent to improperly influence behaviour.

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7	AUST 320.2.1	CA ANZ	**Text from the ED** The requirements of Section 320 also apply where a Member in Public Practice is replacing or being replaced by an accountant who is not a Member. **Comments** This para is consistent with extant para AUST 210.15.1. We are aware of this paragraph enhancing the application of the Code.
8	**AUST R330.4.1**	CA ANZ	**Text from the ED** **A Member in Public Practice shall not use Contingent Fees in the specific engagement circumstances set out in:** • **APES 215 Forensic Accounting Services;** • **APES 225 Valuation Services;** • **APES 330 Insolvency Services;** • **APES 345 Reporting on Prospective Financial Information Prepared in Connection with a Disclosure Document; and** • **APES 350 Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document.** **Comments** As each of the standards referred to have prohibitions for contingent fees for specific engagements we believe there is a compelling reason to include this paragraph in the Code. We would however recommend the Board reconsider the drafting. An alternative drafting is provided below. A Member in Public Practice shall not enter into a ~~use~~ Contingent Fee~~s~~ engagement of a nature that is prohibited by the following standards ~~in the specific engagement circumstances set out in~~:
9	**AUST R330.4.1**	Deloitte	• AUST R330.4.1: We support the inclusion of this AU paragraph to enhance clarity for readers, however suggest the drafting might be improved as follows: *A Member in Public Practice shall not ~~use~~ charge a Contingent Fee~~s~~ for a non-assurance service where not permitted by the following standards ~~in the specific engagement circumstances set out in~~:*
10	**AUST R330.5.1**	CA ANZ	**Text from the ED** **A Member in Public Practice who is undertaking an engagement in Australia and receives a referral fee or commission shall inform the client in writing of:** • **the existence of such arrangement;** • **the identity of the other party or parties; and** • **the method of calculation of the referral fee, commission or other benefit accruing directly or indirectly to the Member.**

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	AUST R330.5.2 AUST 330.5.2 A1		**A Member in Public Practice shall not receive commissions or other similar benefits in connection with an Assurance Engagement.** The receipt of commissions or other similar benefits in connection with an Assurance Engagement creates a threat to Independence that no safeguards could reduce to an Acceptable Level. **Comments** Theses paras are consistent with extant paras AUST 240.7.1, AUST 240.7.2.and AUST 240.7.2. We note that the Board has elevated two of these paragraphs to a requirement whilst in the extant code it was guidance. We believe that, in the current environment, if commissions form part of the engagement remuneration it should be completely transparent. Accordingly we are supportive of these AUST paragraphs.
11	**R340.13**	EY	In addition, with respect to R340.13 A1, we suggest that consideration be given to softening the proposed language, "the accountant shall advise the immediate or close family member not to offer or accept the inducement". The reason for potentially softening the language is that the accountant only has reason to believe that there is intent to improperly influence the accountant or the counterparty and there may be other facts and circumstances which are unknown to the accountant which would establish that this was not the case.
12	**AUST R400.8.1**	CA ANZ	**Text from the ED** **Firms shall determine whether to treat additional entities, or certain categories of entities, as Public Interest Entities because they have a large number and wide range of stakeholders. Factors to be considered include:** • **The nature of the business, such as the holding of assets in a fiduciary capacity for a large number of stakeholders. Examples might include financial institutions, such as banks and insurance companies, and pension funds.** • **Size.** • **Number of employees.** **Comments** This para is consistent with extant para 290.26 and IESBA para 400.8. However the APESB has elevated this to a requirement. We feel that the inclusion of this paragraph and AUST 40.8.1A1 will assist in the consistent determination of PIEs in Australia. Accordingly we are supportive of this paragraph and related AUST 400.8.1A1 paragraph.
13	AUST 400.8.1 A1	CA ANZ	**Text from the ED** The following entities in Australia will generally satisfy the conditions in paragraph AUST 400.8.1 as having a large number and wide range of stakeholders and thus are likely to be classified as Public Interest Entities. In each instance Firms shall consider the nature of the business, its size and the number of its employees: • Authorised deposit-taking institutions (ADIs) and authorised non-operating holding companies (NOHCs) regulated by the Australian Prudential Regulatory Authority (APRA)9 under the Banking Act 1959;

<table>
<tr><th>Item No.</th><th>Paragraph No. in ED</th><th>Respondent</th><th>Respondents' Comments</th></tr>
<tr><td></td><td></td><td></td><td>Authorised insurers and authorised NOHCs regulated by APRA10 under Section 122 of the Insurance Act 1973;
Life insurance companies and registered NOHCs regulated by APRA11 under the Life Insurance Act 1995;
Private health insurers regulated by APRA12 under the Private Health Insurance (Prudential Supervision) Act 2015;
Disclosing entities as defined in Section 111AC of the Corporations Act 2001;
Registrable superannuation entity (RSE) licensees, and RSEs under their trusteeship that have five or more members, regulated by APRA13 under the Superannuation Industry (Supervision) Act 1993; and
Other issuers of debt and equity instruments to the public.
Comments
This para is consistent with extant para AUST 290.26.1.</td></tr>
<tr><td>14</td><td>AUST R400.12.1</td><td>CA ANZ</td><td>Text from the ED
Where a Member in Public Practice identified multiple threats to Independence, which individually might not be significant, the Member shall evaluate the significance of those threats in aggregate and the safeguards applied or in place to eliminate some or all of the threats or reduce them to an Acceptable Level in aggregate.
Comments
This para is consistent with extant para AUST 290.11.1.
We understand in practice this is what would happen but as the IESBA has not included a similar paragraph we seek to understand from the Board why there is a specific need for the paragraph in Australia.
Furthermore, how does the Board intend the aggregation to occur, for each engagement, for a financial year?</td></tr>
<tr><td>15</td><td>AUST R410.3.1</td><td>CA ANZ</td><td>Text from the ED
When the total fees in respect of multiple Audit Clients referred from one source represent a large proportion of the total fees of the Firm expressing the audit opinions, the Firm shall evaluate the significance of the threat and apply safeguards when necessary to eliminate the threat or reduce it to an Acceptable Level.
Comments
This para is consistent with extant para AUST 290.17.1 (partially). This has been elevated to a requirement from application materials in the extant Code.
We understand this paragraph assists in the application of the Code. We would encourage the Board to clearly document the reasons why you believe it is important to include this requirement in the Code.</td></tr>
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Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
16	AUST 410.3.1 A1	CA ANZ	**Text from the ED** Another party or Firm may refer multiple Audit Clients to a Firm. The dependence on that source and concern about losing those clients creates a self-interest or intimidation threat. Paragraph 410.3 A2 provides examples of factors that may affect the significance of the threat and paragraph 410.3 A6 lists potential safeguards that may be applied. **Comments** This para is consistent with extant para AUST 290.17.1 (partially). Refer above comments regarding AUST R410.3.1.
17	**R510.4** (Extant 290.108)	KPMG	However, while not specifically related to the structure of the Code, we believe it is appropriate to raise a suggested amendment to the Code in order to address an existing anomaly between the Code and the Corporations Act 2001, as amended (Cth) (**Corporations Act**). **APES 110 (290.108) – Financial interest breach involving a 'Partner in the Office' and the implications for the Corporations Act** • A breach of APES 110 (290.108) occurs when a Partner in the same office in which the Engagement Partner practices in connection with the Audit Engagement, or their immediate family, holds a financial interest in that audit client. • We note that while this does not represent a breach of the Corporations Act, the legislation requires the issuance of a qualified section 307C declaration, as there would be a 'contravention of any applicable code of professional conduct in relation to the audit'. • In this scenario, we do not believe that the quality control system defence available in the Corporations Act (section 324CF(4)), which would not require the issuance of a qualified section 307C declaration, can be relied upon. This defence is only applicable to 'the requirements of this Subdivision'. In particular, the rule that is breached (i.e. the APES 110 'Partner in the Office' rule) is not in the relevant Subdivision (as the rule is not in the Corporations Act at all). Hence, the quality control defence could not be used. • However, it is acknowledged by many that this concluded position is unintended i.e. a 'Partner in the Office' breach requires a qualified section 307C, however, no qualified section 307C is typically required if a breach was caused by a member of the audit team. We believe that this anomalous outcome was not intended by the legislature. In 2007, the legislature introduced subsection 307C(5B) of the Act as part of a package of reforms to address what the legislature described as 'Anomalies arising from CLERP 9'.[1] One anomaly identified was that section 307C of the Act would require an auditor to declare inadvertent breaches of the auditor independence requirements notwithstanding that a statutory defence applied. The Explanatory Memorandum to the Bill states:[2] In the course of day-to-day audit practice, there would be many examples of inadvertent breaches of the auditor independence requirements which would be quickly addressed once the auditor became aware of the breach. …

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
			The measures in the Bill will ensure that an auditor will not be required to report inadvertent breaches of the auditor independence requirements in the auditor's declaration where the statutory defence would be applicable. Prior to the introduction of subsection 307C(5B), relief in such circumstances was provided under ASIC class order 05/910. Importantly, and essential to understanding the anomaly that it creates, subsection 307C(5B): • **'carves-out'** from the section 307C disclosure requirement conduct that while in breach of auditor independence requirements in the Act – is conduct for which certain statutory defences are able to be established; • **but does not 'carve-out'** breaches of any applicable code of professional conduct (such as APES 110), even where those breaches are inadvertent. Relevantly, it is an offence under subsection 324CF(2) of the Act for a professional member of the audit team to have an asset that is an Investment in an audit client.[3] A statutory defence to that offence is available under subsection 324CF(4) if there were reasonable grounds to believe that the auditor had in place at the time a quality control system that provided reasonable assurance that the auditor and its employees complied with the requirements of Subdivision 3B of Part 2M.4 of the Act. Therefore, as a result of the introduction of section 307C(5B), if rather than another Partner in the office of the Engagement Partner making the Investment, the Investment had been made by a professional member of the audit team (including the Engagement Partner): • that would be a contravention of subsection 324CF(2) of the Act; and • the defence in subsection 324CF(4) would apply; and, consequently • subsection 307C(5B) would apply so that the auditor would not be required to give a declaration under section 307C in respect of the contravention of the Act. However, whilst it is a breach of paragraph 290.108 for a partner who is not a professional member of the audit team of an audit client, but who is based in the same office as the Engagement Partner for the audit, to have an asset that is an Investment in an audit client, it is not an offence under the Act. Therefore: • the defence under subsection 324CF(4) cannot apply; and • subsection 307C(5B) cannot apply (even if the circumstances of the breach would satisfy the requirements for that defence to apply); and, consequently, • the auditor would be required to give a declaration under subsection 307C(3) in respect of the APES 110 Breach. We believe that this is an anomalous outcome that is not consistent with the intention of the legislature (which followed from the policy of ASIC at that time in class order 05/910) that an auditor should not be required to declare inadvertent breaches of auditor independence requirements that occur in day-to-day practice and are quickly addressed once the auditor became aware of the breach.

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments
			Suggested amendment to 290.108 Given the above, we detail below in red a suggested amendment to 290.108 (as 290.108.1) of the Code in order to address the above: **APES 110 290.108** If other partners in the Office in which the Engagement Partner practices in connection with the Audit Engagement, or their Immediate Family members, hold a Direct Financial Interest or a material Indirect Financial Interest in that Audit Client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an Acceptable Level. Therefore, neither such partners nor their Immediate Family members shall hold any such Financial Interests in such an Audit Client. **APES 110 290.108.1** *An inadvertent violation of 290.108 is not considered to be a contravention of the Code for the purposes of section 307C of the Corporations Act 2001, provided:* • *the violation is trivial and inconsequential;* • *the Firm has appropriate quality control policies and procedures in place, equivalent to those required by APES 320 Quality Control for Firms, to maintain Independence; and* • *once discovered, the violation is corrected promptly and any necessary safeguards are applied to eliminate any threat or reduce it to an Acceptable Level.* The inclusion of the above Australian text in red: • does not affect the compliance of APES 110 with the IESBA Code, as all breaches still require reporting to 'Those Charged With Governance' under para 290.46; • aligns with the reporting exemption approach already included in the Corporations Act, whereby contraventions of the specific independence requirements of the Corporations Act do not require inclusion in the section 307C declaration, as long as reasonable steps are taken to address the circumstance that has given rise to the contravention, and the audit partner considers that the Firm has a quality control system that provides reasonable assurance (taking into account the size and nature of the audit practice of the audit firm) that the audit firm and its employees complied with the relevant requirements of the Corporations Act; and • removes the need for ASIC to spend its time reviewing and providing relief (now under section 340 of the Corporations Act) from disclosure for this type of breach. **Footnotes** 1 Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007; Explanatory Memorandum to the Bill, p60. 2 At pp62 – 63.

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			3 Section 324CF(2), because item 10 of the table in subsection 324CH(1) would have applied at that time to a person covered by item 4 of the table in subsection 324CF(5).
18	**R510.4** (Extant 290.108)	Deloitte	• Consistency between the Code and the Corporations Act: We request the APESB consider the appropriateness of making additional amendments to the Australian Code, with the objective of highlighting, or if possible remedying, the inconsistency that currently exists between the Australian Code and the Corporations Act requirements with respect to the reporting of certain breaches. All breaches of applicable independence requirements are reported to the audit client in accordance with the provisions of the Code. The Corporations Act additionally sets out the requirements for when breaches are reported under section 307C. However, the prohibition in the Code with respect to a financial interest owned by a Partner in the same Office as the audit partner is not contained in the auditor independence requirements of the Corporations Act. Therefore, a breach of that provision of the Code is not covered by the reporting exemption in s307C(5B) of the Corporations Act. The effect of this anomaly is that a breach of that provision is required to be disclosed under s307C, where other breaches of the Code are not, which is contrary to the spirit and intention of section 307C(5B).
19	**R510.4** (Extant 290.108)	PwC	I have reviewed the wording, I believe this wording would appropriately address the anomaly that currently exists. PwC is supportive of this change, it is in the interests of the profession and the community for the reasons outlined in KPMG's submission.
20	**AUST R523.3.1**	CA ANZ	**Text from the ED** **A Firm shall refuse to perform, or shall withdraw from, the Audit Engagement if a partner or employee of the Firm were to serve as an Officer (including management of an Administration) or as a Director of an Audit Client, or as an employee in a position to exert direct and significant influence over the subject matter of the Audit Engagement** **Comments** This para is consistent with extant para AUST 290.144.1. Paragraph R523.3 prohibits an individual from serving as a Director or Officer of an Audit client of the Firm. This paragraph takes the same prohibition but from a firm point of view and extends the prohibition to "management of an Administration". We understand, in practice the processes and policies to comply with R523.3 would achieve the same outcome as proposed AUST R523.3.1 but as the IESBA has not included a similar paragraph we are unsure why there is a specific need for the paragraph in Australia. The definition of a Director or Officer could be amended in the glossary to include "management of an Administration" further reducing the need for the proposed paragraph.

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21	**AUST R523.5**	CA ANZ	**Text from the ED** **As the company secretary of a company incorporated in Australia is an Officer under the Corporations Act 2001, no partner or employee of a Firm shall act in the position of company secretary of an Audit Client. If an individual were to accept such a position the Firm shall comply with the requirements of AUST R523.3.1.** **Comments** This para is consistent with extant para AUST 290.146.1. We are supportive of the inclusion of this paragraph as it is providing assistance to users to understand the specific Australian legislation. We do feel that it is better included as application materials rather than a requirement.
22	Section 540 and **AUST R540.19.1**	EY	We are supportive of the proposals in principle but would like to reiterate the comments from our previous submission on earlier exposure drafts of APES 110 on the transition of shorter cooling-off periods established by legislation or regulations. The proposals effectively create a framework where the core requirement for engagement partners serving five years on Australian listed companies require a three year cooling-off until 31 December 2023, when the lapsing of the transitional provision will create a five on/ five off regime. This compares with the international code requirement of seven on/ five off, and the legal requirement under Corporations Act 2001 of five on/ two off. We continue to hold the view that serving five on/ five off is too onerous. We understand that the APES Board has ongoing dialogue with the IESBA on this issue and we recommend that the sunset provision on the transitional provision in AUST R540.19.1 be deleted in order to establish a five on/ three off regime for the foreseeable future. We note that there continues to be no empirical data or authoritative research supporting a link between cooling-off and audit quality. We do acknowledge that the extension provisions of the law that allow a listed entity to extend the engagement partner up to seven years do create the ability for a seven on/five off regime to apply, and in our view, this is acceptable, and consistent with the international standard. We note, however, that these extension provisions are intended for exceptional circumstances.
23	**AUST R540.19.1**	CA ANZ	**Text from the ED** **In Australia, where laws or regulations require a two year cooling-off period for Engagement Partners for audits of Public Interest Entities, the cooling-off period shall be three years for periods beginning prior to 31 December 2023 provided that the applicable time-on period does not exceed seven years.** **Comments** We agree that this paragraph will assist Australian users of the Code as it is providing assistance to users to understand the specific Australian scenario. We are unsure that a requirements paragraph is necessary. The Corporations Act at 324DA refers to Listed Entities not Public Interest Entities. We recommend the Board consider amending this paragraph to reflect the Corporations Act.

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24	AUST 900.11.1	CA ANZ	**Text from the ED** The AUASB has issued Framework for Assurance Engagements which describes the nature of an Assurance Engagement. To obtain a full understanding of the objectives and elements of an Assurance Engagement it is necessary to refer to the full text of that document. **Comments** This para is consistent with extant para AUST 291.16.1. We understand that this application material may assist users applying the Code.
25	**AUST R900.15.1**	CA ANZ	**Text from the ED** **Where a Member in Public Practice identifies multiple threats to Independence, which individually might not be significant, the Member shall evaluate the significance of those threats in aggregate and the safeguards applied or in place to eliminate some or all of the threats or reduce them to an Acceptable Level in aggregate.** **Comments** This para is consistent with extant para AUST 291.10.1. We refer to our comments on paragraph AUST R400.8.1.

RESPONDENTS

1	CA ANZ	Chartered Accountants Australia and New Zealand
2	CPAA	CPA Australia
3	Deloitte	Deloitte Touche Tohmatsu
4	EY	Ernst & Young (Submission relating to amendments to the Code)
5	EY	Ernst & Young (Submission relating to proposed inducement provisions)
6	KPMG	KPMG Australia
7	PwC	PricewaterhouseCoopers (electronic correspondence)