



Annual Review of Compiled APES 110 Code of Ethics for Professional Accountants

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1. Executive Summary

1.1. Background

APESB issued APES 110 *Code of Ethics for Professional Accountants – Revised 2010* (the Code) in December 2010 with an effective date of 1 July 2011. The new Code aligns Australia's professional requirements with the IESBA Code and also includes Australian specific requirements relating to inadvertent violations and multiple threats to auditors' independence.

In December 2011, the definition of Public Interest Entity in APES 110 was revised and was included in the compiled version of APES 110 that was issued in September 2012. The compiled Code takes into account amendments up to and including December 2011.

1.2. Reason for this report

In accordance with the constitution of APESB, an annual review needs to be performed to identify and resolve any issues reported by stakeholders. This report presents an analysis of the issues identified and the proposed action to address the identified issues.

1.3. Issues identified

The issues raised by stakeholders are summarised below.

Carry forward issues from the 2012 Six Monthly Review

1. Temporary staff assignments that are prohibited by the Code are commonly part of public sector employment conditions which is an issue for staff of the Auditor General's office.
2. The Code has certain prohibitions in respect of employment with an audit client for Key Audit Partners. However, such employment is permissible in the public sector which may create conflicts for staff of the Auditor General's office.

New Issues arising

3. Stakeholders raised editorial amendments to Section 2 Definitions and [AUST] Preface: Sections 290 and 291 of the Code.
4. The NSW Auditor General's office raised the issue of what entities are considered Public Interest Entities in the public sector.
5. A stakeholder noted that paragraph 290.149 in APES 110 issued in 2006 excluded Members' Voluntary Liquidation as a circumstance where an auditor could not be an officer of the Company. This exclusion is no longer available under the revised APES 110.

1.4. Summary of Recommendations/Actions Taken

The following is a summary of the recommendations in respect of the identified issues:

Carry forward issue from the 2012 Six Monthly Review

1. The Board considered this issue during the 2012 Six Monthly Review process and did not agree with the proposed AUST 290.142. A meeting was held between the Board and the NSW Audit Office to communicate the Board's views and this issue is now resolved.
2. The Board considered this issue during the 2012 Six Monthly Review process and directed Technical Staff to seek further clarification from ACAG and redraft a proposed paragraph AUST 290.139. This matter is still a work in progress.

New issues arising

3. Editorial amendments to the relevant sections of the Code to be completed with the next revision.
4. APES Board to consider the benefits of developing guidance relating to the interpretation of the defined term, Public Interest Entity in relation to the public sector.
5. APES Board to consider the merit of reinstating the exclusion associated with the auditor acting as an officer where the company is undergoing a Members' Voluntary Liquidation.

2. Review of Issues

Carry forward issue from the 2012 Six Monthly Review:

2.1 Temporary Staff Assignments

Issue

Paragraph 290.142 of the Code states that the Firm's personnel may not be lent to an audit client for other than a short time and shall not provide non-assurance services of a certain type or assume management responsibilities. In NSW, the Auditor General has arrangements for secondments with audit clients and, in many cases, they may relate to roles such as those mentioned above and, while temporary, may last for up to two years. Such secondments are considered a part of public sector employment conditions which the Auditor General is obliged to support. Further, in the opinion of the Auditor General, with appropriate safeguards in place, threats to independence can be reduced to an acceptable level.

Analysis of issue

Temporary secondments involving performance of the roles mentioned above are commonly part of public sector employment conditions. As currently drafted, paragraph 290.142 allows secondments under specified conditions and provides examples of safeguards available if a threat to independence arises. However, paragraph 290.142 provides that such arrangements as highlighted by the Auditor General will not be permitted. The Auditor General has suggested that an exception be made in the case of government bodies where temporary staff assignments are expected as part of the broader public sector employment conditions and appropriate safeguards can be put in place.

The Code is derived from the international Code issued by IESBA. IESBA's Code does not directly address equivalent Auditor General's offices. In Australia, Auditor Generals are included by virtue of limb (d) of the definition of 'Firm'.

2012 Update

The Board considered this matter during the 2012 Six Monthly Review process and directed Technical Staff to organise a meeting with the Audit Office of New South Wales to discuss further. The meeting was held on the 2nd of February 2012 to discuss the issue and collaborate on the development of an AUST paragraph to address the concerns raised. It was proposed that acceptable safeguards were to be developed for the Board's consideration.

2013 Update

The APES Board considered the draft AUST 290.142 proposed by ACAG at the September 2012 meeting and did not agree with the proposed paragraph. A meeting was held in October 2012 with the NSW Audit Office where the Board's views on this matter was communicated to the NSW Audit Office. This issue has now been resolved.

Stakeholders

Members who are employed in the Auditor Generals offices.

Recommendation/Status

No further work required in relation to this issue.

2.2 Employment of Key Audit Partners with Audit Clients

Issue

Paragraph 290.139 of the Code indicates that in certain circumstances employment with an Audit Client will result in independence being compromised. The Code does not explain what the impact of this would be and what safeguards or steps (if any) can be implemented so the independence of the audit is not affected.

In the NSW public sector, there are instances when the equivalent of Key Audit Partners may take employment with Audit Clients. If the intent of the Code is to suggest that the only option in such circumstances is to relinquish the audit Engagement, by law the Auditor General is unable to do this in the public sector.

Analysis of issue

Where the equivalent of a Key Audit Partner takes employment with an Audit Client that is a Public Interest Entity, such action is in contravention of the requirements of the Code. The Code as currently drafted does not provide detail of the impact of such employment or potential safeguards and steps that can be implemented so the independence of the audit is not affected in the public sector.

This issue has arisen due to the Australian definition of 'Firm'.

2012 Update

The Board considered this issue during the 2012 Six Monthly Review process and directed Technical Staff to organise a meeting with the Audit Office of New South Wales on 2 February 2012 to discuss the issue and collaborate on the development of an AUST paragraph to deal with this issue. It was proposed that acceptable safeguards be developed and evaluated for inclusion in this proposed paragraph.

2013 Update

ACAG developed a proposed paragraph AUST 290.139 and submitted it for the September 2012 Board meeting. The Board directed staff to explore this issue further with ACAG and redraft the proposed AUST 290.139.

A meeting was held in October 2012 with the NSW Audit Office where the Board's views on this matter were communicated to the NSW Audit Office.

A further teleconference meeting was held with NSW Audit Office in January 2013. This matter is currently a work in progress.

Stakeholders

Members who are employed in the Auditor Generals offices.

Recommendation/Status

Work on the redraft of the proposed AUST 290.139 and resolution of this issue is in progress in conjunction with the NSW Audit Office.

New issues arising:

5.3 Editorial amendments to the definitions and the AUST Preface of Sections 290 and 291

Issue

Stakeholders noted that the following editorial amendments to the Code are required:

1. The adjective 'dependent' used in the definition of 'Immediate Family' in the Code should be replaced by the noun, 'dependant'.
2. The fifth paragraph of AUST Preface to Sections 290 and 291 of the Code states 'not all applicable Corporations Act 2001 requirements have been address and thus...'. The term 'addressed' should replace 'address'.

Analysis of issue

1. 'Immediate Family' is defined by the Code as a spouse (or equivalent) or dependent.

In this context, reference should be to the noun and not the adjective. It is believed that this issue has arisen due to US Spelling. This could be addressed in the Australian context with an editorial change.

2. The text is drafted in the past tense, accordingly the term 'address' should be replaced by the past tense 'addressed'.

Stakeholders

Members

Recommendation/Status

Editorial amendments to be made in the next revision of the Code.

5.4 Public Interest Entities in the public sector

Issue

During a meeting held with ACAG the issue of what is considered a Public Interest Entity (PIE) in the public sector arose due to potential differing interpretations of the definition in the Code as currently there is no guidance for the public sector.

Analysis of issue

The Code defines Public Interest Entity as:

- (a) A Listed Entity; or
- (b) An entity (a) defined by regulation or legislation as a public interest entity or (b) for which the audit is required by regulation or legislation to be conducted in compliance with the same Independence requirements that apply to the audit of Listed Entities. Such regulation may be promulgated by any relevant regulator, including an audit regulator.

APESB representatives met with officers of the Auditor General's office and understood that clarification around this definition with particular regard to the public sector would be beneficial.

Stakeholders

State and federal Auditor Generals.

Recommendation/Status

The Board to consider the benefits of developing guidance relating to the interpretation of the defined term, Public Interest Entity in relation to the public sector.

5.5 Exclusion of Members' Voluntary Liquidation where an auditor cannot be an officer of the company

Issue

A stakeholder noted that APES 110 issued in 2006 contained paragraph 290.149 that excluded Members' Voluntary Liquidation as a circumstance where an auditor could not be an officer of the Company. This was an Australian addition to the Code in 2006. This exclusion is not provided for in the previous or the 2009 version of the IESBA Code, or in the Compiled APES 110 *Code of Ethics for Professional Accountants* issued in September 2012 (the Code).

Analysis of issue

The basis for and process of Members' Voluntary Liquidation is clearly differentiated from the liquidation of a company that is considered insolvent. Accordingly, APESB has excluded such arrangements from the scope of APES 330 *Insolvency Services* and similarly by way of paragraph 290.149 in APES 110 *Code of Ethics for Professional Accountants* issued in 2006.

Following the reissue of the IESBA Code, APESB revised APES 110 in a manner consistent with the IESBA Code except where further requirements and guidance was considered necessary in the Australian context. The exclusion of Members' Voluntary Liquidations was not carried forward from the 2006 Code to the revised APES 110.

The key threats identified by paragraph 290.148 of the Code are the threats of self-review and advocacy where a partner or employee of the Firm serves as an officer of an Audit Client. Where a Members' Voluntary Liquidation is undertaken however, the risks arising as a result of these threats are reduced. This is due to the nature of the Engagement particularly given that no future audits will occur subsequent to the liquidation.

Stakeholders

Members

Recommendation/Status

The Board to consider the merit of reinstating the exclusion associated with the auditor acting as an officer where the company is undergoing a Members' Voluntary Liquidation. If the Board is of the view that this should be considered then Technical Staff can develop a proposed paragraph for the Board's consideration.