



**Consultation Paper: Proposed Revision of APES 110 Code
of Ethics for Professional Accountants**

Prepared and issued by **Accounting Professional & Ethical Standards Board Limited**

Commenting on this Consultation Paper

Comments on this Consultation Paper should be forwarded so as to arrive by **29 January 2010**.

Comments should be addressed to:

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A copy of all submissions will be placed on public record on the APESB website: www.apesb.org.au.

Obtaining a copy of this Consultation Paper

This Consultation Paper is available on the APESB website: www.apesb.org.au. Alternatively, any individual or organisation may obtain one printed copy of this Consultation Paper without charge until **29 January 2010** by contacting:

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Reasons for issuing Consultation Paper 01/09

Accounting Professional & Ethical Standards Board Limited (APESB) is planning to issue an Exposure Draft to update APES 110 *Code of Ethics for Professional Accountants* (APES 110) in the first half of 2010. This is in response to changes that have been made in July 2009 to the IFAC *Code of Ethics for Professional Accountants* (IFAC Code). Prior to developing an Exposure Draft, APESB is seeking views on specific matters which may impact the overall drafting of the revised APES 110.

Specific matters for comment

1. Consideration of the IFAC Code in the Australian Context

APESB Drafting Conventions

Section 5.2 of APESB *Due process and working procedures for the development and review of APESB pronouncements* (November 2007) (Due Process Document) stipulates the drafting conventions adopted by APESB for the development of professional and ethical standards. Some of the key requirements are:

- Mandatory requirements and explanatory guidance are shown in separate paragraphs;
- Paragraphs containing mandatory requirements are shown in bold type black lettering;
- Paragraphs containing explanatory guidance are shown in grey type grey lettering;
- The word “shall” is used within mandatory requirement paragraphs to denote the obligations a member is required to comply with; and
- Defined terms will be in title case.

Section 5.4(c) of the Due Process Document requires that definitions contained in APESB standards are to be applied in the interpretation of APESB standards and that they are consistent across all pronouncements issued by APESB.

The revised IFAC Code has adopted a different drafting approach and APESB is considering whether an exception should be made to its normal drafting conventions in the revision of APES 110. In particular, APESB is considering the following matters:

- The IFAC Code contains a mixture of mandatory requirements and guidance within the same paragraph; and
- The IFAC Code and APES 110 contain different and additional defined terms. In developing APES 110, APESB modified or added defined terms to suit the Australian environment – for example, “assurance engagement”, “audit client”, “audit engagement”, “audit team”, “clients”, “engagement”, “firm”, “managerial employee”, “member”, “member in public practice”, “officer”, and “partner”. These terms have also been used in other standards issued by APESB. Another example is the definition of “public interest entity” in the IFAC Code for which there is currently no definition within APESB pronouncements or Australian legislation (refer further discussion below).

Illustration

If APESB’s drafting conventions and definitions were applied to paragraph 100.9 of the revised IFAC Code, it will result in the following marked-up version:

IFAC Code (July 2009)	Marked-up applying APESB Drafting Conventions
100.9 A professional accountant shall take qualitative as well as quantitative factors into account when evaluating the significance of a threat. When applying the conceptual framework, a professional	100.9A A professional accountant Member shall take qualitative as well as quantitative factors into account when evaluating the significance of a threat.

IFAC Code (July 2009)	Marked-up applying APESB Drafting Conventions
<p>accountant may encounter situations in which threats cannot be eliminated or reduced to an acceptable level, either because the threat is too significant or because appropriate safeguards are not available or cannot be applied. In such situations, the professional accountant shall decline or discontinue the specific professional service involved or, when necessary, resign from the engagement (in the case of a professional accountant in public practice) or the employing organization (in the case of a professional accountant in business).</p>	<p><u>100.9B</u> When applying the conceptual framework, a professional accountant<u>Member</u> may encounter situations in which threats cannot be eliminated or reduced to an acceptable <u>Level</u>, either because the threat is too significant or because appropriate safeguards are not available or cannot be applied.</p> <p><u>100.9C</u> In such situations, the professional accountant<u>Member</u> shall decline or discontinue the specific professional <u>Service</u> involved or, when necessary, resign from the engagement <u>(in the case of a professional accountant</u> <u>Member</u> in public practice <u>Public Practice)</u> or the employing organization (in the case of a professional accountant<u>Member</u> in business <u>Business</u>).</p>

Interaction with Australian Auditing Standards

In October 2009, the Auditing and Assurance Standards Board (AUASB) issued Auditing Standard ASA 102 *Compliance with Ethical Requirements when Performing Audits, Reviews and Other Assurance Engagements*. ASA 102 is a legislative instrument made under the *Corporations Act 2001*. The definition of relevant ethical requirements refers to APES 110. Accordingly, the defined terms audit engagement and review engagement need to be consistently used in APESB pronouncements and AUASB pronouncements and also internally within the revised APES 110. We note that the IFAC Code uses certain terms such as assurance engagements and audit engagements in different ways.

Illustration

Section 290.3 of the IFAC Code states that in this section, the term(s):

- “Audit,” “audit team,” “audit engagement,” “audit client” and “audit report” includes review, review team, review engagement, review client and review report; and
- “Firm” includes network firm, except where otherwise stated.

The requirements and guidance in paragraphs 290.4 to 290.514 are written using the defined term “audit engagement” whereas the intention is to actually apply these provisions to audit engagements and review engagements. For all other sections of the Code (excluding section 290), these terms are used only in their defined context. The use of defined terms in this manner in different sections of the Code has the potential to cause confusion.

A similar issue has been identified in respect of section 291 of the IFAC Code. Section 291 is intended to apply to assurance engagements which are not audit or review engagements (refer paragraph 291.1). However, all the provisions in that section are written using the defined term “assurance engagements”.

Definition of “public interest entity”

Paragraph 290.25 of the IFAC Code defines a public interest entity as:

“(a) All listed entities; and

- (b) Any 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.”

Paragraph 290.26 encourages firms and member bodies to consider whether ‘other entities’, or certain categories of entities, should also be treated as “public interest entities”. 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 may include financial institutions, such as banks and insurance companies, and pension funds;
- Size; and
- Number of employees.

The definition of public interest entity is central to the “stricter” independence requirements of section 290 of the revised IFAC Code.

Question 1

- a) **Mixture of mandatory requirements and guidance** – In accordance with APESB drafting conventions, should the revised APES 110 be formatted so that mandatory requirements appear in separate paragraphs to guidance?
- b) **Defined terms** – Should the revised APES 110 use IFAC defined terms, use defined terms tailored to the Australian environment, or, where applicable, use defined terms which are consistent with those used in Australian Auditing Standards?
- c) **Capitalisation of defined terms** – Should defined terms be differentiated from non-defined terms by capitalising defined terms in the revised APES 110?
- d) **Definition of “public interest entity”** – Should the revised APES 110 use the IFAC definition of “public interest entity” or provide guidance on the application of the IFAC definition in the Australian context or redefine this term in the Australian context?

Your response should include reasons to support your position and outline the advantages and disadvantages of the alternative approaches.

2. References to Australian legislative requirements

The existing APES 110 refers to the *Corporations Act 2001* and Australian Auditing Standards as issued by the Auditing and Assurance Standards Board. For example, APES 110 defines “audit engagement” as:

“An Assurance Engagement to provide a high level of assurance that a financial report is free of material misstatement, such as an Engagement in accordance with Australian Auditing Standards. This includes a statutory audit which is an audit required by legislation or other regulation, and other audits conducted for the purposes of the *Corporations Act*.”

In addition, APES 110 makes reference to the statutory independence of Auditors-General as provided for in legislation by the Parliament of each Australian jurisdiction.

Question 2

Should specific references to the *Corporations Act 2001* and Australian Auditing Standards be incorporated into the revised APES 110 where relevant?

Your response should include reasons to support your position and outline the advantages and disadvantages of the alternative approaches.

3. Structure of sections 290 and 291 of the IFAC Code

Significant duplication exists between sections 290 and 291 of the IFAC Code. While the underlying conceptual framework to independence is adopted in a consistent manner in both sections, the same common requirements that apply to audit and review engagements (section 290) are duplicated in relation to other assurance engagements (section 291).

Illustration

An example of the duplication is as follows:

IFAC Code (July 2009) – Section 290	IFAC Code (July 2009) – Section 291
<p>290.10 In deciding whether to accept or continue an engagement, or whether a particular individual may be a member of the audit team, a firm shall identify and evaluate threats to independence. If the threats are not at an acceptable level, and the decision is whether to accept an engagement or include a particular individual on the audit team, the firm shall determine whether safeguards are available to eliminate the threats or reduce them to an acceptable level. If the decision is whether to continue an engagement, the firm shall determine whether any existing safeguards will continue to be effective to eliminate the threats or reduce them to an acceptable level or whether other safeguards will need to be applied or whether the engagement needs to be terminated. Whenever new information about a threat to independence comes to the attention of the firm during the engagement, the firm shall evaluate the significance of the threat in accordance with the conceptual framework approach.</p>	<p>291.9 In deciding whether to accept or continue an engagement, or whether a particular individual may be a member of the assurance team, a firm shall identify and evaluate any threats to independence. If the threats are not at an acceptable level, and the decision is whether to accept an engagement or include a particular individual on the assurance team, the firm shall determine whether safeguards are available to eliminate the threats or reduce them to an acceptable level. If the decision is whether to continue an engagement, the firm shall determine whether any existing safeguards will continue to be effective to eliminate the threats or reduce them to an acceptable level or whether other safeguards will need to be applied or whether the engagement needs to be terminated. Whenever new information about a threat comes to the attention of the firm during the engagement, the firm shall evaluate the significance of the threat in accordance with the conceptual framework approach.</p>

Question 3

Do you believe sections 290 and 291 of the IFAC Code should be presented in their current form in the revised APES 110 or should they be restructured to remove duplication where possible?

Your response should include reasons to support your position and outline the advantages and disadvantages of the alternative approaches.

Request for comments

Comments are invited on this Consultation Paper: Proposed Revision of APES 110 *Code of Ethics for Professional Accountants* by **29 January 2010**. APESB would prefer that respondents express a clear opinion on the specific questions raised and that opinions are supplemented by detailed comments.