

AGENDA PAPER

Item Number: 4.1
Date of Meeting: 9 August 2010
Subject: Draft Exposure Draft ED 03/10 *Proposed Standard: APES 110 Code of Ethics for Professional Accountants*

<input checked="" type="checkbox"/>	Action Required	<input type="checkbox"/>	For Information Only
-------------------------------------	------------------------	--------------------------	-----------------------------

Purpose

To seek feedback from the APES Board on Exposure Draft ED 03/10 *Proposed Standard: APES 110 Code of Ethics for Professional Accountants* and to seek direction on the outstanding drafting matters noted in this agenda paper.

Background

At the May 2009 meeting, the Board approved a project to update APES 110 *Code of Ethics for Professional Accountants* to bring the requirements of APES 110 into alignment with the revisions made internationally by IESBA in July 2009 to its *Code of Ethics for Professional Accountants* (IESBA Code).

At the November 2009 meeting, the Board decided to issue a Consultation Paper seeking views of stakeholders on three key areas:

- Consideration of the IESBA Code in the Australian Context and application of APESB drafting conventions;
- Reference to Australian legislative requirements; and
- Structure of sections 290 and 291 of the IESBA Code.

At the March 2010 meeting, the Board considered responses to its Consultation Paper along with ten potential drafting approaches that could be used to update APES 110.

The Board instructed Technical Staff to draft an Exposure Draft applying the following drafting conventions:

- Change spelling from US to Australian English;
- Capitalise definitions;
- References to professional accountant to be changed to Member, Member in Public Practice or Member in Business as appropriate;
- Mandatory requirements and explanatory guidance will not be shown in separate paragraphs nor will bold or grey type be used to distinguish between mandatory requirements and explanatory guidance;

- Adopt IESBA definitions where possible with amendments or additions where these refer to Australian legislative requirements and Australian Auditing Standards;
- 2006 Board decisions which tailored the IESBA Code (2005) to the Australian environment be reconsidered and retained where there is sufficient justification to do so;
- A review of substantive matters be undertaken and that consideration be given to incorporating guidance to those issues identified as requiring further clarification; and
- A high level redraft of sections 290 and 291 be considered to determine the merit or otherwise of attempting to remove duplication of those sections.

At the April 2010 meeting the Board considered the structure of sections 290 and 291 of the IESBA Code and agreed that the format of sections 290 and 291 in the IESBA Code be retained in the revised APES 110.

At the May 2010 meeting the Board agreed that:

- Paragraphs 290.39, 290.117, 290.133, 291.33 and 291.122 be redrafted to require the documentation of inadvertent violations unless such violation is trivial and inconsequential;
- The AUST Preface to section 290 (as introduced in the 2006 version of APES 110) which addresses materiality be retained;
- The exemption on emergency situations for public interest entities for bookkeeping and tax be removed and that a guidance paragraph on what constitutes an emergency situation for non public interest entities be drafted;
- An additional AUST paragraph be included in section 290 to clarify the level of acceptable fees for non-public interest entities;
- No change be made with respect to requirements relating to internal audit services;
- An additional AUST paragraph be drafted to address documentation for multiple threats that are individually less significant but accumulate to a significant threat;
- Appropriate cross-referencing to the *Corporations Act 2001* be included below the relevant paragraph for consideration in the next version of the exposure draft;
- No structural or terminological changes be made to clarify the application of requirements contained in sections 290 and 291;
- A technical staff recommendation to retain, modify or remove 2006 insertions and removals be included in the next draft Exposure Draft for the Board's consideration;
- To the extent possible, definitions should be internationally and jurisdictionally consistent;
- The IESBA definition of public interest entity be adopted; and
- Requirements relating to the preparation of financial statements in accordance with an applicable financial reporting framework be clarified for Members in Business.

At the July 2010 meeting the Board agreed:

- The inclusion of a scope and application section.
- The legal enforceability paragraph should be relocated to within the scope and application section.
- In relation to the proposed definitions section:
 - Editorials be made in relation to the following proposed definitions: “audit engagement” and “auditing and assurance standards”;
 - The following proposed Australian definitions be removed: “client”, “engagement”, and “managerial employee”.
 - The proposed Australian definitions of “director” and “officer” be replaced with the IESBA definition of “director or officer”.
- Subject to editorials, the Australian Preface to sections 290 and 291 and the Australian Appendix to section 290 to be retained.
- Wherever possible, the text of IESBA paragraphs should remain unchanged and Australian specific requirements should follow immediately after relevant IESBA requirements as an “AUST” paragraph or sub-paragraph.
- In relation to the content and wording of the following specific paragraphs that were agreed in principle by the Board at its May 2010 meeting:
 - Retain the following proposed paragraphs without modification: AUST 290.39.1
 - Technical Staff further refine the draft wording in paragraphs: AUST 290.29.1, AUST 291.29.1 and AUST 320.2.1.
 - Retain the proposed wording of paragraphs 290.117, 290.133, 291.33, and 291.112 but relocate to a proposed specific AUST paragraph.

Reviewed the 61 decisions made by the Board in 2006 and directed technical staff to:

- Retain the amendments in the following paragraphs: 150.1, 210.13, headings before 240.3 and 240.5, 290.117 (renumbered as AUST 290.117.1), headings before 290.128 and 290.129, 290.144, 290.146 (renumbered as AUST 290.146.1), 290.148 (renumbered as AUST 290.148.1), AUST 291.16.1, 291.33 (renumbered as AUST 291.33.1), 291.112 (renumbered as AUST 291.112.1), 291.137 (renumbered as AUST 291.137.1), and AUST 291.156.1 (now relocated to 290.157.1).
- Modify the following paragraphs: AUST 100.1.1, AUST 100.3.2, AUST 210.11.1, 240.7, 250.2, AUST (c) 290.29, 290.133 (renumbered as AUST 290.133.1), AUST 290.151.1, Section 290 Appendix, AUST (c) 291.29, AUST 291.151.1, and AUST 320.2.1.
- Remove the following paragraphs: AUST 100.3.1, AUST 100.3.3, AUST 200.2.1, AUST 200.2.2, note before 210.9, AUST 210.14.1, AUST 280.2.1 to AUST 280.2.11, AUST 290.31.1, AUST 290.39.2, AUST 290.126.1, AUST 290.138.1, AUST 290.144.1, AUST 290.145.1, AUST 290.154.1, AUST 290.220.1, and AUST 291.32.1.
- Remove the amendments in the following paragraphs: 200.4, 210.10, 210.14, 220.4, 230.1, 240.1, 240.5, 240.8, 280.1, 280.2, 290.32, 290.118, 290.119, 290.120, 290.121, 290.123, 290.150, 290.155, 290.171, 290.173, 290.185, 290.186, 291.17, 291.113, 291.114, 291.115, 291.116, 291.118, 300.3, 320.2, 320.3, and 350.5.
- Reinstate the previously removed text/amendments in paragraphs: 100.5, 100.18, 290.146, 290.147 and 290.136.
- Further consider the need for amendments to the following paragraphs in Section 140 Confidentiality: 140.1, 140.6, 140.7, AUST 140.7.1, and 140.8.

- Further review 290.136 to examine the extent to which these requirements are covered by the *Corporations Act 2001* and to report back to the Board with a drafting recommendation.
- Noted that the insertion amendment in current paragraph 290.6 of APES 110 is no longer required as an equivalent paragraph no longer exists in the revised IESBA Code.
- The Board revisited its decision at the May 2010 Board Meeting and decided to reinstate the exemption on emergency situations for public interest entities for bookkeeping and tax (Paragraphs 290.171, 290.173, 290.185 and 290.186).
- The Board also directed Technical Staff to prepare a separate tabulation of previous 2006 Board insertions to APES 110 primarily relating to requirements of the *Corporations Act 2001* that are proposed to be removed from the revised APES 110. The Board agreed that further consideration of these items could then be undertaken from a public interest perspective.

Explanatory Guide to mark-ups

- The draft Exposure Draft 03/10 is a marked up version of the IESBA Code (July 2009) with editorial changes relating to 2006 Board Decisions highlighted in yellow. The replacement of “professional accountant” with “Member” and the capitalisation of defined terms as per APESB drafting conventions have not been highlighted in yellow.
- Obvious deletions are not shown in the mark-up (for example, capitalisation of a defined term or a spelling amendment). However, the associated insertion change is reflected with the amended text.
- Additional AUST paragraphs from the existing APES 110 are relocated next to the relevant IESBA paragraph and are highlighted in yellow.
- The definitions in section 2 highlight new IESBA defined terms in blue. 2006 APES Board insertions and removals are highlighted in yellow. Additional Australian definitions are included directly following IESBA definitions as AUST definitions;
- Technical Staff recommendations concerning the 61 decisions made by the Board in 2006 appear below the relevant paragraph. July 2010 Board decisions have been added below each of these along with further Technical Staff comments where relevant.

The attached draft Exposure Draft ED 03/10 *Proposed Standard: APES 110 Code of Ethics for Professional Accountants* reflects the drafting decisions approved by the Board and identifies the outstanding matters for the Board’s consideration.

Outstanding matters for the Board’s consideration

In order to finalise drafting of the Exposure Draft, technical staff seek the Board’s direction on the following matters:

1. Definition of “Engagement Team” – Reconsider the proposed amendment to the IESBA definition – the Board deferred consideration of this definition at it’s July meeting. The term Engagement Team is used in sections 200, 210, 220 and 280 which are applicable to all engagements (i.e. not only Assurance Engagements). If the term was only used in section 290 and 291 then the use of “assurance” would have been appropriate. The IAASB and AUASB glossary does not use “assurance” in their definition of Engagement Team. As some of the engagements conducted under the IAASB and AUASB framework include non assurance engagements, the term has been defined in a manner not to limit it to assurance procedures.

Technical Staff Recommendation

Technical Staff recommend the word “assurance” is removed from the definition to achieve consistency with the IAASB Glossary, the AUASB Glossary and APES 320.

2. Section 140 – Confidentiality

The current marked up version is based on the 2006 version of the Code. The 2006 version was prepared based on privileged legal advice obtained by the ICAA (refer Attachment 1A) and may not necessarily provide legal comfort to the APES Board.

Technical Staff have received comments from stakeholders on the drafting of section 140. As there are differing opinions on how section 140 should be drafted in the Australian context, Technical Staff present 3 options for the Board's consideration.

Option 1

APES Board engage a solicitor and obtain independent legal advice which can be relied upon as the basis for drafting section 140.

Option 2

APES Board retain the 2006 amendments as drafted and place reliance on the legal advice obtained via the ICAA and as reflected in the existing APES 110.

Option 3

APES Board remove the 2006 amendments and use the IESBA requirements with the expectation that users of APES 110 will seek their own legal counsel in applying the requirements of section 140 to their particular circumstances.

Technical Staff Recommendation

Technical Staff recommend that the APES Board adopt Option 1.

3. New Paragraph AUST210.15.1 – Board to review this new paragraph which has been added to clarify Member obligations where changes in professional appointments involve a non-member.

Technical Staff Recommendation

Technical Staff recommend the inclusion of AUST210.15.1 in the proposed revised APES 110.

4. Paragraph AUST290.136.1 – Board to consider whether this paragraph should be retained or removed.

Technical Staff Recommendation

Technical Staff recommend the retention of this paragraph on the basis it is a higher professional requirement that has existed since 2002 in Australia and that its removal would be lowering of the Australian requirements.

5. Paragraph AUST290.151.1 – Board to consider whether this paragraph should be retained or removed.

Technical Staff Recommendation

Technical Staff recommend that this paragraph be removed as a matter of consistency as the Board has decided to remove all other paragraphs that relate to the *Corporations Act 2001*.

An option to consider is whether footnote references should be made to make Members aware of the *Corporations Act 2001* requirements. If this approach is adopted then an explanatory note can be included in respect of partner rotation.

6. Section 290 Appendix (AUST) – Auditor’s Independence Declaration – Board to review drafting including references to paragraph 290.12 and reference to “lead Engagement Partner/auditor”.

Technical Staff Recommendation

Technical Staff recommend retention of the reference to paragraph 290.12 and prefer the simpler wording “lead Engagement Partner/auditor” over the proposed alternate wording “Key Audit Partner/auditor who is responsible for the engagement.”

7. AUST291.151.1 – Board to give further consideration to the 15% requirement.

Technical Staff Recommendation

Technical Staff recommend retaining the reference to 15%. While arbitrary, the 15% amount is also used in the IESBA requirements for Audit Clients that are Public Interest Entities (refer paragraph 290.222) and is used in AUST290.206.1 of the existing APES 110 in respect of Assurance Clients.

8. Comment period for the Exposure Draft – Board to consider the exposure period for ED 03/10.

Technical Staff Recommendation

Technical Staff recommend a minimum 45-day comment period.

Material Presented

- Exposure Draft ED 03/10 Proposed Standard: APES 110 *Code of Ethics for Professional Accountants [marked-up, version 1.11, 30-07-2010]*;
- Attachment 1A – Legal Advice obtained by ICAA on Section 140 *Confidentiality* (Strictly Confidential);
- Attachment 1B – Stakeholder Views on Section 140 *Confidentiality* (Strictly Confidential);
- Attachment 1C – Potential ‘Guidebook’ Paragraphs [*v1.01, 29-07-2010*].

Authors: Channa Wijesinghe
Erik Hopp

Date: 1 August 2010